

# Health Services Act 1997 No 154

[1997-154]



New South Wales

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### Notes—

- **Does not include amendments by**  
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# Health Services Act 1997 No 154



New South Wales

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# Health Services Act 1997 No 154



New South Wales

An Act to regulate the public health system of New South Wales; to repeal the *Area Health Services Act 1986* and the *Public Hospitals Act 1929*; to amend various other Acts; and for other purposes.

## Chapter 1 Preliminary

### Introduction—

This Chapter contains provisions that are helpful in understanding the Act as a whole. It also contains some machinery provisions.

### 1 Name of Act

This Act is the *Health Services Act 1997*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

Expressions used in this Act (or in a particular provision of this Act) that are defined in the Dictionary at the end of the Act have the meanings set out in the Dictionary.

#### Note—

Expressions used in this Act (or a particular provision of this Act) that are defined in the *Interpretation Act 1987* have the meanings set out in that Act.

### 4 Objects of Act

The objects of this Act are:

- (a) to establish a system of area health services for 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) to constitute statutory health corporations to deliver health services and health support services other than on the basis of a specified area, and
- (c) to recognise as affiliated health organisations certain non-government institutions and

organisations that provide health services and health support services within the State that contribute significantly to the public health system, and

- (d) to re-affirm the adoption of the Medicare Principles and Commitments as guidelines for the delivery of public hospital services (within the meaning of section 23E of the [Health Insurance Act 1973](#) of the Commonwealth) and to facilitate the collection of fees from patients of public health organisations in respect of services received by them that are not required to be provided free of charge under the Medicare Agreement, and
- (e) to regulate the conditions of contracts of visiting medical officers appointed by public health organisations, and
- (f) to facilitate transfers of staff within the public health system and to avoid unnecessary staff redundancies, and
- (g) to require visiting practitioners and staff of public health organisations to notify the organisation that has appointed or employed them of any charge or conviction for a serious sex or violence offence or of a misconduct finding (such as findings of professional misconduct or unsatisfactory professional conduct), and
- (h) to specify the action that may be taken in relation to convictions for serious sex or violence offences committed by visiting practitioners or staff members of public health organisations, and
- (i) to make provision for the funding of public health organisations, and
- (j) to facilitate the efficient and effective administration of the public health system generally by providing mechanisms for such matters as inquiries, inspections and transfers of resources.

## 5 Notes

Introductions to Chapters and other notes included in this Act are explanatory notes and do not form part of this Act.

### **Note—**

For the purposes of comparison, a number of provisions of this Act contain bracketed notes in headings drawing attention (“cf”) to equivalent or comparable (though not necessarily identical) provisions of other Acts. Abbreviations in the notes include:

- AHS Act: [Area Health Services Act 1986](#)
- PH Act: [Public Hospitals Act 1929](#)
- PSM Act: [Public Sector Management Act 1988](#)
- PSE&M Act: [Public Sector Employment and Management Act 2002](#)

## Chapter 2 Structure of the public health system

### Introduction—

This Chapter describes the structure of the public health system and explains the rationale and functions of the various elements of that structure.

The basic elements of the public health system are the area health services, statutory health corporations and affiliated health organisations. These public health organisations are intended to complement each other in the provision of health services and health support services within the State.

Area health services and statutory health corporations are essentially statutory-based entities. However, each kind of organisation has different areas of concern.

Area health services, which are constituted by Chapter 3, are principally concerned with the provision of health services to residents within their areas. Statutory health corporations, which are constituted by Chapter 4, provide health services and health support services other than on the basis of defined areas. For example, it may be necessary to constitute a statutory health corporation rather than to include a health service within an area health service because the health service concerned is to be provided on a Statewide basis.

Affiliated health organisations are non-profit, religious, charitable or other non-government organisations or institutions providing certain health services or health support services within the State (whether on a local basis or Statewide) that contribute significantly to the operation of the public health system. However, an affiliated health organisation is not an affiliated health organisation in relation to all of its services and institutions. It is only an affiliated health organisation in relation to the recognised establishments and recognised services listed in column 2 of Schedule 3 next to its name. Chapter 5 makes provision for the recognition of affiliated health organisations.

Collectively, all the employees of these public health organisations constitute the NSW Health Service. Chapter 9 makes provision for the determination of the employment conditions of those employees and for their transfer within the public health system.

Public hospitals are hospitals controlled by these public health organisations. The Act draws a distinction between hospitals and hospital services. In essence, a hospital is an institution at which hospital services are provided. It is a place rather than a service. A hospital service is itself but one kind of health service. Chapters 6 and 7 make provision for the guidelines under which public hospitals operate and for the fees that may be charged for hospital services and other health services.

### 6 What is the public health system?

For the purposes of this Act, the **public health system** consists of:

- (a) all the area health services, and
- (b) all the statutory health corporations, and
- (c) all the affiliated health organisations in respect of their recognised establishments and recognised services, and
- (d) the Public Health System Support Division of the Health Administration Corporation.

### 7 What is a public health organisation?

A **public health organisation** is:

- (a) an area health service, or
- (b) a statutory health corporation, or

- (c) an affiliated health organisation in respect of its recognised establishments and recognised services.

## **8 What is an area health service?**

- (1) An **area health service** is an area health service constituted under section 17 and specified from time to time in Schedule 1.
- (2) The principal reason for constituting area health services is to facilitate the conduct of public hospitals and health institutions and the provision of health services for residents of the areas of the State in respect of which the services are constituted.

### **Note—**

The area health service system was first established under the [Area Health Services Act 1986](#). However, that system was restricted to certain metropolitan areas of the State. The system of area health services established by this Act extends throughout the whole of the State.

## **9 Primary purposes of area health services** (cf AHS Act s 19)

The primary purposes of an area health service in its area are as follows:

- (a) to provide relief to sick and injured persons through the provision of care and treatment,
- (b) to promote, protect and maintain the health of the community.

## **10 Functions of area health services** (cf AHS Act ss 19 and 20)

The functions of an area health service are as follows:

- (a) generally to promote, protect and maintain the health of the residents of its area,
- (b) to conduct and manage public hospitals, health institutions, health services and health support services under its control,
- (c) to give residents outside its area access to such of the health services it provides as may be necessary or desirable,
- (d) to achieve and maintain adequate standards of patient care and services,
- (e) to ensure the efficient and economic operation of its health services and health support services and use of its resources,
- (f) generally to consult and co-operate (as it considers appropriate) with any one or more of the following:
  - (i) the Health Care Complaints Commission constituted under the [Health Care Complaints Act 1993](#),
  - (ii) health professionals practising in its area,

- (iii) other individuals and organisations (including voluntary agencies, private agencies and public or local authorities) concerned with the promotion, protection and maintenance of health,
- (g) to investigate and assess health needs in its area,
- (h) to plan future development of health services in its area, and, towards that end:
  - (i) to consult and plan jointly with the Department of Health and such other organisations as it considers appropriate, and
  - (ii) to support, encourage and facilitate the organisation of community involvement in the planning of those services, and
  - (iii) to develop strategies to facilitate community involvement in the planning of those services and to report on the implementation of those strategies in annual reports and to the Minister,
- (i) to establish and maintain an appropriate balance in the provision and use of resources for health protection, health promotion, health education and treatment services,
- (j) to provide services to persons with whom it has contracted or entered into an agreement under section 37 (2),
- (k) to administer funding for recognised establishments and recognised services of affiliated health organisations where that function has been delegated to it by the Minister under section 129,
- (l) to provide training and education relevant to the provision of health services,
- (m) to undertake research and development relevant to the provision of health services,
- (n) to make available to the public information and advice concerning public health and the health services available within its area,
- (o) to carry out such other functions as are conferred or imposed on it by or under this or any other Act or as may be prescribed by the regulations.

## **11 What is a statutory health corporation?**

- (1) A **statutory health corporation** is a statutory health corporation constituted under section 41 and specified from time to time in Schedule 2.
- (2) The principal reason for constituting statutory health corporations is to enable certain health services and health support services to be provided within the State other than on an area basis.

**Note—**



Statutory health corporations are intended to replace the system of incorporated hospitals and corporatised boards of directors of associated organisations established under Part 4 and Division 2 of Part 5A of the *Public Hospitals Act 1929* respectively.

## 12 Functions of statutory health corporations (cf PH Act ss 27A and 29I)

A statutory health corporation has the following functions:

- (a) to conduct public hospitals or health institutions or to provide health services or health support services (or any combination of these),
- (b) to conduct such public hospitals and health institutions and provide such health services or health support services as the Minister determines from time to time under section 53,
- (c) to achieve and maintain an adequate standard in the conduct of any public hospital or health institution, or the provision of a health service or health support service, under its control,
- (d) to ensure the efficient and economic operation of any such public hospital, health institution, health service or health support service,
- (e) to carry out such other functions as are conferred or imposed on it by or under this or any other Act or as may be prescribed by the regulations.

## 13 What is an affiliated health organisation?

- (1) An **affiliated health organisation** is an organisation or institution that is an affiliated health organisation under section 62.
- (2) An organisation or institution is an affiliated health organisation only in relation to any of its recognised establishments or recognised services.

### Note—

The Dictionary defines a **recognised establishment** of an affiliated health organisation to mean a hospital or health institution of the organisation that is listed in column 2 of Schedule 3 next to its name. It also defines a **recognised service** of an affiliated health organisation to mean a health service or health support service of the organisation that is listed in column 2 of Schedule 3 next to its name.

- (3) The principal reason for recognising affiliated health organisations is to enable certain non-profit, religious, charitable or other non-government organisations and institutions to be treated as part of the public health system where they control hospitals, health institutions, health services or health support services that significantly contribute to the operation of that system.

### Note—

Affiliated health organisations are intended to replace the system of separate institutions and associated organisations recognised under Part 5AA and section 29B (1) (a) of the *Public Hospitals Act 1929*, respectively.

**14 Functions of affiliated health organisations** (cf PH Act s 29AD)

The functions of an affiliated health organisation are as follows:

- (a) to achieve and maintain an adequate standard in the conduct of its recognised establishments and the provision of its recognised services,
- (b) to ensure the efficient and economic operation of those establishments and services,
- (c) to carry out such other functions as are conferred or imposed on it by or under this or any other Act or as may be prescribed by the regulations.

**15 What is a public hospital?**

A **public hospital** is:

- (a) a hospital controlled by an area health service, or
- (b) a hospital controlled by a statutory health corporation, or
- (c) a hospital that is a recognised establishment of an affiliated health organisation, or
- (d) a hospital controlled by the Crown (including the Minister or the Health Administration Corporation).

**Note—**

Clause 2 of Part 2 of the Dictionary provides that a reference in this Act to a hospital controlled by a public health organisation or any other body or person includes a reference to a hospital that is conducted by or on behalf of such an organisation, body or person.

**16 Who constitutes the NSW Health Service?**

The **NSW Health Service** consists of:

- (a1) all persons employed under Part 3 of Chapter 9 by the Health Administration Corporation, and
- (a) all persons employed under section 33 by each area health service, and
- (b) all persons employed under section 54 by each statutory health corporation, and
- (c) all persons employed as members of staff by each affiliated health organisation in relation to its recognised establishments and recognised services, and
- (d) all persons employed in the Public Health System Support Division of the Health Administration Corporation.

**Note—**

The NSW Health Service is not part of the Public Service for the purposes of the [Public Sector Employment and Management Act 2002](#).

Clause 1 (2) (b) of Part 2 of the Dictionary provides that a reference in this Act (however expressed) to the staff, assets, rights or liabilities of an affiliated health organisation in relation to its recognised establishments or recognised services is a reference to the staff, assets, rights or liabilities of the organisation relating solely or principally to the operation of the establishment or the provision of the service.

## **Chapter 3 Area health services**

### **Introduction—**

This Chapter constitutes as bodies corporate the area health services specified in column 1 of Schedule 1 in respect of the areas described for each service in that Schedule. It also provides for the appointment of a chief executive to manage and control the affairs of each service.

Area health services are given various powers concerning the provision of health services. These include powers to invest, contract, acquire and dispose of property and employ staff. They are also given the power to make by-laws in relation to certain matters.

## **Part 1 Constitution of area health services**

### **17 Constitution of area health services** (cf AHS Act s 5)

- (1) There are constituted by this section such area health services as are specified from time to time in column 1 of Schedule 1.
- (2) An area health service is a body corporate with the corporate name specified in column 1 of Schedule 1.

### **18 Areas in respect of which area health services constituted** (cf AHS Act ss 4 and 7)

- (1) The area in respect of which an area health service is constituted is:
  - (a) if the area comprises a local government area (or part of a local government area) or a local government area constituted as a city (or a part of such a city)—the local government area (or part of a local government area) or city (or part of a city) described in column 2 of Schedule 1 in relation to the area health service, or
  - (b) if the area comprises an area other than a local government area (or part of a local government area)—the area described in any manner (including by reference to a description contained in another document) in column 3 of Schedule 1 in relation to the area health service.
- (2) A reference in column 2 of Schedule 1 to a part of a local government area is a reference to such part of the local government area as is described by the regulations for the purposes of that reference.
- (3) A reference in column 3 of Schedule 1 to the unincorporated area is a reference to such part of the land within the Western Division of the State as is not within a local government area.

### **19 Amendment of Schedule 1 (Names and areas of area health services)** (cf AHS Act ss 6

and 8)

(1) The Governor may, by order published in the Gazette:

- (a) amend column 1 of Schedule 1 by inserting, altering or omitting the name of an area health service, or
- (b) amend column 2 or 3 (or both) of Schedule 1 by inserting, altering or omitting a description of the area in respect of which an area health service is (or was) constituted, or
- (c) omit Schedule 1 and insert instead a Schedule containing the names of area health services and descriptions of the areas in respect of which the area health services are constituted.

(2) If an area in respect of which an area health service is constituted:

- (a) is described by reference to a local government area that is constituted as a city, and
- (b) the name of the city (but not the boundaries) is changed,

a reference in column 2 of Schedule 1 to the old name of the city is taken to include a reference to the new name of the city.

(3) The boundaries of the area in respect of which an area health service that is described by reference to any local government area or part of any local government area are unaffected by a change in the boundaries of the local government area and, for that purpose, the boundaries of the local government area are taken to remain the same as they were when reference to the local government area was included in column 2 of Schedule 1.

## **20 Dissolution, amalgamation or change of name of area health services** (cf AHS Act s 9)

(1) The Governor may, by order published in the Gazette:

- (a) dissolve an area health service, or
- (b) amalgamate 2 or more area health services, or
- (c) change the name of an area health service,

and may, in the order, amend Schedule 1 accordingly.

(2) An order under this section must specify the date (being a date that is on or after the date it is published in the Gazette) on which it takes effect. However, if no date is specified in the order, the order is taken to have specified the date on which it is published in the Gazette as the date on which it takes effect.

- (3) An order is not to be made under this section unless the Minister is of the opinion that the order is in the public interest and has recommended to the Governor that the order be made.
- (4) A dissolution, amalgamation or change of name under this section may be effected without holding an inquiry.

**Note—**

Part 3 of Chapter 10 provides for the transfer by order of the Governor of public hospitals, health institutions, health services, health support services and property between area health services and statutory health corporations.

Section 116 provides for the transfer of staff between public health organisations.

**21 Consequential and transitional provisions on the making of orders** (cf AHS Act s 10)

- (1) Schedule 4 has effect with respect to orders made under this Part.
- (2) An order under this Part may contain provisions, not inconsistent with the provisions of or made under Schedule 4, of a savings and transitional nature consequent on the making of the order.

**22 Provisions relating to the corporate nature of area health services** (cf AHS Act s 11)

An area health service:

- (a) has perpetual succession, and
- (b) is to have an official seal, and
- (c) may take proceedings, and be proceeded against, in its corporate name, and
- (d) may do and suffer all other things that a body corporate may, by law, do and suffer and that are necessary for or incidental to the purposes for which the area health service is constituted, and
- (e) does not represent the Crown.

**Note—**

Section 150 (1) of the [Evidence Act 1995](#) provides for judicial notice to be taken in relation to a seal of any body established under an Act.

## **Part 2 Control and management of area health services**

### **Division 1 The chief executive**

**23 Appointment of chief executive**

- (1) A chief executive is to be appointed for each area health service.

