

[Act 1997 No 154]



New South Wales

Health Services Bill 1997

Explanatory note

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

Overview of Bill

The object of this Bill is to consolidate (with certain changes) the provisions of the *Area Health Services Act 1986* (the “AHS Act”) and the *Public Hospitals Act 1929* (the “PH Act”) in a single Act so as to improve the delivery of health services and health support services by the public health system.

In particular, the Bill alters the existing law by:

- (a) extending the system of area health services from metropolitan Sydney, Wollongong and Newcastle to the whole of the State so as to provide a more effective basis for the planning and delivery of health services within the State, and
- (b) providing for the constitution of statutory health corporations to deliver health services and health support services other than on an area basis, and

* Amended in committee—see table at end of volume.

- (c) providing for the recognition as affiliated health organisations of certain non-government organisations and institutions that provide health services and health support services within the State that significantly contribute to the public health system, and
- (d) facilitating transfers of staff within the public health system and avoiding unnecessary redundancies, and
- (e) requiring visiting practitioners and staff of public health organisations to report serious sex or violence offences for which they have been convicted or with which they have been charged and to report misconduct findings (such as findings of professional misconduct and unsatisfactory professional conduct), and
- (f) providing for the kind of action that may be taken in relation to a conviction of a visiting practitioner or staff member of a public health organisation for a serious sex or violence offence, and
- (g) specifying the criteria by reference to which the Minister may determine funding for public health Organisations, and
- (h) enabling area health services, with the approval of the Minister, to provide health and ancillary services to bodies outside the public health system, and
- (i) enabling the Director-General to enter into performance contracts with area health services and statutory health corporations, and
- (j) enabling public health organisations to enter into service contracts with practice companies conducted by medical practitioners who are to provide medical services to the organisations as visiting practitioners, and
- (k) extending the provisions relating to arbitrations concerning sessional contracts of visiting medical officers to fee-for-service contracts and sessional contracts of visiting medical officers, and
- (l) making it clear that chief executive officers of area health services are ex-officio members of their area health boards and clarifying the operation of the *Public Sector Management Act 1988* in relation to them and the abolition of their positions, and
- (m) enabling members of area health boards and health corporation boards to be remunerated, and
- (n) extending provisions relating to the establishment of Samaritan Funds from hospitals to public health organisations generally, and
- (o) repealing the *Area Health Services Act 1986* and the *Public Hospitals Act 1929*, and

- (p) removing certain obsolete statutory requirements concerning the delivery of public health services.

The Bill also makes consequential amendments to various other Acts.

Outline of provisions

Chapter 1 Preliminary

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 provides that expressions used in the Dictionary at the end of the proposed Act have the meanings given in the Dictionary.

Clause 4 sets out the objects of the proposed Act.

Clause 5 provides that introductions to Chapters and other notes included in the proposed Act do not form part of the proposed Act.

Chapter 2 Structure of the public health system

Clause 6 defines *public health system* to mean all area health services, statutory health corporations and affiliated health organisations (in relation to their recognised establishments and recognised services).

Clause 7 defines *public health organisation* to mean an area health service, statutory health corporation or affiliated health organisation (in relation to its recognised establishments and recognised services).

Clause 8 defines *area health service* and states that the reason behind the constitution of an area health service is to provide health services for residents of the area for which the service is constituted.

Clause 9 sets out the primary purposes of area health services.

Clause 10 sets out the functions of area health services.

Clause 11 defines *statutory health corporation* and states that the reason behind the constitution of statutory health corporations is to enable certain health services and health support services to be provided other than on an area basis.

Clause 12 sets out the functions of statutory health corporations.

Clause 13 defines *affiliated health organisation* and states that the reason behind the recognition of such organisations by the proposed Act is to enable certain non-profit, religious, charitable or other non-government organisations and institutions that control hospitals, health institutions, health services or health support services that significantly contribute to the operation of the public health system to be treated as part of that system.

Clause 14 sets out the functions of affiliated health organisations.

Clause 15 defines *public hospital* to mean a hospital controlled by an area health service, statutory health corporation or the Crown, or a hospital that is a recognised establishment of an affiliated health organisation.

Clause 16 defines the *NSW Health Service* to mean all persons employed by area health services, statutory health corporations or employed by affiliated health organisations in relation to their recognised establishments and recognised services.