- (2) The chief executive is, for all purposes, taken to be employed by the Health Administration Corporation.
- (3) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the chief executive.

**Note—**

Under Part 3 of Chapter 9, the chief executive is appointed by the Health Administration Corporation as a member of the Health Executive Service.

## **24 Chief executive to manage and control affairs of area health service**

- (1) The affairs of an area health service are to be managed and controlled by the chief executive of the service.
- (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.

## **25 Functions of chief executive generally**

The chief executive of an area health service:

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

## **Division 2 Area health advisory councils**

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

- (1) An area health advisory council is to be established for each area health service.
- (2) An area health advisory council is to consist of between 9 and 13 members, appointed by the Minister, of whom:
  - (a) some must be persons having experience in the provision of health services, and
  - (b) the others must be persons who can represent the interests of consumers of health services and the local community, and
  - (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.
- (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.

- (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.
- (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.
- (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.
- (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.
- (8) Subject to this section, the constitution and procedure of an area health advisory council are to be as prescribed by the regulations.

## **27 Role of area health advisory councils**

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.

## **28 Functions of area health advisory councils**

The area health advisory council for an area health service has the following functions:

- (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,
- (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,
- (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,
- (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,
- (e) to liaise with other area health advisory councils in relation to both local and State-wide initiatives for the provision of health services,

- (f) to publish reports (annually or more frequently) as to its work and activities,
- (g) such other functions as are conferred or imposed on it by the regulations.

## **29 Charter for area health advisory councils**

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

## **29A Annual report**

- (1) As soon as practicable after 30 June (but on or before 31 December) of each year, the chairperson of an area health advisory council is to provide the Minister with a report on the performance by the area health advisory council of its role and functions under this Act during the period of 12 months ending on 30 June in that year.
- (2) The report is to include performance indicators to measure the area health advisory council's success in the performance of its role and functions under this Act.
- (3) The Minister is to cause the report to be laid before both Houses of Parliament as soon as practicable after receiving the report.

## **Division 3 Other committees and councils**

### **29B Other committees and councils**

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.

## **Part 3 Functions of area health services**

### **30 Combined management or assistance in management of public hospitals, health institutions, health services or health support services** (cf AHS Act s 22)

- (1) Any two or more area health services, or any one or more area health services and any one or more non-area health organisations, may, by agreement, jointly control and manage any public hospital, health institution, health service or health support service.



- (2) An area health service may, by agreement, manage any public hospital, health institution, health service or health support service under the control of another area health service or a non-area health organisation, or assist in that management, for and on behalf of that other area health service or non-area health organisation.
- (3) An area health service must not enter into an agreement under this section without the approval of the Minister.
- (4) A public hospital, health institution, health service or health support service is not, for the purposes of this or any other Act, to be regarded as being under the control of an area health service because the area health service manages, or assists in the management of, the hospital, health institution, health service or health support service for and on behalf of another area health service or of a non-area health organisation.
- (5) In this section:  
***non-area health organisation*** means:
  - (a) a statutory health corporation, or
  - (b) an affiliated health organisation.

**31 Opening and closing of hospitals, health institutions, health services or health support services** (cf AHS Act s 23)

- (1) An area health service may, subject to any direction under this Act, at any time establish such hospitals, health institutions, health services or health support services as it thinks necessary for the exercise of its functions.
- (2) An area health service may, subject to any direction under this Act, at any time:
  - (a) close any public hospital or health institution, or cease to provide any health service or health support service, under its control, or
  - (b) restrict the range of health care or treatment provided by any public hospital, health institution, health service or health support service under its control.
- (3) An area health service must, before implementing any decision to exercise its functions under subsection (1) or (2):
  - (a) notify the Director-General of the decision, and
  - (b) ensure that the decision is appropriate having regard to the functions of the area health service.
- (4) (Repealed)

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

- (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.
- (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:
  - (a) establish any hospital, health institution, health service or health support service,
  - (b) close any public hospital or health institution, or cease to provide any health service or health support service, under its control,
  - (c) restrict the range of health care or treatment provided by any public hospital, health institution or health service under its control.

### **33 Staff of area health services** (cf AHS Act s 25)

- (1) An area health service may appoint and employ such employees as may be necessary for the purpose of exercising its functions.
- (2) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of persons employed under this section.
- (3) An area health service may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a Government agency or public authority.

**Note—**

Section 115 of this Act makes provision for the determination of the conditions of employment of the staff of area health services.

### **34 Powers in relation to property** (cf AHS Act s 27)

- (1) An area health service may do all or any of the following:
  - (a) acquire land (including an interest in land), for the purpose of the exercise of its functions, by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* and acquire any other property (whether or not the land or other property is required for the purposes of any public hospital, health institution, health service or health support service under the control of the area health service),
  - (b) sell, lease, mortgage or otherwise dispose of land or any other property,
  - (c) dedicate land as a public road under the *Roads Act 1993*.
- (2) An area health service must not, without the approval of the Minister, do any of the

following:

- (a) acquire land by any means,
  - (b) dispose of land by sale, lease, mortgage or otherwise,
  - (c) dedicate land as a public road.
- (3) An area health service may request the Minister to give approval to (and the Minister may approve) a disposition or dedication of land or a use of land, being a disposition, dedication or use:
- (a) that is contrary to a provision of, or a trust arising under, the Crown grant of that land, or
  - (b) that, if this section had not been enacted, may make the land liable to be forfeited to the Crown.
- (4) If the Minister has given an approval under this section to a disposition or dedication of land, or to a use of land, neither the disposition or dedication of the land (or its subsequent use) nor the use of the land:
- (a) is to be regarded as a breach of any provision of, or any trust arising under, the Crown grant of that land, or
  - (b) is to make the land liable to be forfeited to the Crown.

**35 Application of [Public Works Act 1912](#)** (cf AHS Act s 28)

- (1) For the purposes of the [Public Works Act 1912](#), any acquisition of land under section 34 (1) (a) is taken to be for an authorised work and the area health service concerned is, in relation to that authorised work, taken to be the Constructing Authority.
- (2) Sections 34, 35, 36 and 37 of the [Public Works Act 1912](#) do not apply in respect of works constructed under this Act.

**36 Power to accept property by gifts, devises and bequests** (cf AHS Act s 29)

- (1) An area health service may acquire any property by gift, devise or bequest and may agree to and carry out the conditions of any such gift, devise or bequest, but only if the carrying out of any such conditions is not inconsistent with the purposes and functions of the service.
- (2) The rule of law against remoteness of vesting does not apply to any such condition to which an area health service has agreed.
- (3) An area health service may act as trustee of money or other property vested in the area health service on trust.

**37 Contracts of area health service** (cf AHS Act s 30)

- (1) An area health service may make and enter into contracts or agreements with any person for the performance of services, or for the supply of goods, plant, machinery or material, by that person with respect to the exercise by the area health service of its functions conferred or imposed by or under this or any other Act.
- (2) An area health service may also, with the approval of the Director-General, make and enter into contracts or agreements with any person for the provision of any service by the area health service to that person. Any such contract or agreement may extend to the provision of the service outside the area of the area health service.
- (3) Any contract or agreement under this section is taken, for the purposes of the *Constitution Act 1902*, to be a contract or agreement for or on account of the Public Service of New South Wales.

**38 Investments** (cf AHS Act s 31)

- (1) An area health service may invest money held by it:
  - (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
  - (b) if that Act does not confer power to invest money so held, in any manner authorised for the time being for the investment of trust funds and in any other manner approved by the Minister with the concurrence of the Treasurer.
- (2) An area health service may at any time dispose of any of its investments and apply the proceeds for the purpose of exercising its functions.
- (3) This section is, in relation to the investment of any funds, subject to the terms of any trust applying to those funds.

**39 Area health service may make by-laws** (cf AHS Act s 32)

- (1) **Power to make by-laws** An area health service may, with the approval of the Director-General, make by-laws, not inconsistent with this Act or the regulations, for or with respect to the following:
  - (a) the management of any public hospital, health institution, health service or health support service under its control,
  - (b) the provision of hospital services and other health services to patients of any public hospital or health institution under its control and to other persons,
  - (c) the appointment, control and governance of visiting practitioners in connection with public hospitals, health institutions and health services under its control, including the conditions subject to which visiting practitioners may perform work

at or in relation to any such hospital, institution or service,

- (d) the appointment, control and governance of persons employed by it under section 33 and any other matter or thing necessary or convenient to ensure the maintenance of discipline and efficiency of any such employees or group or class of employees,
- (e) the custody and use of the seal of the area health service,
- (f) the keeping of records concerning its acts and decisions,
- (g) the appointment and functions of its councils and committees.
- (h) (Repealed)

(2) **Publication of model by-laws** The Director-General may publish an order in the Gazette setting out the terms of model by-laws.

(3) **Preconditions for making of by-laws** A by-law may not be made by an area health service for or with respect to any matter referred to in subsection (1) (c) unless:

- (a) it is in substance the same as a model by-law under an order for the time being in force under subsection (2) and the Director-General has received advice from the Medical Services Committee in relation to the substance of the model by-law, or
- (b) the Director-General has received advice from the Medical Services Committee in relation to the substance of the by-law proposed to be made by the area health service.

(4) **Exception to preconditions** Subsection (3) does not apply to a by-law if the Medical Services Committee does not furnish advice to the Director-General in relation to the relevant model by-law or the by-law:

- (a) within 30 days after a notice from the Director-General requesting such advice has been served on the Committee, or
- (b) within such further period as the Director-General may specify in the notice or in another notice served on the Committee.

(5) **What by-laws may provide for** A provision of a by-law may do any one or any combination of the following:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
- (b) apply differently according to different factors of a specified kind,
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.

- (6) **Judicial notice** Judicial notice is to be taken of a by-law authenticated by the seal of the area health service concerned or in accordance with section 135. It is to be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of the by-law have been complied with and performed.

**40 Delegations by area health service** (cf AHS Act s 34)

- (1) An area health service may delegate to any of its officers or employees the exercise of any of its functions, other than:
- (a) this power of delegation, or
  - (b) the exercise of its functions under section 31 (2) (a) or (b), or
  - (c) the power to make by-laws.

**Note—**

Section 49 of the [Interpretation Act 1987](#) contains general provisions relating to the delegation of functions.

- (2) The Director-General may give any direction to an area health service concerning delegations under this section that the Director-General thinks fit.
- (3) Nothing in this section authorises an area health service to delegate the whole of its functions to another person.
- (4) For the purposes of this section:
- (a) (Repealed)
  - (b) the employees of an area health service include any persons whose services are made use of by the area health service under section 33 (3).

## **Chapter 4 Statutory health corporations**

**Introduction—**

This Chapter constitutes as bodies corporate the statutory health corporations named in Schedule 2. It also constitutes health corporation boards for those statutory health corporations that Schedule 2 indicates are to be board governed and provides for the appointment of a chief executive to manage the affairs of each corporation. 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.

Statutory health corporations are given various powers to assist them in providing health services and health support services. These include powers to invest, contract, acquire and dispose of property and employ staff. They are also given the power to make by-laws in relation to certain matters.

### **Part 1 Constitution of statutory health corporations**

**41 Constitution of statutory health corporations** (cf AHS Act s 5, PH Act s 18 (1))

- (1) There are constituted by this section such statutory health corporations as are

specified from time to time in Schedule 2.

- (2) A statutory health corporation is a body corporate with the corporate name specified in Schedule 2.
- (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.

**42 Amendment of Schedule 2 (Statutory health corporations)** (cf AHS Act s 6, PH Act s 18 (2) and (2A))

The Governor may, by order published in the Gazette:

- (a) amend Schedule 2 by inserting, altering or omitting the name of a statutory health corporation, or by changing its governance from chief executive governance to board governance or from board governance to chief executive governance, or
- (b) omit Schedule 2 and insert instead a Schedule containing the names of statutory health corporations and the nature of their governance.

**43 Dissolution, transfer, amalgamation or change of name or nature of governance of statutory health corporations** (cf AHS Act ss 9 and 21, PH Act ss 13A, 14 and 15)

(1) The Governor may, by order published in the Gazette:

- (a) dissolve a statutory health corporation, or
  - (b) transfer a statutory health corporation to an area health service, or
  - (c) amalgamate 2 or more statutory health corporations, or
  - (d) change the name or nature of governance of a statutory health corporation,
- and may, in the order, amend Schedules 1 and 2 accordingly.

- (2) An order under this section must specify the date (being a date that is on or after the date it is published in the Gazette) on which it takes effect. However, if no date is specified in the order, the order is taken to have specified the date on which it is published in the Gazette as the date on which it takes effect.
- (3) An order is not to be made under this section unless the Minister is of the opinion that the order is in the public interest and has recommended to the Governor that the order be made.
- (4) A dissolution, transfer, amalgamation or change of name or nature of governance under this section may be effected without holding an inquiry.

**Note—**

Part 3 of Chapter 10 provides for the transfer by order of the Governor of public hospitals, health institutions, health services, health support services and property between area health services and statutory health corporations.

Section 116 provides for the transfer of staff between public health organisations.

**44 Consequential and transitional provisions on the making of orders** (cf AHS Act ss 10 and 21 and Sch 6, PH Act ss 14, 15 and 19)

- (1) Schedule 4 has effect with respect to orders made under this Part.
- (2) An order under this Part may contain provisions, not inconsistent with the provisions of or made under Schedule 4, of a savings and transitional nature consequent on the making of the order.

**45 Provisions relating to the corporate nature of statutory health corporations** (cf AHS Act s 11, PH Act s 18 (3))

A statutory health corporation:

- (a) has perpetual succession, and
- (b) is to have an official seal, and
- (c) may take proceedings, and be proceeded against, in its corporate name, and
- (d) may do and suffer all other things that a body corporate may, by law, do and suffer and that are necessary for or incidental to the purposes for which the corporation is constituted, and
- (e) does not represent the Crown.

**Note—**

Section 150 (1) of the [Evidence Act 1995](#) provides for judicial notice to be taken in relation to a seal of any body established under an Act.

## **Part 2 Health corporation boards**

### **Division 1 Board governed health corporations**

**46 Constitution of health corporation boards** (cf AHS Act s 12, PH Act s 22)

- (1) There is constituted a health corporation board for each board governed health corporation.
- (2) A health corporation board is to be called the “[*name of board governed health corporation*] Board”.

**47 Health corporation board to control affairs of board governed health corporation** (cf



AHS Act s 13, PH Act s 22 (1))

- (1) The affairs of a board governed health corporation are to be controlled by the health corporation board for that corporation.
- (2) Any act, matter or thing done in the name of, or on behalf of, a board governed health corporation by the health corporation board for that corporation, or with the authority of that board, is taken to have been done by that corporation.

**48 Health corporation board subject to control and direction of Minister** (cf AHS Act s 14, PH Act s 22A (1))

A health corporation board is subject to the control and direction of the Minister, except in relation to the contents of a recommendation or report made by the board to the Minister.

**49 Membership of health corporation board** (cf AHS Act s 15, PH Act s 22 (1A))

- (1) A health corporation board is to consist of the following persons:
  - (a) the chief executive of the board governed health corporation (who holds office as an ex-officio member),
  - (b) persons (not being less than 5 or more than 11) appointed by the Minister.
- (2) Of the persons appointed by the Minister, 1 is to be a person elected or, in the case of a board governed health corporation that has fewer than 50 employees, elected or appointed, in the manner prescribed by clause 2 of Schedule 5 or regulations made under that clause.

**50 Provisions relating to members and procedure of boards** (cf AHS Act s 16, PH Act ss 23–27B)

Schedule 5 has effect with respect to the members and procedure of health corporation boards.

**51 Appointment of chief executive**

- (1) The Minister may appoint a chief executive for each board governed health corporation.
- (2) Chapter 2 of the [Public Sector Employment and Management Act 2002](#) does not apply to or in respect of the chief executive.
- (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.
- (4) If the position of chief executive is an executive position within the meaning of Part

3.1 of the *Public Sector Employment and Management Act 2002*, 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.

- (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 *Public Sector Employment and Management Act 2002*:
  - (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
  - (b) the conditions of employment (including remuneration) of the chief executive are to be determined in accordance with section 115.
- (6) The affairs of a board governed health corporation are to be managed by the chief executive of the corporation.
- (7) The chief executive of a board governed health corporation:
  - (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
  - (b) is, in the exercise of his or her functions, subject to the control and direction of the health corporation board for the corporation.

**52 Removal of members and appointment of administrator** (cf AHS Act s 18, PH Act s 26)

- (1) The Governor may at any time, for any reason or no reason and without notice, by order published in the Gazette:
  - (a) remove any member (including the chief executive) or all members of a health corporation board from office, or
  - (b) remove all members of a health corporation board from office and appoint, as administrator of the board governed health corporation concerned, a person specified in the order for such period as may be specified in the order, or
  - (c) remove all members of a health corporation board (other than the chief executive) from office and appoint, as administrator of the board governed health corporation concerned, the chief executive for such period as may be specified in the order.
- (2) The chief executive of a board governed health corporation ceases to hold office as chief executive if removed from office as a member of the health corporation board of the corporation.
- (3) An administrator of a board governed health corporation has and may exercise, subject to any conditions that may be specified in the order by which the administrator was appointed, all the functions of the health corporation board for that

corporation.

- (4) An administrator of a board governed health corporation is entitled to be paid from the funds of that corporation such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the administrator.
- (5) The regulations may make provision with respect to administrators of board governed health corporations.
- (6) If the position of chief executive is an executive position within the meaning of Part 3 of Chapter 9:
  - (a) the chief executive may not be removed from office under section 121N, and
  - (b) section 121N applies:
    - (i) to and in respect of a chief executive who is removed from office under this section, and
    - (ii) to and in respect of the executive position of a chief executive who is so removed,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.
- (7) If the position of chief executive is an executive position within the meaning of Part 3.1 of the *Public Sector Employment and Management Act 2002*:
  - (a) the chief executive may not be removed under section 77 of that Act, and
  - (b) section 77 of that Act applies:
    - (i) to and in respect of a chief executive who is removed from office under this section, and
    - (ii) to and in respect of the executive position of a chief executive who is so removed,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.

## **Division 2 Chief executive governed health corporations**

### **52A Appointment of chief executive**

- (1) The Director-General may appoint a chief executive for each chief executive governed

health corporation.

- (2) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the chief executive.
- (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.
- (4) If the position of chief executive is not an executive position within the meaning of Part 3 of Chapter 9:
  - (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
  - (b) the conditions of employment (including remuneration) of the chief executive are to be determined in accordance with section 115, and
  - (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.

**52B Chief executive to manage and control affairs of chief executive governed health corporation**

- (1) The affairs of a chief executive governed health corporation are to be managed and controlled by the chief executive of the corporation.
- (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.

**52C Functions of chief executive generally**

The chief executive of a chief executive governed health corporation:

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

**52D Advisory councils**

- (1) The Minister may establish an advisory council for each chief executive governed health corporation.
- (2) The constitution, procedure and functions of an advisory council are to be as determined by the Minister.

## 52E Other committees and councils

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.

## Part 3 Functions of statutory health corporations

### 53 Determination of functions of statutory health corporations (cf AHS Act s 24, PH Act s 13 (4))

- (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:
  - (a) in the case of a chief executive governed health corporation, to the chief executive of that corporation, or
  - (b) in the case of a board governed health corporation, to the health corporation board for that corporation.
- (2) Without limiting subsection (1), the Minister may direct a statutory health corporation to do any of the following if the Minister is satisfied that it is in the public interest to do so:
  - (a) establish any hospital, health institution, health service or health support service,
  - (b) close any public hospital or health institution, or cease to provide any health service or health support service, under its control,
  - (c) restrict the range of health care or treatment provided by any public hospital, health institution or health service under its control.
- (3) In this section, **relevant authority** means:
  - (a) in relation to a board governed health corporation, the Minister, and
  - (b) in relation to a chief executive governed health corporation, the Director-General.

### 54 Staff of statutory health corporations (cf AHS Act s 25)

- (1) A statutory health corporation may appoint and employ such employees as may be necessary for the purpose of exercising its functions.
- (2) Chapter 2 of the [Public Sector Employment and Management Act 2002](#) does not apply to or in respect of persons employed under this section.
- (3) A statutory health corporation may arrange for the use of the services of any staff (by

secondment or otherwise) or facilities of a Government agency or public authority.

**Note—**

Section 115 of this Act makes provision for the determination of the conditions of employment of the staff of statutory health corporations.

**55 Powers in relation to property** (cf AHS Act s 27, PH Act s 20)

- (1) A statutory health corporation may do all or any of the following:
  - (a) acquire land (including an interest in land), for the purpose of the exercise of its functions, by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* and acquire any other property (whether or not the land or other property is required for the purposes of any public hospital, health institution, health service or health support service under the control of the statutory health corporation),
  - (b) sell, lease, mortgage or otherwise dispose of land or any other property,
  - (c) dedicate land as a public road under the *Roads Act 1993*.
- (2) A statutory health corporation must not, without the approval of the Minister, do any of the following:
  - (a) acquire land by any means,
  - (b) dispose of land by sale, lease, mortgage or otherwise,
  - (c) dedicate land as a public road.
- (3) A statutory health corporation may request the Minister to give approval to (and the Minister may approve) a disposition or dedication of land or a use of land, being a disposition, dedication or use:
  - (a) that is contrary to a provision of, or a trust arising under, the Crown grant of that land, or
  - (b) that, if this section had not been enacted, may make the land liable to be forfeited to the Crown.
- (4) If the Minister has given an approval under this section to a disposition or dedication of land, or to a use of land, neither the disposition or dedication of the land (or its subsequent use) nor the use of the land:
  - (a) is to be regarded as a breach of any provision of, or any trust arising under, the Crown grant of that land, or
  - (b) is to make the land liable to be forfeited to the Crown.

**56 Application of *Public Works Act 1912*** (cf AHS Act s 28, PH Act s 21)

- (1) For the purposes of the *Public Works Act 1912*, any acquisition of land under section 55 (1) (a) of this Act is taken to be for an authorised work and the statutory health corporation concerned is, in relation to that authorised work, taken to be the Constructing Authority.
- (2) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply in respect of works constructed under this Act.

**57 Power to accept property by gifts, devises and bequests** (cf AHS Act s 29)

- (1) A statutory health corporation may acquire any property by gift, devise or bequest and may agree to and carry out the conditions of any such gift, devise or bequest, but only if the carrying out of any such conditions is not inconsistent with the purposes and functions of the corporation.
- (2) The rule of law against remoteness of vesting does not apply to any such condition to which a statutory health corporation has agreed.
- (3) A statutory health corporation may act as trustee of money or other property vested in the statutory health corporation on trust.

**58 Contracts of statutory health corporations** (cf AHS Act s 30)

- (1) A statutory health corporation may make and enter into contracts or agreements with any person for the performance of services, or for the supply of goods, plant, machinery or material, by that person with respect to the exercise by the statutory health corporation of its functions conferred or imposed by or under this or any other Act.
- (2) A statutory health corporation may also, with the approval of the relevant authority, make and enter into contracts or agreements with any person for the provision of any service by the statutory health corporation to that person.
- (3) Any contract or agreement under this section is taken, for the purposes of the *Constitution Act 1902*, to be a contract or agreement for or on account of the Public Service of New South Wales.
- (4) In this section, **relevant authority** means:
  - (a) in relation to a board governed health corporation, the Minister, and
  - (b) in relation to a chief executive governed health corporation, the Director-General.

**59 Investments** (cf AHS Act s 31, PH Act s 29)

- (1) A statutory health corporation may invest money held by it:

- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
  - (b) if that Act does not confer power to invest money so held, in any manner authorised for the time being for the investment of trust funds and in any other manner approved by the Minister with the concurrence of the Treasurer.
- (2) A statutory health corporation may at any time dispose of any of its investments and apply the proceeds for the purpose of exercising its functions.
- (3) This section is, in relation to the investment of any funds, subject to the terms of any trust applying to those funds.

**60 Statutory health corporation may make by-laws** (cf AHS Act s 32, PH Act ss 28 and 28A)

- (1) **Power to make by-laws** A statutory health corporation may, with the approval of the relevant authority, make by-laws, not inconsistent with this Act or the regulations, for or with respect to the following:
- (a) the management of any public hospital, health institution, health service or health support service under its control,
  - (b) the provision of health services to patients of any public hospital or health institution under its control and to other persons,
  - (c) the appointment, control and governance of visiting practitioners in connection with public hospitals, health institutions and health services under its control, including the conditions subject to which visiting practitioners may perform work at or in relation to any such hospital, institution or service,
  - (d) the appointment, control and governance of persons employed by it under section 54 and any other matter or thing necessary or convenient to ensure the maintenance of discipline and efficiency of any such employees or group or class of employees,
  - (e) the custody and use of the seal of the statutory health corporation,
  - (f) the keeping of records concerning its acts and decisions,
  - (g) in the case of a board governed health corporation:
    - (i) the keeping of records concerning the acts and decisions of the board, and
    - (ii) the procedure for the calling of meetings of the board and for the conduct of business at those meetings,
  - (h) the appointment and functions of its councils and committees.
- (2) **Publication of model by-laws** The relevant authority may publish an order in the Gazette



setting out the terms of model by-laws.

- (3) **Precondition for making of by-laws** A by-law may not be made by a statutory health corporation for or with respect to any matter referred to in subsection (1) (c) unless:
- (a) it is in substance the same as a model by-law under an order for the time being in force under subsection (2) and the relevant authority has received advice from the Medical Services Committee in relation to the substance of the model by-law, or
  - (b) the relevant authority has received advice from the Medical Services Committee in relation to the substance of the by-law proposed to be made by the statutory health corporation.
- (4) **Exception to precondition** Subsection (3) does not apply to a by-law if the Medical Services Committee does not furnish advice to the relevant authority in relation to the relevant model by-law or the by-law:
- (a) within 30 days after a notice from the relevant authority requesting such advice has been served on the Committee, or
  - (b) within such further period as the relevant authority may specify in the notice or in another notice served on the Committee.
- (5) **What by-laws may provide for** A provision of a by-law may do any one or any combination of the following:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind,
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.
- (6) **Judicial notice** Judicial notice is to be taken of a by-law authenticated by the seal of the statutory health corporation concerned or in accordance with section 135. It is to be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of the by-law have been complied with and performed.
- (7) In this section, **relevant authority** means:
- (a) in relation to a board governed health corporation, the Minister, and
  - (b) in relation to a chief executive governed health corporation, the Director-General.

## **61 Delegations by statutory health corporations** (cf AHS Act s 34)

- (1) A statutory health corporation may delegate to any of its officers or employees the

exercise of any of its functions, other than:

- (a) this power of delegation, or
- (b) the power to make by-laws.

**Note—**

Section 49 of the *Interpretation Act 1987* contains general provisions relating to the delegation of functions.

- (2) The relevant authority may give any direction to a statutory health corporation concerning delegations under this section that the relevant authority thinks fit.
- (3) Nothing in this section authorises a statutory health corporation to delegate the whole of its functions to another person.
- (4) For the purposes of this section:
  - (a) the functions of a board governed health corporation include the functions of its health corporation board, and
  - (b) the employees of a statutory health corporation include any persons whose services are made use of by the statutory health corporation under section 54 (3).
- (5) In this section, **relevant authority** means:
  - (a) in relation to a board governed health corporation, the Minister, and
  - (b) in relation to a chief executive governed health corporation, the Director-General.

## Chapter 5 Affiliated health organisations

**Introduction—**

This Chapter provides for the recognition as affiliated health organisations of the organisations and institutions listed (with their consent) in column 1 of Schedule 3 in respect of the recognised establishments and recognised services specified in column 2 of that Schedule. It confers on such organisations the power to make by-laws in relation to certain matters and facilitates the transfer (with their consent) of such establishments and services to area health services and statutory health corporations. It also subjects them to Ministerial direction in relation to the exercise of their functions concerning these establishments and services and confers certain protections from personal liability.

Clause 1 of Part 2 of the Dictionary contains several referential provisions relating to affiliated health organisations. In particular, clause 1 (1) provides that a reference in this Act (however expressed) to any act, omission or thing of an affiliated health organisation in relation to any of its recognised establishments or recognised services:

- (a) in the case of an affiliated health organisation that is unincorporated—is a reference to an act, omission or thing of the governing body of the organisation or a member of that body (as the case may be), or
- (b) in the case of an affiliated health organisation that is incorporated—is a reference to the act, omission or thing of the corporate body constituting the organisation.

### 62 Recognition of affiliated health organisations (cf PH Act s 29B)

- (1) An organisation or institution whose name is included in column 1 of Schedule 3 is an affiliated health organisation in respect of any of its recognised establishments and

recognised services.

- (2) The Governor may, by order published in the Gazette:
  - (a) amend column 1 of Schedule 3 by inserting the name of any organisation or institution (other than an area health service or statutory health corporation) that controls any hospital, health institution, health service or health support service, or
  - (b) amend column 2 of Schedule 3 by inserting a description of any hospital, health institution, health service or health support service under the control of the organisation or institution, or
  - (c) amend Schedule 3 by omitting or altering any such name or description, or
  - (d) omit Schedule 3 and insert instead a Schedule containing the names of any organisations or institutions (other than area health services or statutory health corporations) and descriptions of any hospital, health institution, health service or health support service under their control.
- (3) An order made under subsection (2) may amend column 2 of Schedule 3 to describe an organisation or institution by reference to some or all of the hospitals, health institutions, health services or health support services it controls.
- (4) An order cannot be made under this section:
  - (a) inserting or altering the name of an organisation or institution in column 1 of Schedule 3 unless the organisation or institution (or its governing body) consents to it, or
  - (b) inserting or altering a description of any hospital, health institution, health service or health support service under the control of an organisation or institution in column 2 of Schedule 3 unless the organisation or institution (or its governing body) consents to it.
- (5) In this section, ***governing body*** of an organisation or institution means the person or the board or other body that is responsible for the management of the organisation or institution.

### **63 Affiliated health organisations may make by-laws** (cf PH Act s 29AE)

- (1) **Power to make by-laws** An affiliated health organisation may, with the approval of the Minister, make by-laws, not inconsistent with this Act or the regulations, for or with respect to the following:
  - (a) the management of any of its recognised establishments and recognised services,
  - (b) the provision of health services to patients of any hospitals or health institutions

that are its recognised establishments,

- (c) the provision to other persons of health services that are its recognised services,
  - (d) the appointment, control and governance of visiting practitioners in connection with hospitals, health institutions and health services that are its recognised establishments or recognised services (including the conditions subject to which visiting practitioners may perform work at or in relation to any such hospital, institution or service),
  - (e) the appointment, control and governance of persons employed by it in respect of its recognised establishments and recognised services and any other matter or thing necessary or convenient to ensure the maintenance of discipline and efficiency in the service of the affiliated health organisation of any such employees or group or class of employees,
  - (f) the keeping of records concerning the acts, decisions and proceedings of its governing body in respect of its recognised establishments and recognised services,
  - (g) the procedure for the calling of meetings of its governing body and for the conduct of business at those meetings in respect of its recognised establishments and recognised services,
  - (h) the appointment and functions of committees of the governing body in respect of its recognised establishments and recognised services.
- (2) **Publication of model by-laws** The Minister may publish an order in the Gazette setting out the terms of model by-laws.
- (3) **Precondition for making of by-laws** A by-law may not be made by an affiliated health organisation for or with respect to any matter referred to in subsection (1) (d) unless:
- (a) it is in substance the same as a model by-law under an order for the time being in force under subsection (2) and the Minister has received advice from the Medical Services Committee in relation to the substance of the model by-law, or
  - (b) the Minister has received advice from the Medical Services Committee in relation to the substance of the by-law proposed to be made by the affiliated health organisation.
- (4) **Exception to precondition** Subsection (3) does not apply to a by-law if the Medical Services Committee does not furnish advice to the Minister in relation to the relevant model by-law or the by-law:
- (a) within 30 days after a notice from the Minister requesting such advice has been served on the Committee, or

(b) within such further period as the Minister may specify in the notice or in another notice served on the Committee.

(5) **What by-laws may provide for** A provision of a by-law may do any one or any combination of the following:

(a) apply generally or be limited in its application by reference to specified exceptions or factors,

(b) apply differently according to different factors of a specified kind,

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.