Chapter 3 Area health services

Part 1 Constitution of area health services

Clause 17 constitutes as bodies corporate the area health services specified in column 1 of Schedule 1.

Clause 18 provides that the area in respect of which each area health service is constituted is the local government area or other area specified or described in columns 2 and 3 of Schedule 1 for that service.

Clause 19 enables the Governor, by order published in the Gazette, to amend Schedule 1 or substitute a new Schedule for that Schedule.

Clause 20 enables the Governor, by order published in the Gazette, to dissolve, amalgamate or change the name of any area health service.

Clause 21 ensures that Schedule 4 has effect with respect to orders made under the proposed Part. Schedule 4 contains provisions relating to the transfer, dissolution, amalgamation and change of name of public health organisations and the transfer of public hospitals, health institutions, health services and health support services.

Clause 22 ensures that an area health service has the usual powers of a body corporate such as perpetual succession, the capacity to sue and be sued and to have an official seal.

Part 2 Area health boards

Clause 23 constitutes an area health board for each area health service.

Clause 24 provides that each area health board is to control the affairs of the area health service for which it is constituted and empowers the board to do things in the name of the service.

Clause 25 provides that an area health board is subject to the control and direction of the Minister.

Clause 26 provides that an area health board is to consist of the chief executive officer of the area health service and such other persons (not being less than 8 or more than 11) appointed by the Minister. It also provides that one of the members appointed by the Minister must be an elected staff member.

Clause 27 gives effect to Schedule 5, which contains provisions relating to the members and procedure of area health boards.

Clause 28 provides for the appointment of a chief executive officer for each area health service. It states that the functions of a chief executive officer are to manage the affairs of the service and to exercise such other functions as may be imposed on the officer by or under the proposed Act or any other Act. It also provides that the employment of a chief executive officer is subject to Part 2A (but not Part 2) of the *Public Sector Management Act 1988*.

Clause 29 enables the Governor, by order published in the Gazette, to remove any or all members of an area health board (including the chief executive officer) from office or to appoint an administrator.

Part 3 Functions of area health services

Clause 30 enables an area health service (with Ministerial approval) to enter into agreements with other area health services, statutory health corporations and affiliated health organisations to control or manage any public hospital, health institution, health service or health support service either jointly or alone.

Clause 31 enables an area health service to open, close or restrict any health service it provides or any of its hospitals or health institutions. It also enables the Minister to direct an area health service to ensure that any hospital, health institution, health service or health support service be established, closed or restricted.

Clause 32 enables the Minister, from time to time, to determine the role, functions and activities of public hospitals, health institutions, health services or health support services under the control of an area health service and to give necessary directions for that purpose.

Clause 33 enables each area health service to employ staff and to arrange for the use of the services of any staff or facilities of a Government agency or public authority. It also ensures that any staff members employed under the proposed section are not subject to Part 2 of the *Public Sector Management Act 1988*, which makes provision for members of the Public Service of the State.

Clause 34 confers various powers on area health services in relation to the acquisition, disposal and dedication of land.

Clause 35 applies certain provisions of the *Public Works Act 1912* to the acquisition of land by an area health service.

Clause 36 enables an area health service to accept gifts, devises and bequests of property.

Clause 37 enables an area health service to enter into a contract or agreement with any other person under which it receives services, goods, plant, machinery or material from that person. It also enables an area health service, with the approval of the Minister, to enter into a contract or agreement with another person to provide any service to that person even if that service is to be provided outside its area.

Clause 38 confers various investment powers on area health services.

Clause 39 enables area health services, with the approval of the Minister, to make by-laws in relation to certain matters.

Clause 40 enables an area health service to delegate certain of its functions to certain persons.

Chapter 4 Statutory health corporations

Part 1 Constitution of statutory health corporations

Clause 41 constitutes as bodies corporate the statutory health corporations specified in Schedule 2.

Clause 42 enables the Governor, by order published in the Gazette, to amend Schedule 2 or substitute a new Schedule for that Schedule.

Clause 43 enables the Governor, by order published in the Gazette, to dissolve, transfer, amalgamate, or change the name of, any statutory health corporation.

Clause 44 ensures that Schedule 4 has effect with respect to orders made under the proposed Part. Schedule 4 contains provisions relating to the transfer, dissolution, amalgamation and change of name of public health organisations and the transfer of hospitals, health institutions, health services and health support services.