(6) **Judicial notice** Judicial notice is to be taken of a by-law authenticated by the seal of the affiliated health organisation concerned or in accordance with section 135. It is to be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of the by-law have been complied with and performed.

**64 Transfer of recognised establishments and recognised services of affiliated health organisations** (cf AHS Act ss 10 and 21)

(1) The Governor may, by order published in the Gazette, transfer to any area health service or statutory health corporation:

(a) any public hospital or health institution of an affiliated health organisation that is a recognised establishment of the organisation, or

(b) any health service or health support service of an affiliated health organisation that is a recognised service of the organisation, or

(c) any of the assets, rights or liabilities of an affiliated health organisation relating to a recognised establishment or recognised service of the organisation,

and may amend Schedules 1, 2 and 3 accordingly.

(2) However, such an order cannot be made unless the affiliated health organisation consents to the transfer.

(3) An order under this section is to specify the date (being a date that is on or after the date it is published in the Gazette) on which it takes effect. However, if no date is specified in the order, the order is taken to have specified the date on which it is published in the Gazette as the date on which it takes effect.

(4) Schedule 4 has effect with respect to orders made under this section.

(5) An order under this section may contain provisions, not inconsistent with the provisions of or made under Schedule 4, of a savings and transitional nature

consequent on the making of the order.

**Note—**

Part 3 of Chapter 10 provides for the transfer by order of the Governor of public hospitals, health institutions, health services, health support services and property between area health services and statutory health corporations.

Section 116 provides for the transfer of staff between public health organisations.

**65 Minister may determine role, functions and activities of affiliated health organisations**

- (1) The Minister may, from time to time, determine the role, functions and activities of any recognised establishment or recognised service of an affiliated health organisation and, for that purpose, give the organisation any necessary directions.
- (2) Before making a determination under subsection (1), the Minister is to consult with the affiliated health organisation concerned having regard to the health care philosophy of the organisation.

**66 Appointment of chief executives of public hospitals and health services of affiliated health organisations** (cf PH Act s 40B)

- (1) A person cannot be appointed as the chief executive of a public hospital that is a recognised establishment, or health service that is a recognised service, of an affiliated health organisation unless the Director-General consents to the appointment.
- (2) In this section:

**chief executive** means the person (however described) who is responsible to the affiliated health organisation for the management, supervision or administration of the public hospital or health service concerned.

**67 Liability of affiliated health organisations in relation to recognised establishments and recognised services**

A matter or thing done in relation to any of an affiliated health organisation's recognised establishments or recognised services by:

- (a) the organisation, or
- (b) the governing body of the organisation, or
- (c) a member of the governing body of the organisation, or
- (d) any person acting under the direction of that organisation or governing body,

does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or the person so acting personally to any action, liability, claim or demand.

## Chapter 6 Medicare Principles and Commitments

### Introduction—

In this Chapter, the Medicare Principles and Commitments set out in section 26 of the *Health Insurance Act 1973* of the Commonwealth are readopted as guidelines for the provision of public hospital services within the meaning of section 23E of that Act. They had previously been adopted in Part 4 of the *Health Administration Act 1982*, which was repealed by this Act. The Commonwealth Act makes the adoption by the State of the Principles and Commitments a condition of the grant of financial assistance by the Commonwealth to the State in respect of the provision of public hospital services.

### 68 Medicare Principles and Commitments

- (1) The Medicare Principles and Commitments are adopted as guidelines for the provision of public hospital services to eligible persons in New South Wales.
- (2) The Medicare Principles and Commitments are as follows:

#### MEDICARE PRINCIPLES

The Commonwealth and the States are committed to the following principles in the provision of public hospital services:

#### Explanatory note—

The Principles focus on the provision of public hospital services to eligible persons, but operate in an environment where eligible persons have the right to choose private health care in public and private hospitals supported by private health insurance.

#### Choices of services

*Principle 1:* Eligible persons must be given the choice to receive public hospital services free of charge as public patients

#### Explanatory note 1—

Hospital services include in-patient, out-patient, emergency services (including primary care where appropriate) and day patient services consistent with currently acceptable medical and health service standards.

#### Explanatory note 2—

At the time of admission to a hospital, or as soon as practicable after that, an eligible person will be required to elect or confirm whether he or she wishes to be treated as a public or private patient.

#### Universality of services

*Principle 2:* Access to public hospital services is to be on the basis of clinical need

#### Explanatory note 1—

None of the following factors are to be a determinant of an eligible person's priority for receiving hospital services:

-

whether or not an eligible person has health insurance,

•

an eligible person's financial status or place of residence,

•

whether or not an eligible person intends to elect, or elects, to be treated as a public or private patient.

**Explanatory note 2—**

This principle applies equally to waiting times for elective surgery.

**Equity in service provision**

*Principle 3:* To the maximum practicable extent, a State will ensure the provision of public hospital services equitably to all eligible persons, regardless of their geographical location

**Explanatory note 1—**

This principle does not require a local hospital to be equipped to provide eligible persons with every hospital service they may need.

**Explanatory note 2—**

In rural and remote areas, a State should ensure provision of reasonable public access to a basic range of hospital services which are in accord with clinical practices.

**COMMITMENTS**

In order to achieve Principles 1 to 3, the Commonwealth and States make the following Commitments regarding public hospital services for eligible persons:

**Information about service provision**

*Commitment 1:* The Commonwealth and a State must make available information on the public hospital services eligible persons can expect to receive as public patients

**Explanatory note 1—**

The State development of a Public Patients' Hospital Charter in consultation with the Commonwealth will be a vehicle for the public dissemination of this information.

**Explanatory note 2—**

The Charter will set out the public hospital services available to public patients.

**Efficiency and quality of service provision**

*Commitment 2:* The Commonwealth and the States are committed to making improvements in the efficiency, effectiveness and quality of hospital service delivery

**Explanatory note—**



This includes a commitment to quality improvement, outcome measurement, management efficiency and effort to integrate the delivery of hospital and other health and health-related community services.

- (3) Expressions used in the Medicare Principles and Commitments (and the notes to them) set out in subsection (2) have the same meanings they have in the Medicare Principles and Commitments (and the notes to them) set out in section 26 of the *Health Insurance Act 1973* of the Commonwealth.
- (4) Nothing in this section gives rise to, or can be taken into account in, any civil cause of action, and, without limiting the generality of the foregoing, nothing in this section operates to create in any person legal rights not in existence before the enactment of this section.

## Chapter 7 Charges for health services

### Introduction—

This Chapter makes provision for the charging and collection of fees from certain patients and other clients of public health organisations.

### 69 Scale of fees (cf PH Act s 30 (8) and (9))

- (1) The Minister may, from time to time, by order published in the Gazette:
  - (a) fix a scale of fees for hospital services and other health services received from any public health organisation, and
  - (b) amend or revoke any scale of fees so fixed.
- (2) A scale of fees may be fixed, amended or revoked by the adoption by reference of any scale of fees (as in force at a particular time or as in force from time to time) fixed or determined by a Commonwealth authority or body. Any such adoption may be wholly or in part and with or without modification.
- (3) Except where a scale of fees has been fixed under this section, nothing in this section affects any right that a public health organisation may have to charge a fee for the provision of a hospital service or other health service.

### 70 Liability of persons for health service fees (cf PH Act s 30 (1)–(5))

- (1) Any person who receives any health service (other than a non-chargeable hospital service) from a public health organisation is liable to contribute towards the funds of the organisation, according to the person's means, such sum in respect of the health service as is calculated in accordance with the scale of fees fixed under section 69.
- (2) That sum (if unpaid) may be recovered in any court of competent jurisdiction as a debt.
- (3) A written statement of the amount due, purporting to be signed by an authorised employee of the public health organisation concerned, is prima facie evidence of the

amount being due.

(4) The public health organisation may remit, postpone or write-off payment of all or any sums of money due to the organisation under this section.

(5) In this section:

**authorised employee** of a public health organisation means an employee of the organisation who is authorised in writing by the chief executive of the organisation to certify any amount owing to it for the provision of a health service.

**71 Care and treatment to be provided to persons without means** (cf PH Act s 30 (6))

A person without means must not be refused care or treatment for sickness or injury at any public hospital by reason only of the person's inability to pay for the care or treatment.

**72 Cost of relief granted to injured persons to be a charge on damages** (cf PH Act s 30A)

(1) This section applies to any person (**the debtor**) who is liable to a public health organisation for the cost of any health service (other than a non-chargeable hospital service) provided by the organisation in respect of any personal injury suffered by the person or another person.

(2) If the debtor has a right to recover damages against any other person in respect of the personal injury, the amount of the debtor's liability to the public health organisation is a charge on any money that is or may become payable in respect of such right to recover damages.

(3) The charge is enforceable by way of an action brought by the public health organisation in the same way as if the action were an action brought by or on behalf of the debtor claiming the amount of such liability as special damages.

(4) In any such action (or any judgment given concerning that action), the parties have, to the extent of the charge, the same rights and liabilities (and the court has the same powers) as if the action were by or on behalf of the debtor.

(5) The action may be brought despite:

(a) any judgment recovered by or on behalf of the debtor, and

(b) any payment made to the debtor or any other person (except the public health organisation) in respect of the defendant's liability, and

(c) any complete or partial discharge given by the debtor.

(6) However, any such payment or discharge in respect of a claim for damages is, to the extent of the payment or discharge, a valid discharge to the person making the payment or receiving the discharge if it is given after:

- (a) the person injured has ceased to receive health services in respect of the injury, and
- (b) the cost of all health services provided by any public health organisation has been fully paid or satisfied.

**73 Order not to be made in certain circumstances** (cf PH Act s 32)

- (1) An order is not to be made under this Chapter by a court if it is satisfied that (having regard to the means, estate, or property of the person in respect of whom the order is sought or to the circumstances of the case) the order would be unreasonable.
- (2) Nothing in this Chapter derogates from any rights that may exist for the recovery of money due.

**74 Fees for medical attendance** (cf PH Act s 36)

- (1) A medical practitioner is not entitled to charge a patient who is under treatment by the medical practitioner in any public hospital with any fees in respect of the treatment if that treatment is provided as part of the provision of a non-chargeable hospital service.
- (2) Any contract between a patient and a medical practitioner for any payment made in contravention of this section is unenforceable.

**75 Hospital and other health services provided by Crown**

A reference in this Chapter to a hospital service or other health service provided to a person by a public health organisation includes a reference to a hospital service or other health service provided by a public hospital controlled by the Crown (including the Minister or the Health Administration Corporation).

## Chapter 8 Visiting practitioners

### Introduction—

In this Chapter, Part 1 defines a visiting practitioner to be a medical practitioner or dentist appointed by a public health organisation (otherwise than as an employee) to practise as a medical practitioner or dentist at its hospitals or health institutions or in relation to its health services (as specified in the appointment). It also makes it clear that a visiting medical officer and an honorary medical officer are visiting practitioners appointed under a service contract with a public health organisation.

Part 2 explains, and provides for the prerequisites for the entry into, service contracts. It also enables the relevant Minister, on application from the Australian Medical Association (NSW) Limited or the Minister (or both), to appoint an arbitrator to determine certain matters involving fee-for-service contracts or sessional contracts of visiting medical officers (or both) throughout the public health system generally.

Part 3 requires visiting practitioners to report to the public health organisation that appointed them the fact that they have been charged with committing, or have been convicted of, a serious sex or violence offence or have had a finding of professional misconduct or unsatisfactory professional conduct made against them under the [Medical Practice Act 1992](#) or the [Dentists Act 1989](#). A public health organisation must terminate the appointment of a visiting practitioner convicted of a serious sex or violence offence if the Director-General so directs. A public health organisation cannot terminate the appointment of a visiting

practitioner of its own motion under the Part unless the Director-General has confirmed the organisation's proposal to terminate the appointment. These provisions mirror those provided in Part 2 of Chapter 9 for employees in the NSW Health Service.

Part 4 enables individual visiting practitioners to appeal to the Minister (who must then appoint a Committee of Review) concerning decisions of public health organisations to reduce their clinical privileges, to refuse to re-appoint them or to suspend or terminate their appointments under service contracts.

Part 5 makes it clear that any agreement between a public health organisation and a visiting practitioner relating to the performance of work is not affected by this Act except as provided by Parts 2, 3 and 4 of this Chapter.

## Part 1 Classification of visiting practitioners

### 76 Who is a visiting practitioner? (cf PH Act s 29K)

A **visiting practitioner** is a medical practitioner or dentist who is appointed by a public health organisation (otherwise than as an employee) to practise as a medical practitioner or dentist in accordance with the conditions of appointment at any of its public hospitals or health institutions, or in relation to any health service it provides, specified in the appointment.

### 77 What are the kinds of visiting practitioners? (cf PH Act s 29K)

The kinds of visiting practitioners are:

- (a) visiting practitioners appointed under a service contract (whether as visiting medical officers or honorary medical officers), and
- (b) visiting practitioners appointed otherwise than under a service contract.

### 78 Who is a visiting medical officer? (cf PH Act s 29K)

A **visiting medical officer** is a medical practitioner appointed under a service contract (whether the practitioner or his or her practice company is a party to the contract) to provide services as a visiting practitioner for monetary remuneration for or on behalf of the public health organisation concerned.

### 79 Who is an honorary medical officer? (cf PH Act s 29K)

An **honorary medical officer** is a medical practitioner appointed under an honorary contract (whether the practitioner or his or her practice company is a party to the contract) to provide services as a visiting practitioner for or on behalf of the public health organisation concerned.

**Note—**

Section 84 defines **honorary contract** to mean a service contract under which the services of a medical practitioner are provided to or on behalf of a public health organisation otherwise than for monetary remuneration.

## Part 2 Service contracts

### Division 1 Classification of service contracts

#### 80 What is a service contract? (cf PH Act s 29K)

- (1) A **service contract** is an agreement between:
- (a) a public health organisation and a medical practitioner under which the practitioner is appointed as a visiting practitioner to provide to or on behalf of the public health organisation the medical services that are specified in the agreement, or
  - (b) a public health organisation and a practice company under which:
    - (i) the medical practitioner who conducts his or her practice by means of the company is appointed as a visiting practitioner, and
    - (ii) the company agrees to provide to or on behalf of the public health organisation the medical services, to be performed by the medical practitioner (as a visiting practitioner), that are specified in the agreement.
- (2) Any contract, agreement or other arrangement for the supply of medical services that is entered into as a result of a tendering process is not a service contract.

#### 81 What are the kinds of service contracts?

The kinds of service contracts include (but are not limited to) the following:

- (a) fee-for-service contracts,
- (b) sessional contracts,
- (c) honorary contracts.

#### 82 What is a fee-for-service contract? (cf PH Act s 29K)

A **fee-for-service contract** is a service contract under which a medical practitioner (or the medical practitioner's practice company) is remunerated for medical services performed by the medical practitioner by reference to a scale of fees for different kinds of medical services that is contained in, or specified or otherwise identified by, the contract.

#### 83 What is a sessional contract? (cf PH Act s 29K)

A **sessional contract** is a service contract under which the medical practitioner (or the medical practitioner's practice company) is remunerated by reference to any hourly rate or rates for services provided, but not on a fee-for-service basis.

**84 What is an honorary contract?** (cf PH Act s 29K)

An **honorary contract** is a service contract under which the services of a medical practitioner are provided to or on behalf of a public health organisation otherwise than for monetary remuneration.

**Division 2 Entry into service contracts**

**85 When can medical practitioners elect to provide their services through their practice companies?**

- (1) A medical practitioner who a public health organisation wishes to appoint as a visiting medical officer may elect to be appointed under a service contract entered into between the organisation and the medical practitioner's practice company.
- (2) However, no such election may be made unless the medical practitioner's practice company:
  - (a) carries public liability insurance to a level approved by the Director-General from time to time, and
  - (b) carries medical indemnity insurance.
- (3) Subsection (2) (b) does not apply to the extent that the medical practitioner's practice company is exempt under section 19 (4) of the [Health Care Liability Act 2001](#) from the requirement to be covered by approved professional indemnity insurance in respect of medical services to be provided under the relevant service contract.
- (4) In this section:

**medical indemnity insurance** means approved professional indemnity insurance within the meaning of the [Health Care Liability Act 2001](#).