Clause 45 ensures that a statutory health corporation has the usual powers of a corporate body such as perpetual succession, the capacity to sue and be sued and to have an official seal.

Part 2 Health corporation boards

Clause 46 constitutes a health corporation board for each statutory health corporation.

Clause 47 provides that each health corporation board is to control the affairs of the statutory health corporation for which it is constituted and empowers the board to do things in the name of the corporation.

Clause 48 provides that a health corporation board is subject to the control and direction of the Minister.

Clause 49 provides that a health corporation board is to consist of the chief executive officer of the statutory health corporation and such other persons (not being less than 5 or more than 11) appointed by the Minister. It also provides that one of the members appointed by the Minister must be an elected staff member.

Clause 50 gives effect to Schedule 5, which contains provisions relating to the members and procedure of health corporation boards.

Clause 51 provides for the appointment of a chief executive officer for each statutory health corporation. It states that the functions of a chief executive officer are to manage the affairs of the corporation and to exercise such other functions as may be conferred or imposed on the officer by or under the proposed Act or any other Act.

The proposed section also provides that the employment of a chief executive officer is subject to Part 2A (but not Part 2) of the *Public Sector Management Act 1988* if the Governor specifies in the instrument of appointment that it is an appointment to which that Part is to apply. However, if the Governor

specifies in the instrument of appointment that it is not an appointment to which that Part is to apply, then proposed section 51 (4) will apply to the employment of the chief executive officer.

Clause 52 enables the Governor, by order published in the Gazette, to remove any or all members of a health corporation board (including the chief executive officer) from office or to appoint an administrator.

Part 3 Functions of statutory health corporations

Clause 53 enables the Minister, from time to time, to determine the role, functions and activities of public hospitals, health institutions, health services or health support services under the control of a statutory health corporation and to give necessary directions for that purpose. In particular, it enables the Minister to direct a statutory health corporation to ensure that any hospital, health institution, health service or health support service be established, closed or restricted.

Clause 54 enables each statutory health corporation to employ staff and to arrange for the use of the services of any staff or facilities of a Government agency or public authority. It also ensures that any staff member employed under the proposed section is not subject to Part 2 of the *Public Sector Management Act 1988*, which makes provision for members of the Public Service of the State.

Clause 55 confers various powers on statutory health corporations in relation to the acquisition, disposal and dedication of land.

Clause 56 applies certain provisions of the *Public Works Act 1912* to the acquisition of land by a statutory health corporation.

Clause 57 enables a statutory health corporation to accept gifts, devises and bequests of property.

Clause 58 enables a statutory health corporation to enter into a contract or agreement with any other person under which it receives services, goods, plant, machinery or material from that person. It also enables a statutory health corporation, with the approval of the Minister, to enter into a contract or agreement with another person to provide any service to that person.

Clause 59 confers various investment powers on statutory health corporations.

Clause 60 enables statutory health corporations, with the approval of the Minister, to make by-laws in relation to certain matters.

Clause 61 enables a statutory health corporation to delegate certain of its functions to certain persons.

Chapter 5 Affiliated health organisations

Clause 62 provides that the various organisations or institutions named in column 1 of Schedule 3 are affiliated health organisations in respect of recognised establishments and recognised services described in column 2 of that Schedule opposite their names. It also enables the Governor, by order published in the Gazette, to amend Schedule 3 or substitute a new Schedule for that Schedule. However, an organisation or institution cannot be included in the Schedule as an affiliated health organisation unless it (or its governing body) consents to being included.

Clause 63 enables affiliated health organisations, with the approval of the Minister, to make by-laws in relation to certain matters.

Clause 64 enables the Governor, by order published in the Gazette, to transfer a public hospital, health institution, health service or health support service that is a recognised establishment or a recognised service of an affiliated health organisation to an area health service or statutory health corporation. It also provides for the transfer of related assets, rights or liabilities of the organisation. However, such an order cannot be made unless the affiliated health organisation consents to the transfer.

Clause 65 enables the Minister, from time to time, to determine the role, functions and activities of the recognised establishments and recognised services of an affiliated health organisation and to give necessary directions for that purpose.

Clause 66 requires the Director-General's consent to the appointment of the chief executive officer of a hospital that is a recognised establishment, or a health service that is a recognised service, of an affiliated health organisation.

Clause 67 confers certain protections from personal liability for matters or things done in good faith for the purposes of executing the proposed Act in relation to the recognised establishments and recognised services of affiliated health organisations.

Chapter 6 Medicare Principles and Commitments

Clause 68 reaffirms the adoption of the Medicare Principles and Commitments set out in section 26 of the *Health Insurance Act 1973* of the Commonwealth as guidelines for the provision of public hospital services. That Act makes the adoption of the Principles and Commitments a condition of the grant of financial assistance by the Commonwealth to the States in respect of the provision of such services. The Principles and Commitments were previously adopted in Part 4 of the *Health Administration Act 1982*, which is to be repealed by Schedule 6.16 [5] of the proposed Act.

Chapter 7 Charges for health services

Clause 69 enables the Minister, by order published in the Gazette, to fix a scale of fees for health services received from any public health organisation and to amend or revoke any such scale.

Clause 70 makes any patient who has received any health service from a public health organisation (other than a service for which a charge is not to be made under the Medicare Agreement) liable to pay a fee for that service, calculated in accordance with the scale of fees, to the Organisation.

Clause 71 provides that a destitute person cannot be denied care or treatment for sickness or injury at a public hospital only because the person is unable to pay for that care or treatment.

Clause 72 makes special provision for the recovery of a debt owed by a person to a public health organisation for the provision of a health service in respect of any personal injury received by that person or another person that is not covered by the Medicare Agreement.

Clause 73 provides that a court is not to make an order under the proposed Chapter if it is satisfied that it would be unreasonable to do so having regard to the means, estate or property of the patient concerned.

Clause 74 provides that a medical practitioner is not entitled to charge a patient a fee for any treatment he or she provides within a public hospital where that treatment is provided as part of the provision of a health service for which a charge is not to be made under the Medicare Agreement. Any contract entered into in contravention of the proposed section is unenforceable.

Clause 75 ensures that any reference in the proposed Part to a hospital service or other health service provided by a public health organisation is read as including a hospital service or other health service provided by the Crown (including the Minister or the Health Administration Corporation).

Chapter 8 Visiting practitioners

Part 1 Classification of visiting practitioners

Clause 76 defines *visiting practitioner* to mean a person appointed (otherwise than as an employee) by a public health organisation to practise as a medical practitioner or dentist, in accordance with conditions of the appointment, at its public hospitals or health institutions, and in relation to the health services it provides, as specified in the appointment.

Clause 77 sets out the kinds of visiting practitioners, namely, visiting practitioners appointed under service contracts (whether as visiting medical officers or honorary medical officers) and visiting practitioners appointed otherwise than under a service contract.

Clause 78 defines *visiting medical officer*. Such officers are medical practitioners appointed under service contracts to provide their services for monetary remuneration.

Clause 79 defines *honorary medical officer*. Such officers are medical practitioners appointed under service contracts to provide their services otherwise than for monetary remuneration.

Part 2 Service contracts

Division 1 Classification of service contracts

Clause 80 defines *service contract*. A service contract is a contract between a public health organisation and a medical practitioner (or his or her practice company) under which the practitioner is appointed as a visiting practitioner to provide the medical services specified in the contract.

Clause 81 sets out examples of the kinds of service contract, namely, fee-for-service contracts, sessional contracts and honorary contracts.

Clause 82 defines *fee-for-service contract*. A fee-for-service contract is a service contract under which a medical practitioner (or his or her practice company) is remunerated by reference to a scale of fees for different kinds of medical services.

Clause 83 defines *sessional contract*. A sessional contract is a service contract under which the medical practitioner (or his or her practice company) is remunerated by reference to any hourly rate or rates, but not on a fee-for-service basis.

Clause 84 defines *honorary contract*. An honorary contract is a service contract under which the services of a medical practitioner are to be provided otherwise than for monetary remuneration.

Division 2 Entry into service Contracts

Clause 85 enables a medical practitioner to elect to be appointed as a visiting medical officer under a service contract between a public health organisation and the practitioner's practice company. However, such an election cannot be made unless the practice company carries public liability insurance and medical indemnity insurance to a level approved by the Director-General.

Clause 86 provides that a visiting medical officer or honorary medical officer must not be appointed unless the terms and conditions of the appointment are contained in a written service contract. An appointment made in contravention of the proposed section will be void.

Clause 87 enables the Minister, by order in writing, to approve sets of conditions recommended by the Association for inclusion in service contracts. It also defines *standard service contract* to mean a class of service contract containing a set of conditions approved by the Minister.