**86 Service contracts to be in writing** (cf PH Act s 29RA)

- (1) A visiting medical officer or honorary medical officer must not be appointed unless the terms and conditions to which the officer is to be subject are in the form of a written service contract between:
  - (a) the officer (or the officer's practice company), and
  - (b) the relevant public health organisation.
- (2) An appointment made in contravention of this section is void.

**87 Minister may approve of standard conditions for service contracts** (cf PH Act s 29RB)

- (1) The Minister may, by order in writing, approve of sets of conditions (including remuneration) recommended by the Association for inclusion in service contracts, entered into on or after the day on which the order takes effect, of a class specified in

the order.

- (2) A **standard service contract**, in relation to a class of service contracts (such as fee-for-service contracts, sessional contracts or honorary contracts), is a contract that, when entered into, contains the set of conditions (if any) approved for the time being under subsection (1) for those service contracts, whether or not it contains other conditions that are not inconsistent with the approved set of conditions.
- (3) An order under this section takes effect:
  - (a) on the day the order is made, or
  - (b) on such later day as may be specified in the order.
- (4) An order under this section is to specify a period for the purposes of section 89 (3) (being a period that does not exceed 5 years).

**88 Standard service contracts to be used** (cf PH Act s 29RC)

- (1) A service contract of a class for which there is a standard service contract must not be entered into unless it contains the set of conditions contained in the relevant standard service contract.
- (2) A service contract entered into in contravention of this section is void.
- (3) This section does not apply to honorary contracts.

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

**89 Application for appointment of arbitrator** (cf PH Act s 29L)

- (1) The Minister or the Association may apply (either jointly or individually) to the relevant Minister for the appointment of an arbitrator to determine:
  - (a) the terms and conditions of work, the amounts or rates of remuneration and the bases on which those amounts or rates are applicable, in respect of medical services provided by visiting medical officers under fee-for-service contracts or sessional contracts (or both), and
  - (b) the date or dates (not being a date or dates earlier than the date of the determination) on and from which any determination made under paragraph (a) is to have effect.

**Note—**

The Dictionary defines **relevant Minister** to mean the Minister administering the [Industrial Relations Act 1996](#) for the time being.

- (2) An application is to be in the form approved by the relevant Minister from time to time.
- (3) An application that seeks to obtain a determination under this Part:
  - (a) in relation to a class of service contracts for which there is a standard service contract, and
  - (b) that, if made, would be at variance with a condition approved under section 87, cannot be made before the expiry of such period as may have been specified in the order under section 87 by force of which the condition concerned was last included in the standard service contract.

### **90 Appointment of arbitrator by relevant Minister**

On receipt of an application under section 89, the relevant Minister must appoint a judicial member of the Industrial Relations Commission nominated by the President of the Commission to be the arbitrator for the purposes of making a determination under this Part.

### **91 Nature of determination** (cf PH Act s 29M)

- (1) The arbitrator must, as soon as practicable after being appointed under section 90, determine:
  - (a) the terms and conditions of work, the amounts or rates of remuneration and the bases on which those amounts or rates are applicable, in respect of medical services provided by visiting medical officers under fee-for-service contracts or sessional contracts (or both), and
  - (b) the date or dates (not being a date or dates earlier than the date of the determination) on and from which any determination made under paragraph (a) is to have effect.
- (2) The arbitrator must endeavour to bring the persons appearing before the arbitrator to agreement regarding the matters in respect of which the arbitrator is required to make a determination under this Part.

### **92 Manner of exercise of arbitrator's functions** (cf PH Act s 29N)

- (1) In making a determination under this Part, the arbitrator:
  - (a) is not bound by the rules of evidence and may inform himself or herself on any matter as the arbitrator sees fit, and
  - (b) must act judicially and be governed by equity and good conscience, without regard to technicalities or legal forms.



- (2) In making a determination under this Part, the arbitrator must have regard to the following matters:
  - (a) the economic consequences of the proposed determination, and
  - (b) the established principles of the Industrial Relations Commission in connection with the determination of remuneration under awards made under the *Industrial Relations Act 1996*.

**93 Rights of appearance, administration of oaths, legal representation** (cf PH Act s 290)

- (1) The Minister and the Association may appear before and be heard by an arbitrator by their respective representatives in any proceedings before the arbitrator.
- (2) Any other person may, by the person's representative, appear before and be heard by the arbitrator:
  - (a) only with the arbitrator's leave, and
  - (b) subject to such conditions as the arbitrator determines.
- (3) The arbitrator must not grant leave under subsection (2) unless the arbitrator considers that the person concerned has a special interest in the outcome of the proceedings.
- (4) The arbitrator may administer an oath to any person appearing as a witness in any proceedings before the arbitrator.
- (5) A person appearing before the arbitrator may be represented by a practising legal practitioner.

**94 Conduct of proceedings and protection of arbitrator** (cf PH Act s 29P)

- (1) Subject to this Part and the regulations, proceedings before the arbitrator are to be conducted in whatever manner the arbitrator may determine.
- (2) The arbitrator may, as he or she thinks fit, conduct any proceedings under this Part (or any part of the proceedings) in public or in private.
- (3) In the exercise of the arbitrator's duty as arbitrator, the arbitrator has the same protection and immunity as a Judge of the Supreme Court.

**95 Notification of determination and finality of determination** (cf PH Act s 29Q)

- (1) The arbitrator must give written notice to the Minister and the Association of the arbitrator's determination under this Part.
- (2) Except as provided by section 96, a determination made under this Part (or a purported determination):

(a) is final, and

(b) may not be appealed against, reviewed, quashed or called into question by any court or tribunal (whether on an issue of fact, law, jurisdiction or otherwise).

**96 Appeal to Full Bench of the Industrial Relations Commission** (cf PH Act s 29QA)

- (1) The Minister or the Association may appeal to a Full Bench of the Industrial Relations Commission against a determination made under this Part.
- (2) Subject to subsection (1), the *Industrial Relations Act 1996* applies to any such appeal in the same way as it applies to an appeal from a decision of a single member of the Industrial Relations Commission.

**Note—**

Part 7 of Chapter 4 of the *Industrial Relations Act 1996* provides for appeals to the Full Bench of the Commission. Under section 188 of that Act, appeals lie to the Full Bench only by leave.

**97 Interpretation of a determination**

- (1) The Minister or the Association may apply to the Industrial Relations Commission in Court Session for a declaration of right under section 154 of the *Industrial Relations Act 1996* in respect of the interpretation, application or operation of a determination made under this Part.
- (2) Subject to subsection (1), the *Industrial Relations Act 1996* applies to any such application in the same way as it applies to an application for a declaration of right in relation to any other matter in which the Industrial Relations Commission (however constituted) has jurisdiction.

**98 Determination contractually binding** (cf PH Act s 29R)

Any provision of any service contract that is inconsistent with a determination under this Part is, to the extent of the inconsistency, of no effect on and from the date or dates that the relevant determination is to take effect and the contract is, on and from that date or those dates, taken to be varied so as to include the terms of the determination.

**Part 3 Criminal and disciplinary matters concerning visiting practitioners**

**99 Duty to report certain criminal and disciplinary matters**

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

**Note—**

The term **serious sex or violence offence** is defined in the Dictionary to mean an offence involving sexual activity, acts of indecency, physical violence or the threat of physical violence that:

- (a) if committed in New South Wales, is punishable by imprisonment for 12 months or more, or
- (b) if committed elsewhere than in New South Wales, would have been an offence punishable by imprisonment for 12 months or more if committed in New South Wales.

(2) A visiting practitioner appointed by a public health organisation who has a finding of unsatisfactory professional conduct or professional misconduct made against him or her under the *Medical Practice Act 1992* (in the case of a medical practitioner) or professional misconduct under the *Dentists Act 1989* (in the case of a dentist) must, within 7 days of receiving notice of the finding:

- (a) report that fact to the chief executive of the organisation, and
- (b) provide the chief executive with a copy of that finding.

#### **100 Termination of appointments in certain cases of serious sex or violence offences**

(1) **Chief executive to notify Director-General of certain matters** The chief executive of a public health organisation must notify the Director-General of the following matters:

- (a) that a visiting practitioner of the organisation has been convicted (whether before or during the term of his or her appointment as a visiting practitioner) of a serious sex or violence offence,
- (b) whether or not the public health organisation proposes to terminate the appointment of the visiting practitioner and the reasons why it intends to terminate or not to terminate the appointment,
- (c) any written submissions made to the chief executive under subsection (3) concerning the conviction.

(2) **When chief executive to notify** The chief executive is to notify the Director-General under subsection (1) within 30 days (or such further period as may be agreed to by the Director-General) of becoming aware of the visiting practitioner's conviction.

(3) **Chief executive to afford practitioner opportunity to make submissions** Before notifying the Director-General under subsection (1), the chief executive is to afford the visiting practitioner concerned a reasonable opportunity to make written submissions concerning any matter relevant to the conviction that the visiting practitioner wishes to have considered in determining whether or not to terminate the practitioner's appointment.

(4) **Powers of Director-General on being notified** On being notified of the matters referred to in subsection (1), the Director-General may:

- (a) confirm the proposed termination or retention of the visiting practitioner, or

(b) refuse to confirm the proposed termination or proposed retention of the visiting practitioner and direct the public health organisation not to terminate or to terminate the appointment (as the case may be).

(5) **When public health organisation may terminate appointment on its own initiative** A public health organisation may terminate the appointment of a visiting practitioner who has been convicted (whether before or during the term of his or her appointment as a visiting practitioner) of a serious sex or violence offence, but only if:

(a) the chief executive has notified the Director-General under subsection (1) of the proposal to terminate the appointment and of the matters referred to in that subsection, and

(b) the Director-General has notified the organisation that he or she has confirmed the organisation's proposal to terminate the appointment.

(6) **Public health organisation must terminate appointment if Director-General directs A** public health organisation must terminate the appointment of a visiting practitioner under this Part who has been convicted (whether before or during the appointment) of a serious sex or violence offence if the Director-General has directed the public health organisation to do so under subsection (4) (b).

(7) **Section does not apply to previously disclosed convictions** This section does not apply to a conviction that occurred before a person was appointed as a visiting practitioner if before that appointment:

(a) the person notified the chief executive of the public health organisation in writing of the fact of the conviction, and

(b) the chief executive of the organisation reported the conviction to the Director-General, and

(c) the Director-General notified the public health organisation in writing that he or she consented to the person being appointed as a visiting practitioner.

(8) **Functions of chief executive may be carried out by authorised person** The functions of a chief executive of a public health organisation under this section may be carried out by a person who is authorised by the chief executive to do so.

(9) **Application of section** This section extends to a conviction that occurred before the commencement of this section.

## **101 Protection of patients, clients and children to be paramount consideration**

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 relation to determining whether to terminate a visiting practitioner's appointment under this Part.

## 102 No compensation for termination of appointment

No compensation (whether for breach of contract or otherwise) is payable in respect of the termination of the appointment of a visiting practitioner under this Part.

## 103 Appeal rights

- (1) Nothing in this Part affects any right to appeal that a visiting practitioner may have under Part 4 in relation to the termination of his or her appointment.
- (2) However, a visiting practitioner cannot appeal under that Part against a decision under this Part to terminate his or her appointment because the practitioner has been convicted of a serious sex or violence offence in respect of:
  - (a) a minor (but only if the offence committed involves sexual activity or acts of indecency with, or in relation to the minor), or
  - (b) a patient or client of the practitioner if the offence is committed during the course of his or her practice as a medical practitioner or dentist (whether as a visiting practitioner or otherwise).

### Note—

Section 21 (1) of the [Interpretation Act 1987](#) defines **minor** to mean an individual who is under the age of 18 years.

## 104 Effect of Part on other rights

- (1) Nothing in this Part affects any other rights (whether conferred by statute or otherwise) that a public health organisation may have in relation to a visiting practitioner who:
  - (a) fails to disclose the fact of being charged with committing, or of being convicted of, a serious sex or violence offence, or
  - (b) is charged with committing, or who has been convicted of, a serious sex or violence offence, or
  - (c) fails to disclose the fact of having a finding of unsatisfactory professional conduct or professional misconduct made against the practitioner, or
  - (d) has a finding of unsatisfactory professional conduct or professional misconduct made against the practitioner.
- (2) Nothing in this Part affects the operation of the [Criminal Records Act 1991](#) in relation to spent convictions within the meaning of that Act.

### Note—

Section 22 of the [Health Administration Act 1982](#) makes it an offence for a person to disclose any information

obtained in connection with the administration or execution of that Act or any other Act conferring or imposing functions on the Director-General, except in the circumstances specified in that section.

## **Part 4 Appeals concerning appointment decisions**

### **105 Public health organisation to notify visiting practitioners of certain decisions** (cf PH Act s 33H)

- (1) If a public health organisation:
  - (a) reduces any clinical privileges of a person appointed as a visiting practitioner that have previously been granted, or
  - (b) does not re-appoint a person as a visiting practitioner, or
  - (c) suspends or terminates the appointment of a person as a visiting practitioner,it must give notice in writing to the person of its decision (and the reasons for the decision) within 14 days of the date of the making of the decision.
- (2) In this Part, **clinical privileges** means the kind of clinical work (subject to any restrictions) that the public health organisation determines the visiting practitioner is to be allowed to perform at any of its hospitals.

### **106 Right of appeal to Minister** (cf PH Act s 33I)

- (1) A person who is dissatisfied with a decision of a public health organisation referred to in section 105 (1) concerning the person may appeal to the Minister against that decision.
- (2) However, a person cannot appeal to the Minister in relation to any of the following decisions:
  - (a) a decision by a public health organisation not to re-appoint the person as a visiting practitioner if the organisation has ceased to offer appointments of the kind to which the person seeks re-appointment,
  - (b) a decision by a public health organisation reducing the clinical privileges of a person if the decision is based on grounds other than the lack of professional competence of the person,
  - (c) a decision by a public health organisation not to re-appoint a visiting practitioner (or a decision to terminate the appointment of a visiting practitioner) if:
    - (i) the decision is based on the fact that the practitioner has been convicted of a serious sex or violence offence in respect of a minor, and
    - (ii) the offence committed involves sexual activity or acts of indecency with, or in relation to the minor,

(d) a decision by a public health organisation not to re-appoint a visiting practitioner (or a decision to terminate the appointment of a visiting practitioner) if the decision is based on the fact that the practitioner has been convicted of a serious sex or violence offence in respect of a patient or client of the practitioner that is committed during the course of his or her practice as a medical practitioner or dentist (whether as a visiting practitioner or otherwise).

(3) For the purposes of this section, a failure of a public health organisation to re-appoint a person as a visiting practitioner on or before his or her appointment expires is taken to be a decision not to re-appoint the person.

**107 Notice of appeal to Minister** (cf PH Act s 33J)

- (1) An appellant must give notice to the Minister of the grounds of the appellant's appeal in the form and manner approved by the Minister from time to time.
- (2) A notice under subsection (1) must be given within 1 month (or within such longer period as the Minister may allow) of the following dates:
  - (a) if a public health organisation makes a decision referred to in section 105 (1)—the date on which the public health organisation notified the appellant under that subsection of the reasons for its decision, or
  - (b) if a public health organisation is taken to have made a decision under section 106 (3)—the date on which the appointment of the visiting practitioner concerned expires.

**108 Constitution of Committee of Review** (cf PH Act s 33K)

- (1) On receipt of a notice under section 107, the Minister must appoint a Committee of Review to determine the appeal.
- (2) A Committee of Review is to be constituted by:
  - (a) a legal practitioner of at least 7 years standing (who is also to be appointed as the Chairperson of the Committee), and
  - (b) if the appellant is a medical practitioner—1 person nominated by the Association who is a medical practitioner, and
  - (c) if the appellant is a dentist—1 person nominated by the Australian Dental Association, New South Wales Branch who is a dentist, and
  - (d) 1 other person appointed in accordance with subsection (4).
- (3) A person must not be appointed under subsection (2) (b) or (c) unless the Minister is satisfied that the person nominated is sufficiently experienced in the administration of health services within the public health system to warrant being appointed.