Clause 88 provides that a service contract (other than an honorary contract) belonging to a class of standard service contract must not be entered into unless it is an appropriate standard service contract. A contract entered in contravention of the proposed section will be void.

Division 3 Arbitrations concerning certain service contracts in the public health system generally

Clause 89 enables the Minister or The New South Wales Branch of the Australian Medical Association ("the Association"), either jointly or individually, to apply to the relevant Minister for the appointment of an arbitrator for the purpose of making a determination concerning the terms and conditions of work (and amounts or rates of remuneration) of visiting medical officers generally under fee-for-service contracts and sessional contracts.

Clause 90 provides that the relevant Minister is to appoint an arbitrator (who is to be the President or a judicial member of the Industrial Relations Commission) on the receipt of an application under proposed section 89.

Clause 91 provides that, on his or her appointment, an arbitrator is to determine certain matters (such as work conditions and remuneration) under the relevant fee-for-service contracts or sessional contracts.

Clause 92 provides for the manner in which the arbitrator is to exercise his or her functions. It provides that the arbitrator may exercise his or her functions without being bound by the rules of evidence. It also provides that the arbitrator must act judicially and be governed by equity and good conscience, without regard to technicalities or legal forms. In making a determination, the arbitrator is required to have regard to the economic consequences of the proposed determination and the established principles of the Industrial Relations Commission concerning the determination of remuneration under awards made under the *Industrial Relations Act 1996*.

Clause 93 confers a right of appearance on the Minister and the Association (or their representatives) in proceedings before the arbitrator and a right to appear (with leave) on any other person with a special interest in the proceedings. It also enables the arbitrator to administer oaths to witnesses.

Clause 94 enables the arbitrator to conduct the proceedings as he or she thinks fit and confers on the arbitrator the same immunity from action as that of a Judge of the Supreme Court.

Clause 95 requires the arbitrator to give written notice to the Minister and the Association of any determination. It also provides that any such determination is final unless appealed under proposed section 96.

Clause 96 confers a right on the Minister and the Association to appeal to the Industrial Relations Commission from a determination of an arbitrator. Any such appeal is to be determined in accordance with the provisions of the *Industrial Relations Act 1996*.

Clause 97 enables the Minister or the Association to apply to the Industrial Relations Commission for a declaration as to the meaning of a determination.

Clause 98 provides that, to the extent of any inconsistency, an arbitrator's determination prevails over any service contract.

Part 3 Criminal and disciplinary matters concerning visiting practitioners

Clause 99 requires a visiting practitioner to report the fact of a charge or conviction for a serious sex or violence offence to the chief executive officer of the public health organisation that appointed the practitioner. The Dictionary defines a serious sex or violence offence to mean an offence involving sexual activity, acts of indecency, physical violence or the threat of physical violence for which a person may be sentenced to penal servitude or

imprisonment for 12 months or more. It also requires the practitioner to report a finding against the person of professional misconduct or unsatisfactory professional conduct.

Clause 100 requires the chief executive officer of a public health organisation (or a person authorised by the chief executive officer) to notify the Director-General of the fact that one of the organisation's visiting practitioners has been convicted of a serious sex or violence offence (whether before or after appointment) and to indicate whether or not it proposes to terminate the appointment. The chief executive officer (or the person authorised by the chief executive officer) must also notify the Director-General of any written submissions made by the visiting practitioner concerned.

The proposed section also provides that a public health organisation must terminate the appointment of a visiting practitioner who has been convicted of a serious sex or violence offence if the Director-General so directs. A public health organisation cannot terminate an appointment on its own initiative unless the Director-General has confirmed its proposal to terminate the appointment.

However, termination of an appointment because of a pre-appointment conviction will not be possible if the practitioner notified the chief executive officer of the organisation (or a person authorised by the chief executive officer) in writing of that fact before being appointed and the chief executive officer informed the Director-General of the conviction and obtained his or her written consent to the practitioner being appointed.

Clause 101 provides that the protection of a public health organisation's patients and clients and of children for which it is responsible is to be the paramount consideration in determining whether a visiting practitioner's appointment should be terminated under the proposed Part.

Clause 102 provides that no compensation is payable in respect of the termination of an appointment under the proposed Part.

Clause 103 preserves the appeal rights of visiting practitioners in relation to terminations of appointments under the proposed Part except in the case of certain serious sex or violence offences involving minors and patients or clients.