- (4) A person may be appointed under subsection (2) (d) only if:
  - (a) the Minister is satisfied that the person appointed is sufficiently experienced in the administration of health services within the public health system to warrant being appointed, and
  - (b) if the decision being appealed relates to a lack of professional standards or competence—the person appointed is a medical practitioner (if the appellant is a medical practitioner) or a dentist (if the appellant is a dentist).
- (5) If the Association or the Australian Dental Association, New South Wales Branch fails to nominate a person for appointment to the Committee within such time as may be notified by the Minister, the Minister may nominate a person who is eligible to be nominated by either Association under subsection (2).
- (6) A decision of the Minister as to whether a Committee should be constituted as provided by subsection (4) is final.

**109 Date and place of hearing** (cf PH Act s 33L)

The Chairperson of the Committee:

- (a) is to fix a date and a place for the hearing of the appeal, and
- (b) must give 14 days' notice of those details to the parties to the proceedings.

**110 Right of appearance** (cf PH Act s 33M)

- (1) In any proceedings before a Committee, a party to the proceedings may appear in person or by an agent. However, no party is to be represented by a practising legal practitioner except with the consent of all parties and by leave of the Committee.
- (2) The proceedings may, at the discretion of the Committee, be conducted wholly or partly in private.

**111 Powers of and procedure before a Committee** (cf PH Act s 33N)

- (1) A Committee has, for the purposes of the appeal, the powers, authorities, protections and immunities conferred by the [Royal Commissions Act 1923](#) on a commissioner and the chairperson of a commission respectively, appointed under Division 1 of Part 2 of that Act. That Act (Division 2 of Part 2 excepted) applies to any witness summoned by or appearing before a Committee in the same way as it applies to any witness summoned by or appearing before a commission.
- (2) The decision of the Chairperson of the Committee on any question of law or procedure that may arise before a Committee is taken to be the decision of the Committee.



**112 Determination of appeal** (cf PH Act s 33O)

- (1) Subject to this Part and the regulations, a Committee must determine the appeal and may make such orders with respect to the matter being appealed as the Committee considers proper.
- (2) If a public health organisation refused to re-appoint the appellant because it had appointed persons to all its available relevant positions that it considered to be better applicants, the Committee cannot order the re-appointment of the appellant unless it specifies in the order which one of those other practitioners' appointments is to be made available to the appellant.
- (3) The Chairperson of the Committee is to notify the Minister in writing of any order of the Committee made under this section.
- (4) In this section:

**relevant position** means any position as a visiting practitioner of the public health organisation that is of the kind to which the appellant seeks re-appointment.

**113 Effect and implementation of order** (cf PH Act s 33P)

- (1) An order of a Committee under section 112:
  - (a) has force and effect from the date it is made, and
  - (b) is taken to be the final decision of the public health organisation concerned and must be given effect to accordingly.
- (2) If a Committee makes an order for re-appointment referred to in section 112 (2):
  - (a) the appointment of any visiting practitioner specified in the order (along with any related service contract) is terminated, and
  - (b) no compensation is payable to the visiting practitioner (or to any party to a related service contract) as a consequence of the termination of the appointment or contract or of a public health organisation giving effect to the order.

**Part 5 Effect of Act on agreements with visiting practitioners**

**114 Application of Act to agreements with visiting practitioners** (cf PH Act s 29T)

- (1) This section applies to any agreement between a public health organisation and a visiting practitioner relating to the performance of work by the visiting practitioner for the organisation, regardless of whether or not the agreement also relates to other matters.
- (2) A provision of this Act (other than Parts 2, 3 and 4 of this Chapter) or a regulation or by-law made under this Act that is inconsistent with any of the rights and obligations

under any agreement to which this section applies has (to the extent of the inconsistency) no force or effect in relation to the visiting practitioner concerned.

(3) In this section, a reference to an agreement includes a reference to a service contract.

## Chapter 9 The NSW Health Service

### Introduction—

This Chapter makes provision for the regulation of the terms and conditions of employment of employees in the NSW Health Service and for the transfer of staff between and within public health organisations. It also requires disclosure by NSW Health Service employees of findings of misconduct and of convictions for serious sex or violence offences and charges against them for such offences. It also provides for the action that can be taken in the case of such convictions. These provisions mirror those provided in Part 3 of Chapter 8 for visiting practitioners.

## Part 1 General

### 115 Determination of conditions of employment of staff (cf AHS Act s 26, PH Act s 40BA)

- (1) **Definitions** In this section, **enterprise agreement** and **industrial matters** have the same meanings as in the [Industrial Relations Act 1996](#).
- (2) **Conditions of employment** Except in so far as provision is otherwise made by law, the conditions of employment (including salaries, wages or remuneration) of the employees in the NSW Health Service are to be as may be determined from time to time by the Health Administration Corporation.
- (3) **Corporation is taken to be employer for certain purposes** The Health Administration Corporation:
  - (a) is, for the purpose of making any determination under subsection (2), taken to be the employer of the employees in the NSW Health Service, and
  - (b) is, for the purpose of entering into an enterprise agreement relating to the enterprise carried on by a public health organisation, taken to be the employer of the employees of the organisation concerned, and
  - (c) is, for the purpose of any proceedings before a competent tribunal having power to deal with industrial matters, taken to be the employer of the employees in the NSW Health Service.
- (4) **Corporation may delegate functions** To remove any doubt, the Health Administration Corporation may, in accordance with section 21 of the [Health Administration Act 1982](#), delegate its functions as such an employer.
- (5) **Corporation may enter industrial agreements** The Health Administration Corporation may enter into an agreement (not being an enterprise agreement taken to have been entered into by the Corporation under subsection (3) (b)) with any association or organisation representing any group or class of employees in the NSW Health Service

with respect to the conditions of employment (including salaries, wages or remuneration) of that group or class. Any such agreement may (subject to Part 2) extend to conditions in respect of the employment of persons convicted of, or charged with, serious sex or violence offences.

- (6) **Industrial agreements bind employees** An agreement referred to in subsection (5) binds all employees in the group or class affected by the agreement and no such employee, whether a member of the association or organisation with which the agreement was entered into or not, has any right of appeal against the terms of the agreement.
- (7) **Actual employers bound by industrial agreements** A public health organisation must give effect to:
- (a) any determination made by the Health Administration Corporation under subsection (2), and
  - (b) any enterprise agreement referred to in subsection (3), and
  - (c) any order or determination made by a competent tribunal in proceedings referred to in subsection (3), and
  - (d) any agreement referred to in subsection (5).
- (8) **Corporation taken to be employer only for certain purposes** Nothing in this section authorises:
- (a) the Health Administration Corporation to act as an employer, or
  - (b) any function to be exercised by or in relation to the Health Administration Corporation,
- otherwise than for the purposes of and in accordance with this section.
- (9) **Application to chief executives and other senior executives** This section does not apply to any conditions of employment determined under Part 3 of Chapter 9 of this Act or Part 3.1 of the *Public Sector Employment and Management Act 2002* of:
- (a) (Repealed)
  - (b) the chief executive of a statutory health corporation whose employment is subject to either of those Parts, or
  - (c) any other employee of a public health organisation whose employment is subject to either of those Parts.

#### **116 Transfers of employees in NSW Health Service** (cf PSM Act ss 50, 51 and 53)

- (1) **Transfers in NSW Health Service by Health Administration Corporation** The Health Administration Corporation may, on the ground of redundancy, direct the transfer of

an employee in the NSW Health Service from one position in the Service to another position in the Service at a salary in accordance with any general determination made by it under section 115 (2), but only if:

- (a) it is satisfied that:
  - (i) the number of persons who are employed by the organisation that employs the employee exceeds the number that appears to be necessary for the effective, efficient and economical management of the organisation's functions and activities, either generally or at a particular location, or
  - (ii) the mix of skills or other expertise of the persons who are employed in the organisation appears to be unsuitable for the effective, efficient and economical management of the organisation's functions and activities, either generally or at a particular location, and
- (b) the organisation that employs the employee has advised the Health Administration Corporation that the employee is redundant, and
- (c) the employee possesses the essential qualifications specified for the other position and the work assigned to the other position is appropriate to the skills and qualifications of the employee, and
- (d) if an employee is to be transferred to an affiliated health organisation—the affiliated health organisation has been consulted by the Health Administration Corporation as to the suitability of the employee for employment within the organisation having regard to the health care philosophy of the organisation.

(2) **Dismissal for failure to accept transfer** If an employee refuses a transfer from one position to another under this section, the organisation that employs the employee may terminate the employee's employment. However, the organisation may only do so if the Health Administration Corporation has certified, on reasonable grounds, that the employee has no valid reason for so refusing.

(3) **When failure to accept transfer is permissible** If the Health Administration Corporation considers that an employee has a valid reason for refusing the transfer, the Corporation may allow the employee to decline the transfer without prejudice to any rights that the employee would have had to any future promotion or appointment if the transfer had not been declined.

(4) **Effect of dismissal for failure to accept transfer** If an employee's employment is terminated under subsection (2):

- (a) the termination of that employment is to be taken for all purposes not to have been on the ground of redundancy, and
- (b) no compensation (whether for breach of contract or otherwise) is payable in

respect of the termination of the employee's employment.

(5) **Operation of Industrial Relations Act 1996** Nothing in this section affects the operation of Part 6 (Unfair dismissals) of Chapter 2 of the *Industrial Relations Act 1996* in relation to any termination of employment if:

(a) the termination is based on a certificate given by the Health Administration Corporation under subsection (2) that the employee concerned has no valid reason for refusing a transfer and there are no reasonable grounds for it to so certify, or

(b) the termination is not in accordance with any other requirement of this section.

**Note—**

Part 6 of Chapter 2 of the *Industrial Relations Act 1996* enables certain employees specified in section 83 of that Act to make an application to the Industrial Relations Commission in respect of a claim that their dismissal or threatened dismissal from employment has been or will be harsh, unreasonable or unjust.

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

### **117 Duty to report certain criminal conduct and disciplinary matters**

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

**Note—**

The term **serious sex or violence offence** is defined in the Dictionary to mean an offence involving sexual activity, acts of indecency, physical violence or the threat of physical violence that:

(a) if committed in New South Wales, is punishable by imprisonment for 12 months or more, or

(b) if committed elsewhere than in New South Wales, would have been an offence punishable by imprisonment for 12 months or more if committed in New South Wales.

(2) An employee appointed by a public health organisation who has a misconduct finding made against him or her under any relevant health professional registration Act must, within 7 days of receiving notice of the finding:

(a) report that fact to the chief executive of the organisation, and

(b) provide the chief executive with a copy of that finding.

(3) In this section:

**misconduct finding** includes a finding of professional misconduct or unsatisfactory professional conduct.

**relevant health professional registration Act** means:

- (a) in relation to an employee who is employed as a chiropractor or osteopath—the *Chiropractors and Osteopaths Act 1991*, or
- (b) in relation to an employee who is employed as a dental technician or dental prosthetist—the *Dental Technicians Registration Act 1975*, or
- (c) in relation to an employee who is employed as a dentist—the *Dentists Act 1989*, or
- (d) in relation to an employee who is employed as a medical practitioner—the *Medical Practice Act 1992*, or
- (e) in relation to an employee who is employed as a nurse or midwife—the *Nurses and Midwives Act 1991*, or
- (f) in relation to an employee who is employed as an optometrist—the *Optometrists Act 1930*, or
- (g) in relation to an employee who is employed as a physiotherapist—the *Physiotherapists Registration Act 1945*, or
- (h) in relation to an employee who is employed as a podiatrist—the *Podiatrists Act 1989*, or
- (i) in relation to an employee who is employed as a psychologist—the *Psychologists Act 1989*, or
- (j) in relation to an employee who is employed as a pharmacist—the *Pharmacy Act 1964*.

#### **118 Disciplinary action in certain cases of serious sex or violence offences**

- (1) **Chief executive to notify Director-General of certain matters** The chief executive of a public health organisation must notify the Director-General of the following matters:
  - (a) that an employee of the organisation has been convicted (whether before or during his or her employment) of a serious sex or violence offence,
  - (b) whether or not the public health organisation proposes to take any disciplinary action in relation to the employee and the reasons why it intends to take or not to take disciplinary action,
  - (c) any written submissions made to the chief executive under subsection (3) concerning the conviction.
- (2) **When chief executive to notify** The chief executive is to notify the Director-General under subsection (1) within 30 days (or such further period as may be agreed to by the Director-General) of becoming aware of the employee's conviction.

- (3) **Chief executive to afford employee opportunity to make submissions** Before notifying the Director-General under subsection (1), the chief executive is to afford the employee concerned a reasonable opportunity to make written submissions concerning any matter relevant to the conviction that the employee wishes to have considered in determining what (if any) disciplinary action should be taken in relation to the employee.
- (4) **Powers of Director-General on being notified** On being notified under subsection (1), the Director-General may:
- (a) confirm any proposed disciplinary action or proposal not to take disciplinary action, or
  - (b) refuse to confirm any proposed disciplinary action or proposal not to take disciplinary action and direct the public health organisation either not to take disciplinary action or to take such disciplinary action as the Director-General may specify in the direction.
- (5) **When public health organisation may take action on its own initiative** A public health organisation may take such disciplinary action as it considers appropriate (having regard to section 119) against an employee who has been convicted (whether before or during his or her employment) of a serious sex or violence offence, but only if:
- (a) the chief executive has notified the Director-General of the proposed disciplinary action under subsection (1) and of other matters referred to in that subsection, and
  - (b) the Director-General has notified the organisation that he or she has confirmed the organisation's proposal to take the disciplinary action.
- (6) **Public health organisation must take action if Director-General directs** A public health organisation must take such disciplinary action against an employee under this Part who has been convicted (whether before or during his or her employment) of a serious sex or violence offence as the Director-General has directed the public health organisation to do under subsection (4) (b).
- (7) **Section does not apply to previously disclosed convictions** This section does not apply to a conviction that occurred before a person was employed if before that employment:
- (a) the person notified the chief executive of the public health organisation in writing of the fact of the conviction, and
  - (b) the chief executive of the organisation reported the conviction to the Director-General, and
  - (c) the Director-General notified the public health organisation in writing that he or she consented to the person being employed.

- (8) **Functions of chief executive may be carried out by authorised person** The functions of a chief executive of a public health organisation under this section may be carried out by a person who is authorised by the chief executive to do so.
- (9) **Application of section** This section extends to a conviction that occurred before the commencement of this section.
- (10) **Definition** In this section:
- disciplinary action** means:
- (a) terminate an employee's employment, or
  - (b) impose conditions in respect of the supervision of, or reporting by, an employee or in respect of the scope of an employee's duties, or
  - (c) transfer an employee to another position within the public health organisation concerned.

### **119 Protection of patients, clients and children to be paramount consideration**

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 relation to determining whether to take disciplinary action against an employee under this Part.

### **120 No compensation for termination of employment**

No compensation (whether for breach of contract or otherwise) is payable in respect of the termination of the employment of an employee under this Part.

### **121 Effect of Part on other rights**

- (1) Nothing in this Part affects any other rights (whether conferred by statute or otherwise) that a public health organisation may have in relation to an employee who:
- (a) fails to disclose the fact of being charged with committing, or of being convicted of, a serious sex or violence offence, or
  - (b) is charged with committing, or who has been convicted of, a serious sex or violence offence, or
  - (c) fails to disclose the fact of having a misconduct finding within the meaning of section 117 made against the employee, or
  - (d) has a misconduct finding within the meaning of section 117 made against the employee.
- (2) Nothing in this Part affects the operation of Part 6 (Unfair dismissals) of Chapter 2 of the *Industrial Relations Act 1996* or any other statutory right that an employee may have in relation to the termination of the employee's employment under this Part.



However, in exercising its functions under that Part, the Industrial Relations Commission is to have regard to section 119 of this Act.

**Note—**

Part 6 of Chapter 2 of the *Industrial Relations Act 1996* enables certain employees specified in section 83 of that Act to make an application to the Industrial Relations Commission in respect of a claim that his or her dismissal or threatened dismissal from employment has been or will be harsh, unreasonable or unjust.

- (3) Nothing in this Part affects the operation of the *Criminal Records Act 1991* in relation to spent convictions within the meaning of that Act.