Clause 104 preserves any additional rights that a public health organisation may have in relation to non-disclosure of charges and criminal convictions and in relation to actual criminal convictions. It also makes it clear that the proposed Part applies to convictions, charges and findings that occurred, were laid or made before the commencement of the proposed Part.

Part 4 Appeals concerning appointment decisions

Clause 105 requires a public health organisation to give written notice to a visiting practitioner within 14 days of deciding to reduce his or her clinical privileges, refusing to re-appoint the practitioner or suspending or terminating the appointment (an *appointment decision*), together with reasons for the decision.

Clause 106 enables a visiting practitioner to appeal to the Minister against certain appointment decisions.

Clause 107 specifies that the appellant must give notice to the Minister of the grounds of appeal in the form and manner approved by the Minister.

Clause 108 provides that the Minister must appoint a Committee of Review to determine the appeal on the receipt of a notice of the grounds of appeal. It also provides for the constitution of a Committee of Review, which is to include a Chairperson.

Clause 109 provides that the Chairperson is to fix a date and place for the hearing of the appeal and must notify the parties of these details.

Clause 110 provides that the parties have a right to appear before the Committee in person or by an agent. However, they cannot be represented by a legal practitioner except with the leave of the Committee.

Clause 111 specifies that, generally, the Committee has the same powers, authorities, protections and immunities as a royal commissioner or a chairperson of a royal commission. It also provides that the Chairperson's decision on any question of law is taken to be the decision of the Committee.

Clause 112 requires the Committee to determine the appeal and empowers it to make such orders as it considers proper. However, if the Committee decides to order the re-appointment of a visiting practitioner to a position that has been filled by another, it must specify in its order that the incumbent's position is to be made available to the visiting practitioner. The Chairperson is required to notify the Minister in writing of any order.

Clause 113 provides that an order of a Committee determining an appeal is final and has effect from the date it is made.

Part 5 Effect of Act on agreements with visiting practitioners

Clause 114 ensures that the provisions of the proposed Act (other than proposed Parts 2, 3 and 4 of this Chapter) that are inconsistent with rights and obligations under agreements between visiting practitioners and public health organisations will not apply to those agreements.

Chapter 9 The NSW Health Service

Part 1 General

Clause 115 provides that the Health Administration Corporation is taken to be the employer of the staff of public health organisations for the purpose of entering industrial agreements and also empowers it to determine conditions of employment from time to time.

Clause 116 authorises the transfer of excess and redundant employees in the NSW Health Service within and between public health organisations.

The provision also deals with cases where an employee in the NSW Health Service refuses a transfer. If the employee refuses a transfer, it will be possible to terminate the employee's employment if the Health Administration Corporation certifies, on reasonable grounds, that the employee does not have a valid reason for refusing the transfer. However, it will still be possible for an employee to apply to the Industrial Relations Commission for relief in respect of an unfair dismissal or threatened dismissal under the proposed section.

Part 2 Criminal and disciplinary matters concerning employees in the NSW Health Service

Clause 117 requires an employee to report the fact of a charge or conviction for a serious sex or violence offence to the chief executive officer of the public health organisation that employs the person. It also requires the person to report certain misconduct findings against the person (including findings of professional misconduct or unsatisfactory professional conduct) made under a relevant health professional registration Act.

Clause 118 requires the chief executive officer of a public health organisation (or a person authorised by the chief executive officer) to notify the Director-General of the fact that one of the organisation's employees has been convicted of a serious sex or violence offence (whether before or after employment) and to indicate whether or not it proposes to take disciplinary action (which may include termination of employment) against the employee. The chief executive officer (or the person authorised by the chief executive officer) must also notify the Director-General of any written submissions made by the employee concerned.

The proposed section also provides that a public health organisation must take disciplinary action against an employee who has been convicted of a serious sex or violence offence if the Director-General has so directed. A public health organisation cannot take disciplinary action against any such employee on its own initiative unless the Director-General has confirmed its proposal to take the action against the employee.

However, disciplinary action against an employee for a pre-employment conviction will not be possible if the employee notified the chief executive officer of the organisation (or a person authorised by the chief executive officer) in writing of that fact before being employed and the chief executive officer informed the Director-General of the conviction and obtained his or her written consent to the employee being employed.

Clause 119 provides that the protection of a public health organisation's patients and clients and of children for which it is responsible is to be the paramount consideration in determining whether disciplinary action should be taken against an employee.

Clause 120 provides that no compensation is payable in respect of the termination of the employment of an employee under the proposed Part.

Clause 121 preserves any additional rights that a public health organisation may have in relation to non-disclosure of charges and criminal convictions and in relation to actual criminal convictions. It also makes it clear that the proposed Part does not affect (except in one respect) the application of unfair dismissal provisions in Part 6 of Chapter 2 of the *Industrial Relations Act 1996* to terminations of employment under the proposed Part.

Chapter 10 Administration of the public health system

Part 1 Administration

Clause 122 specifies the functions of the Director-General in the administration of the public health system.

Clause 123 enables the Director-General to inquire (or to delegate to another the power to inquire) into the administration, management and services of any organisation or institution providing publicly funded health services that is not a public health organisation.

Clause 124 provides for the appointment of authorised officers to carry out inspections of the premises of public health organisations and other publicly funded organisations providing health services.

Clause 125 provides for the exercise (with appropriate safeguards) of powers of entry and inspection by authorised officers.

Clause 126 enables the Director-General to enter into performance agreements with public health organisations.

Part 2 Finance

Clause 127 provides for the determination and conditions of the funding of public health organisations by the Minister from money appropriated out of the Consolidated Fund.

Clause 128 provides that the Minister may require an affiliated health organisation to agree to repay funds to be appropriated out of the Consolidated Fund for its benefit.

Clause 129 enables the Minister to delegate to area health services the function of determining funding for recognised establishments and recognised services of any affiliated health organisation.

Clause 130 enables an area health service exercising delegated functions under proposed section 129 to enter into performance agreements with any affiliated health organisation operating recognised establishments or recognised services within its area.

Part 3 Transfer of public hospitals, health institutions, services and property

Clause 131 enables the Governor, by order published in the Gazette, to transfer public hospitals, health institutions, health services, health support services and property between area health services and statutory health corporations.

Clause 132 ensures that Schedule 4 has effect with respect to orders made under the proposed Part. Schedule 4 contains provisions relating to the transfer, dissolution, amalgamation and change of name of public health organisations and the transfer of hospitals, health institutions, health services and health support services.

Chapter 11 Miscellaneous

Clause 133 enables public health organisations to retain and realise certain unclaimed assets of former or deceased patients, that have been left at the premises of the organisations, for the purpose of establishing a Samaritan Fund. The Fund is to be used for the benefit of needy patients of the organisation.

Clause 134 makes it an offence to obstruct or hinder the Minister, Director-General, an authorised officer or other public official in the exercise of inquiry, investigation, inspection or report functions conferred by or under the proposed Act. The maximum penalty for such an offence will be 100 penalty units.

Clause 135 provides for the authentication of certain documents by public health organisations.

Clause 136 provides that certain matters relating to the constitution and decisions of a board of a public health organisation need not be proved in legal proceedings in the absence of contrary evidence.

Clause 137 provides that proceedings for an offence against the proposed Act or the regulations are to be dealt with summarily by a Magistrate of the Local Court sitting alone.

Clause 138 repeals the *Area Health Services Act 1986* and the *Public Hospitals Act 1929*.

Clause 139 gives effect to Schedule 6, which amends various other Acts.

Clause 140 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 141 gives effect to Schedule 7, which contains provisions of a savings and transitional nature.

Clause 142 provides for the Minister to review, and report to Parliament on, the operation of the proposed Act within 12 months of the fifth anniversary of the date on which it receives assent.

Schedules

Schedule 1 sets out the names (column 1) and describes the areas (columns 2 and 3) of the various area health services.

Schedule 2 sets out the names of the various statutory health corporations.

Schedule 3 sets out the names of the various affiliated health organisations (in column 1) and describes the recognised establishments and recognised services in respect of which they are affiliated health organisations (in column 2).

Schedule 4 contains provisions relating to the transfer, dissolution, amalgamation and change of name of public health organisations and the transfer of hospitals, health institutions, health services and health support services.

Schedule 5 contains provisions relating to the constitution and procedure of area health boards and health corporation boards.

Schedule 6 amends consequentially various other Acts.

Schedule 7 contains provisions of a savings and transitional nature.

Dictionary

The Dictionary defines words and expressions used in the proposed Act.