**Note—**

Section 22 of the *Health Administration Act 1982* makes it an offence for a person to disclose any information obtained in connection with the administration or execution of that Act or any other Act conferring or imposing functions on the Director-General, except in the circumstances specified in that section.

## Part 3 The Health Executive Service

### Division 1 Preliminary

#### 121A Definitions (cf PSE&M Act s 63)

- (1) In this Part:

**contract of employment** means a contract of employment under this Part between a health executive and the Health Administration Corporation.

**executive position** means:

- (a) the position of chief executive of an area health service, or
- (b) a position the subject of a determination referred to in section 121B (1) (b).

**health executive** means a person holding an executive position.

**remuneration package** means the remuneration package for a health executive determined for the time being by the Health Administration Corporation under section 121J.

- (2) In this Part, a reference to the remuneration package for a health executive is, if a range of amounts has been determined by the Health Administration Corporation, a reference to:

- (a) the amount within that range nominated in the executive's contract of employment, or
- (b) in any other case, the minimum amount within that range.

### Division 2 Composition of Health Executive Service

**121B Composition of Health Executive Service** (cf PSE&M Act s 65)

- (1) The Health Executive Service comprises:
  - (a) the chief executives of the area health services, and
  - (b) the persons holding:
    - (i) such positions in the NSW Health Service involving employment in connection with public health organisations, other than positions in an affiliated health organisation, and
    - (ii) such positions in the Health Administration Corporation,  
  
as are for the time being determined by the Health Administration Corporation to be executive positions.
- (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.

**Division 3 Appointment and employment of health executives**

**121C Appointment of health executives** (cf PSE&M Act ss 17 and 24)

- (1) Appointments to vacant executive positions are to be made by the Health Administration Corporation.
- (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.
- (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.
- (4) The Health Administration Corporation may, at any time, terminate the appointment of a person to act in an executive position.
- (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.

**121D Term appointments** (cf PSE&M Act s 68)

- (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.
- (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.

**121E Employment of health executives to be governed by contract of employment** (cf PSE&M Act s 69)

- (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) A contract of employment may be made before or after the appointment of the health executive concerned.
- (3) A health executive is not appointed by, nor is a health executive's term of office fixed by, the contract of employment.
- (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.
- (5) A contract of employment may be varied at any time by a further contract between the parties.
- (6) A contract of employment may not vary or exclude a provision of this Act or the regulations.

**121F Matters regulated by contract of employment** (cf PSE&M Act s 70)

- (1) The matters to be dealt with in a contract of employment between a health executive and the Health Administration Corporation include the following:
  - (a) the duties of the executive's position (including performance criteria for the purpose of reviews of the executive's performance),
  - (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).
- (2) A contract of employment may provide for any matter to be determined:
  - (a) by further agreement between the parties, or
  - (b) by further agreement between the health executive concerned and some other person specified in the contract, or
  - (c) by the Health Administration Corporation or by some other person or body specified in the contract.

**121G Performance reviews** (cf PSE&M Act s 71)

- (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) Any such review is to have regard to the agreed performance criteria for the position and any other relevant matter.

**121H Industrial arbitration or legal proceedings excluded** (cf PSE&M Act s 72)

- (1) In this section, a reference to the employment of a health executive is a reference to:
- (a) the appointment of, or failure to appoint, a person to a vacant executive position, or
  - (b) the removal, retirement, termination of employment or other cessation of office of a health executive, or
  - (c) any disciplinary proceedings or disciplinary action taken against a health executive, or
  - (d) the remuneration or conditions of employment of a health executive.
- (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 *Industrial Relations Act 1996*.
- (3) Subsection (2) applies whether or not any person has been appointed to a vacant executive position.
- (4) Part 6 (Unfair dismissals) and Part 9 (Unfair contracts) of Chapter 2 of the *Industrial Relations Act 1996* do not apply to or in respect of the employment of a health executive.
- (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.
- (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.
- (7) An appeal does not lie to the Government and Related Employees Appeal Tribunal in relation to the employment of a health executive.
- (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 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.
- (9) In this section, **industrial agreement** includes any determination under section 115.

**Division 4 Remuneration of health executives**

**121I Definitions** (cf PSE&M Act s 73)

In this Division:

**approved** 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.

**employment benefit** means:

- (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
- (b) the provision by the Health Administration Corporation of a motor vehicle for private use by a health executive, or
- (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).

**monetary remuneration** includes allowances paid in money, but does not include:

- (a) travelling or subsistence allowances, or
- (b) allowances in relation to relocation expenses, or
- (c) any other allowances in relation to expenses incurred in the discharge of a health executive's duties.

**superannuation scheme** means a superannuation scheme established by or under an Act or approved for the purposes of this definition.

**121J Determination of remuneration packages**

- (1) The Health Administration Corporation may from time to time determine the remuneration packages for health executives.
- (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 [Statutory and Other Offices Remuneration Act 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](#).

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

- (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.

- (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.
- (3) The total amount of:
  - (a) the annual rate of monetary remuneration for a health executive, and
  - (b) the annual cost of employment benefits provided for a health executive under the relevant contract of employment,is to be equal to the amount of the remuneration package for the executive.
- (4) The cost of an employment benefit is the approved amount or an amount calculated in the approved manner.
- (5) This section does not affect:
  - (a) any approved performance-related incentive payments made to a health executive, or
  - (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).
- (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.
- (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.
- (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.
- (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.

**121L Travelling and subsistence allowances etc** (cf PSE&M Act s 75)

- (1) A health executive is entitled to be paid:
  - (a) such travelling and subsistence allowances, and
  - (b) such allowances in relation to relocation expenses, and
  - (c) such other allowances in relation to expenses incurred in the discharge of the executive's duties,as the Health Administration Corporation may from time to time determine in respect of the executive.
- (2) A health executive's contract of employment:
  - (a) may provide for the payment to the executive of allowances of the kind referred to in this section, and
  - (b) may regulate the payment of allowances to the executive under this section.

**Division 5 Removal, retirement etc of health executives**

**121M Vacation of executive positions** (cf PSE&M Act s 76)

- (1) The position of a health executive becomes vacant if the executive:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) is removed from office, or retires or is retired from office, under this or any other Act, or
  - (d) resigns his or her position in writing addressed to the Health Administration Corporation and the Corporation accepts the resignation.
- (2) This section does not affect any other provision by or under which a health executive vacates his or her position.

**121N Removal of health executives from office** (cf PSE&M Act s 77)

- (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.
- (2) The Health Administration Corporation:
  - (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
  - (b) may revoke any such declaration.

- (3) While a declaration under subsection (2) remains in force, the person to whom the declaration relates:
- (a) is to be regarded as a health executive, although not holding an executive position, and
  - (b) is entitled to monetary remuneration and employment benefits as if the person had not been removed from his or her position.
- (4) If:
- (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
  - (b) a declaration under subsection (2) made in relation to a health executive is revoked,
- the executive ceases to be a health executive, unless appointed to some other executive position.
- (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.
- (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.
- (7) Clause 11 of Schedule 4 to the *Public Sector Employment and Management Act 2002* applies to and in respect of a person:
- (a) who ceases to be a health executive pursuant to this section, and
  - (b) who, immediately before he or she became a health executive, was an executive officer to whom that clause applied,
- 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.

**1210 Compensation etc where health executive is removed from office** (cf PSE&M Act s 78)

- (1) This section applies to the following persons:
- (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),
  - (b) a health executive who is otherwise removed from office (except for misbehaviour after due inquiry),



(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.

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.

- (2) A person to whom this section applies is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.
- (3) The Statutory and Other Offices Remuneration Tribunal:
- (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
  - (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.
- (4) The maximum compensation payable is an amount equal to the person's remuneration package for the period of 38 weeks.
- (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).
- (6) A health executive who is removed from office or not re-appointed is not entitled to compensation under this section if:
- (a) the person is appointed on that removal or expiry of term of office:
    - (i) to another executive position within the meaning of this Part, or
    - (ii) to an executive position within the meaning of the *Public Sector Employment and Management Act 2002*, and
  - (b) the remuneration package for the holder of that position is not less than the remuneration package for the holder of the former position.
- (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.
- (8) During the period so specified, the person:
- (a) may not be employed in a public sector service within the meaning of the *Public Sector Employment and Management Act 2002*, and

(b) may not be employed in the service of a State owned corporation or a subsidiary of a State owned corporation, and

(c) may not be appointed to any statutory office,

unless arrangements are made for a refund of the proportionate amount of the compensation.

## **Division 6 General**

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

(1) A person who:

(a) was a chief executive of a statutory health corporation, or was employed in the public sector, when appointed to an executive position, and

(b) had a right to accrued extended or annual leave with pay immediately before that appointment, and

(c) has not taken that leave before taking up duties in the executive position,

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.

(2) An election under this section is to be made within the time and in the manner determined by the Health Administration Corporation.

(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.

(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)).

(5) In this section, a reference to employment in the public sector is a reference to:

(a) employment in the NSW Health Service, the Public Service or the Teaching Service, or

(b) employment as a member of NSW Police, or

(c) employment as an officer in the service of a public authority within the meaning of Part 3.1 of the *Public Sector Employment and Management Act 2002*, or

(d) appointment to a statutory office.

**121Q Effect on incumbent when position ceases to be executive position** (cf PSE&M Act s 81)

- (1) If a position ceases to be designated as an executive position by a determination under section 121B (1) (b):
  - (a) the position is abolished, and
  - (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 unattached officer under section 121N (2).
- (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).
- (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.

**121R Change in title of positions** (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.

**121S Approval to undertake other paid work** (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.

**121T Operation of Part** (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.

## **Chapter 10 Administration of the public health system**

### **Introduction—**

This Chapter contains provisions to facilitate the efficient and effective administration of the public health system by the Minister and the Director-General.

Part 1 enables the Director-General to inquire into the administration, management and services of any organisation or institution providing publicly funded health services. It also specifies the functions of the Director-General and provides for the appointment of authorised officers to carry out inspections of the premises of public health organisations and other publicly funded organisations and institutions providing health services. The Director-General is also authorised to enter into performance agreements with public health organisations to improve the provision of health services and health support services.

Part 1A enables the Health Administration Corporation (the **Corporation**) to provide health support services to public health organisations and, with the Minister's approval, to provide health support services or corporate or other services, by contract or agreement, to other persons. A Public Health System Support Division of the Corporation is established and the persons employed in that Division are employed in connection with public health organisations and the public hospitals that they control and are to carry out the Corporation's function of providing health support services to those organisations. The Corporation may

delegate its functions under Part 1A to a person or an appointed body. The Director-General may transfer staff of a public health organisation to the Corporation for the purpose of exercising those functions and the Director-General may authorise the Corporation to make use of the services of any of the staff of a public health organisation. The Minister may require a public health organisation to acquire health support services from the Corporation or some other specified person.

Part 2 is concerned with the determination and provision of funding by the Minister to public health organisations. The Minister may impose conditions on any funding and may require affiliated health organisations to agree to repay any funds granted to them. The Minister may also delegate the function of funding the recognised establishments and recognised services of affiliated health organisations to the area health services. If any such function is delegated to an area health service, the Part also provides that the service may enter into performance agreements with the affiliated health organisations concerned.

Part 3 contains provisions enabling the Governor, by order published in the Gazette, to rationalise the conduct of public hospitals and health institutions and the provision of health services and health support services by transferring such hospital, institutions and services (and associated property) between area health services and statutory health corporations.

## **Part 1 Administration**

### **122 Functions of the Director-General** (cf PH Act s 11 (1) and (2))

The Director-General has the following functions under this Act:

- (a) to facilitate the achievement and maintenance of adequate standards of patient care within public hospitals and in relation to other services provided by the public health system,
- (b) to facilitate the efficient and economic operation of the public health system consistent with the standards referred to in paragraph (a),
- (c) to inquire into the administration, management and services of any public health organisation,
- (d) to cause public health organisations (including public hospitals controlled by them) to be inspected from time to time,
- (e) to recommend to the Minister what sums of money (if any) should be paid from money appropriated from the Consolidated Fund in any financial year to any public health organisation,
- (f) to enter into performance agreements with public health organisations, to review the results of organisations under such agreements and to report those results (and make recommendations about the results) to the Minister,
- (g) such other functions as may be conferred or imposed by or under this Act.

### **123 Inquiries by Director-General** (cf PH Act s 11A)

- (1) The Director-General may inquire into the administration, management and services of any organisation or institution providing health services (other than a public health organisation) if those services are wholly or partly funded with money paid from the Consolidated Fund.
- (2) However, the Director-General cannot make any inquiry under this section in respect

of a private hospital, nursing home or day procedure centre.

- (3) The Director-General may delegate the conduct of any inquiry under this section to any other person.

**Note—**

Section 49 of the *Interpretation Act 1987* contains general provisions relating to the delegation of functions.

- (4) Nothing in this section prevents the Director-General inquiring into the administration, management and services of any public health organisation under section 122 (c).

**124 Authorised officers** (cf PH Act s 11 (4) and (5))

- (1) **Appointment of authorised officers** The Director-General may appoint any person, or class of persons, as an authorised officer or authorised officers to exercise the functions conferred by section 125.
- (2) **Issue of certificates of authority** The Director-General is to provide an authorised officer with a certificate of authority that:
- (a) states that it is issued under this Act, and
  - (b) gives the name of the person to whom it is issued, and
  - (c) describes the nature of the functions conferred and the source of those functions, and
  - (d) states the date (if any) on which it expires, and
  - (e) describes the kind of premises to which the functions extend, and
  - (f) bears the signature of the Director-General or an officer approved by the Director-General for the purposes of this paragraph.
- (3) **Precondition for exercise of functions generally** An authorised officer must not exercise the functions conferred by section 125 unless the officer is in possession of a certificate of authority issued by the Director-General.
- (4) **Preconditions for exercise of functions in relation to certain non-government health organisations** In addition to the requirement in subsection (3), an authorised officer must not exercise the functions conferred by section 125 in relation to the premises of an organisation or institution referred to in section 123 (1) unless the officer:
- (a) gives reasonable notice to the occupier or owner of the premises of the intention to exercise the function, unless the giving of notice would defeat the purpose for which it is intended to exercise the function, and
  - (b) exercises the function at a reasonable hour of the day, except where it is being exercised in an emergency, and

(c) uses no more force than is reasonably necessary, and

(d) in relation to premises used for residential purposes—has obtained the consent of the owner or occupier of the premises.

(5) **Production of certificate of authority** In the course of carrying out an inspection under this Act, an authorised officer must, if requested by any person to do so, produce the officer's certificate of authority.

**125 Powers of entry and inspection** (cf PH Act s 11 (6))

(1) **Power of entry** An authorised officer may enter premises of any public health organisation (including any public hospital controlled by that organisation) or of an organisation or institution referred to in section 123 (1) for the purpose of exercising any function conferred or imposed on the Director-General by this Act.

(2) **Powers following entry** An authorised officer who has entered any premises under this section may do any one or more of the following:

(a) inspect those premises,

(b) make such examination and inquiry as the officer thinks necessary to assist the Director-General in the performance of the Director-General's functions under this Act,

(c) make copies of, or take extracts or notes from, any accounts, records (including clinical records), books, documents or other things, of a public health organisation or organisation or institution referred to in section 123 (1),

(d) for the purpose of further examination, take possession of, and remove, any of those accounts, records, books, documents or other things,

(e) require the owner or occupier of the premises to provide the officer with such assistance and facilities as is or are reasonably necessary to enable the officer to exercise functions under this section,

(f) require any person in or about the premises to answer questions or otherwise furnish information,

(g) require any person to produce any accounts, records (including clinical records), books, documents or other things in the possession or under the control of the person that relate to, or that the officer believes on reasonable grounds relate to, the operation or administration of a public health organisation.

(3) **Liability for damage to premises of certain organisations and institutions** If damage is caused by the exercise of functions conferred by this section to premises of an organisation or institution referred to in section 123 (1), the Minister is to pay reasonable compensation for the damage unless the exercise of the functions was

obstructed by the occupier of the premises.

### **126 Director-General may enter into performance agreement with a public health organisation**

- (1) The Director-General may enter into a performance agreement with any public health organisation.
- (2) A performance agreement:
  - (a) may set operational performance targets for the organisation in the exercise of specified functions during a specified period, and
  - (b) may provide for the evaluation and review of results in relation to those targets.
- (3) The public health organisation must, as far as practicable, exercise its functions in accordance with the performance agreement.
- (4) The public health organisation is to report the results of the organisation's performance under a performance agreement during a financial year to the Director-General within 3 months of the end of that year.
- (5) The Director-General:
  - (a) is to evaluate and review the results of the organisation's performance for each financial year under the performance agreement and to report those results to the Minister, and
  - (b) may make such recommendations to the Minister concerning those results as the Director-General thinks fit.

## **Part 1A Provision of health support services**

### **126A Definitions**

In this Part:

**appointed body** means a committee, board or other body of persons appointed under section 126C by the Corporation.

**Corporation** means the Health Administration Corporation.

#### **Note—**

The term **health support service** is defined in the Dictionary.

### **126B Corporation to provide health support services**

- (1) The Corporation may provide health support services to public health organisations and the public hospitals that they control.

- (2) There is established a Public Health System Support Division in the Corporation.
- (3) The persons employed by the Corporation in the Public Health System Support Division are employed in connection with public health organisations and the public hospitals that they control and are to carry out the Corporation's function under subsection (1).
- (4) The Corporation may also, with the approval of the Minister, make and enter into contracts or agreements with any person other than a public health organisation for the provision of health support services or corporate or other services to that person.
- (5) The Corporation may determine the fees and charges payable for any service provided by or on behalf of the Corporation under this section.
- (6) The Corporation may delegate its functions under this section to a person or appointed body.
- (7) A delegate may subdelegate to any person or appointed body some or all of any function delegated under this section if the delegate is authorised in writing to do so by the delegator.
- (8) Section 21 of the *Health Administration Act 1982* does not apply in relation to the functions under this section.
- (9) Nothing in this section limits the Corporation's functions under this or any other Act or law.

#### **126C Appointed bodies**

- (1) The Corporation may appoint a committee, board or other body for the purposes of this Part.
- (2) An appointed body is to consist of such members appointed by the Corporation as the Corporation thinks fit.
- (3) The procedure of an appointed body is to be determined by the Corporation or (subject to any determination of the Corporation) by the appointed body.
- (4) A member of an appointed body holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (5) The Corporation may terminate the appointment of a member of an appointed body at any time for any or no reason by notice in writing to the member.
- (6) A member of an appointed body is entitled to such fees and allowances as the Corporation may determine from time to time.



- (7) A member of an appointed body is not personally liable for any act or omission done or omitted to be done in good faith for the purposes of this Part.
- (8) If subsection (7) prevents liability attaching to a member of an appointed body, the liability attaches instead to the Corporation.

**126D Transfer of staff to Corporation**

- (1) The Director-General may, by order in writing, transfer such of the staff of a public health organisation as are specified in the order (either individually or by reference to a class of persons) to the Corporation for the purpose of exercising the Corporation's function under section 126B (1).
- (2) The members of staff of a public health organisation who are transferred to the Corporation by such an order are to be regarded for all purposes as having become employees of the Corporation, in accordance with the terms of the order, on a day specified in the order as being the day on which the transfer takes effect.
- (3) A person who is a member of staff of a public health organisation and who is transferred under this section:
  - (a) is (until other provision is duly made by this or any other Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person if the person had not been transferred but had instead remained as a member of the staff of the public health organisation from which the person was transferred, and
  - (b) retains any rights to annual leave, extended service leave, sick leave, and other forms of leave, accrued or accruing in the person's employment with the public health organisation, and
  - (c) retains any other right or entitlement that may be prescribed for the purposes of this section, and
  - (d) is not entitled to receive any payment or other benefit merely because the person ceases to be a member of staff of the public health organisation, and
  - (e) is not entitled to claim, both under this Act and under any other Act or law, dual benefits of the same kind for the same period of service, and
  - (f) is employed in the Public Health System Support Division of the Corporation.

**126E Corporation may use staff of public health organisation**

- (1) The Director-General may, by order in writing, authorise the Corporation to make use of the services of such of the staff of a public health organisation as are specified in the order (either individually or by reference to a class of persons) for the purpose of exercising the Corporation's functions under section 126B.

- (2) Staff that are subject to an order under subsection (1) are subject to the control and direction of the Corporation to the extent specified or referred to in that order.
- (3) An order under subsection (1) may specify that staff are to be subject to the control and direction of the Corporation on a full-time and ongoing basis.
- (4) Except in so far as an order under subsection (1) otherwise provides, the Corporation may, by instrument in writing, authorise another person or appointed body to exercise the control and direction of any staff that are subject to the order, and may, in like manner, revoke, wholly or in part, any such authority.
- (5) Staff that are subject to an order under subsection (1) remain members of staff of the public health organisation and do not become employees of the Corporation despite any other provision of this Act or of any other law or of any provision of the order.
- (6) This section is not limited by section 7 of the *Health Administration Act 1982*.

**126F Obligations and rights under *Occupational Health and Safety Act 2000* and other legislation**

- (1) For the purposes of the *Occupational Health and Safety Act 2000* and the employer liability legislation, the Corporation has the functions and liabilities of an employer in respect of a person who is the subject of an order under section 126E (1).
- (2) A public health organisation, and any person concerned in the management of the organisation, is not liable for an offence under the *Occupational Health and Safety Act 2000* or the employer liability legislation arising out of an act or omission done or omitted to be done by a member of staff of that organisation while the member of staff is under the control and direction of the Corporation, but only if that liability attaches solely because the member of staff is an employee of the public health organisation or of a person concerned in the management of the organisation.

- (3) In this section:

***employer liability legislation*** means:

- (a) instruments under the *Occupational Health and Safety Act 2000*, and
- (b) associated occupational health and safety legislation within the meaning of that Act, and
- (c) any other Act or instrument under an Act that makes an employer liable for an act or omission of an employee, or for an act or omission of the employer in relation to an employee, being a law prescribed by the regulations for the purposes of this section.

**126G Minister may direct public health organisation to enter contracts with Corporation**

**and others**

- (1) The Minister may, by order in writing, from time to time:
  - (a) require a public health organisation to acquire specified health support services from the Corporation or some other specified person if and when such services are required, and
  - (b) give a public health organisation any necessary directions for the purposes of paragraph (a).
- (2) The following conduct is specifically authorised by this Act for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*:
  - (a) a requirement or direction of the Minister given under subsection (1),
  - (b) the entering or making of a contract, agreement, arrangement or understanding as the result of such a requirement or direction,
  - (c) conduct authorised or required by or under the terms or conditions of any such contract, agreement, arrangement or understanding,
  - (d) any conduct of the Corporation in carrying out its functions or exercising its powers under this Part,
  - (e) any conduct of a public health organisation, its agents, a person concerned in the management of the organisation or a person who is engaged or employed by the organisation:
    - (i) in relation to obtaining health support services in accordance with this Part, or
    - (ii) in complying with a requirement or direction of the Minister given under subsection (1).
- (3) Conduct authorised by subsection (2) is authorised only to the extent (if any) that it would otherwise contravene Part IV of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*.

**126H Consent of affiliated health organisations required for certain orders**

- (1) The Director-General may not make an order under section 126D (1) or 126E (1) in relation to the staff of an affiliated health organisation unless the Director-General has obtained the written consent of the organisation to the making of the order.
- (2) The Minister may not make an order under section 126G (1) that requires or directs an affiliated health organisation to do, or omit to do, anything unless the Minister has obtained the written consent of the organisation to the requirement or direction.

## **Part 2 Finance**

### **127 Determination of subsidies** (cf PH Act s 17)

- (1) In determining what amount of money (if any) is to be paid to each area health service out of money appropriated from the Consolidated Fund, the Minister is to have regard to the following matters:
  - (a) the size and health needs of the population resident within the area of the area health service concerned,
  - (b) the health services provided to patients from outside the area of the area health service concerned,
  - (c) the net receipts and expenditures of the area health service for the financial year,
  - (d) probable requirements for capital maintenance and expenditure of the area health service for the financial year,
  - (e) such other matters as are prescribed by the regulations or as the Minister thinks fit.
- (2) In determining what amount of money (if any) is to be paid to each statutory health corporation and affiliated health organisation out of money appropriated from the Consolidated Fund, the Minister may have regard to such matters as the Minister thinks fit.
- (3) The Minister may, after considering any recommendation made under section 122 (e) for the purpose, determine what amounts of money (if any) should be paid out of money appropriated from the Consolidated Fund in any financial year to any such area health service, statutory health corporation or affiliated health organisation. Any such amount is payable in accordance with that determination.
- (3A) The Minister may vary a determination under subsection (3) in such circumstances as the Minister considers appropriate.
- (4) The Minister may attach to the payment of any subsidy such conditions as the Minister thinks fit.
- (5) If any such condition is breached, the Director-General may make such recommendations to the Minister as the Director-General thinks fit concerning any action to be taken against the public health organisation concerned or any officer or employee of the organisation.

### **127A Deferral of payment of subsidy**

The Minister may determine that payment of the whole or any part of an amount payable under section 127 in a financial year is to be deferred until a subsequent financial year.

Payment is deferred in accordance with such a determination.

**127B Loans to public health organisations**

- (1) The Minister may determine that an amount of money is to be lent to an area health service, statutory health corporation or affiliated health organisation, out of money appropriated from the Consolidated Fund to the Minister.
- (2) Any such amount is to be lent in accordance with that determination and on such terms and conditions as the Minister determines.
- (3) The loans made pursuant to subsection (1) must not result in expenditure in excess of forward estimates.
- (4) The *Public Authorities (Financial Arrangements) Act 1987* does not apply to a loan made under this section.

**128 Agreement by affiliated health organisation to repay sums** (cf PH Act s 17A)

- (1) Before paying any sum to an affiliated health organisation out of money appropriated from the Consolidated Fund, the Minister may require:
  - (a) the affiliated health organisation, or
  - (b) if the property of the affiliated health organisation is not vested in the affiliated health organisation:
    - (i) the persons in whom the property is vested, or
    - (ii) those persons and the affiliated health organisation,to enter into an agreement with the Minister under this section.
- (2) An agreement entered into under this section must make provision for or with respect to requiring:
  - (a) the repayment to the Minister, in the circumstances specified in, or to be determined in accordance with, the agreement of the sum referred to in subsection (1), or
  - (b) the payment to the Minister, in the circumstances specified in, or to be determined in accordance with, the agreement of such other sum (whether lesser or greater than the sum referred to in subsection (1)) as is specified in, or is to be determined in accordance with, the agreement.
- (3) A breach of trust does not occur only because the trustees of an affiliated health organisation have:
  - (a) entered into an agreement under this section, or

- (b) repaid or paid to the Minister any sum in accordance with the agreement, or
- (c) done or performed any act or thing necessary or convenient to be done or performed for the purpose of enabling them to enter into such an agreement or repay or pay such a sum.

**129 Funding of recognised establishments and recognised services of affiliated health organisations**

The Minister may delegate to any area health service the function of determining:

- (a) the subsidy (if any) to be received by any affiliated health organisation for its recognised establishments and recognised services, and
- (b) the conditions (if any) that should attach to that subsidy.

**Note—**

Section 49 of the [Interpretation Act 1987](#) contains general provisions relating to the delegation of functions.

**130 Performance agreements between area health services and affiliated health organisations they subsidise**

- (1) An area health service exercising a function delegated under section 129 in respect of an affiliated health organisation may enter into a performance agreement with the affiliated health organisation in respect of its recognised establishments and recognised services.
- (2) A performance agreement:
  - (a) may set operational performance targets for the affiliated health organisation in the exercise of specified functions in relation to the health services concerned during a specified period, and
  - (b) may provide for the evaluation and review of results in relation to those targets.
- (3) The affiliated health organisation must, as far as practicable, exercise its functions in accordance with the performance agreement.
- (4) The affiliated health organisation is to report the results of the organisation's performance under a performance agreement during a financial year to the area health service within 3 months of the end of that year.
- (5) The area health service is to evaluate and review the results of the organisation's performance for each financial year under the performance agreement and to report those results to the Director-General.
- (6) The Director-General may make such recommendations to the Minister concerning the results reported to the Director-General under subsection (5) as the Director-General

thinks fit.

### **Part 3 Transfer of hospitals, health institutions, services and property**

#### **131 Transfer of hospitals, health institutions, services and property between area health services and statutory health corporations** (cf AHS Act s 21)

- (1) The Governor may, by order published in the Gazette, transfer to any statutory health organisation:
  - (a) any public hospital or health institution under the control of another statutory health organisation, or
  - (b) any health service or health support service under the control of another statutory health organisation, or
  - (c) any public hospital or health service controlled by the Crown (including any hospital or health service controlled by the Minister or the Health Administration Corporation), or
  - (d) any of the assets, rights or liabilities of another statutory health organisation,and may amend Schedules 1 and 2 accordingly.
- (2) An order made under this section must specify the date (being a date that is on or after the date it is published in the Gazette) on which it takes effect. However, if no date is specified in the order, the order is taken to have specified the date on which it is published in the Gazette as the date on which it takes effect.
- (3) An order is not to be made under this section unless the Minister is of the opinion that the order is in the public interest and has recommended to the Governor that the order be made.
- (4) A transfer under this section may be effected without holding an inquiry.
- (5) In this section, **statutory health organisation** means an area health service or a statutory health corporation.

#### **132 Consequential and transitional provisions on the making of orders** (cf AHS Act s 10)

- (1) Schedule 4 has effect with respect to an order under this Part.
- (2) An order under this Part may contain provisions, not inconsistent with the provisions of or made under Schedule 4, of a savings or transitional nature consequent on the making of the order.

## **Chapter 11 Miscellaneous**

### **Introduction—**

This Chapter contains various provisions relating to the general operation of the Act.

For instance, it provides for an offence of obstructing or hindering the performance of functions under the Act and facilitates the proof of certain matters in legal proceedings. A general regulation-making power is also provided.

Public health organisations are also authorised to retain and realise certain unclaimed assets of former or deceased patients that have been left at their premises, the proceeds of which are to be used to establish Samaritan Funds for the benefit of needy patients of the organisation.

The Chapter also repeals the *Area Health Services Act 1986* and the *Public Hospitals Act 1929*.

### **133 Establishment of Samaritan Funds** (cf PH Act s 40A)

- (1) The following money and personal effects are taken to be the property of a public health organisation:
  - (a) all money and personal effects (being choses in possession) that are:
    - (i) left in its custody by any patient who dies in one of its hospitals or health institutions, and
    - (ii) not claimed by the person lawfully entitled to them within a period of 12 months after the patient's death, and
  - (b) all money and personal effects (being choses in possession) that are:
    - (i) left in its custody by any patient discharged from one of its hospitals or health institutions, and
    - (ii) not claimed by the patient or other person lawfully entitled to them within a period of 12 months after the date of discharge.
- (2) All such money, and the proceeds of the realisation of any such personal effects, are to form a distinct and separate fund of the public health organisation to be called a Samaritan Fund.
- (3) A Samaritan Fund is to be managed and disposed of in such manner as may be prescribed by the regulations for the benefit of patients or outgoing patients who are needy.
- (4) An area health service or statutory health corporation may establish a separate fund for each hospital or health institution, or a single fund for all public hospitals or health institutions, under its control.
- (5) A reference in this section to a public health organisation includes a reference to the Crown in relation to any public hospital controlled by the Crown (including the Minister or the Health Administration Corporation).

### **134 Obstructing or hindering Minister, Director-General, authorised officer or other public official** (cf PH Act s 34)

A person must not obstruct or hinder:



- (a) the Minister, or
- (b) the Director-General, or
- (c) any authorised officer, or
- (d) any other public official,

in the exercise of any function conferred by or under this Act for the purposes of any inquiry, investigation, inspection or report.

Maximum penalty: 100 penalty units.

**135 Authentication of certain documents** (cf AHS Act s 35)

Every summons, process, demand, order, notice, statement, direction or other document requiring authentication by a public health organisation may be sufficiently authenticated without the seal of that organisation if signed by the chief executive or by any employee of that organisation authorised to do so by the chief executive.

**136 Proof of certain matters not required** (cf AHS Act s 36)

In any legal proceedings, proof is not required (until evidence is given to the contrary) of any of the following matters:

- (a) the constitution of a board of a public health organisation,
- (b) any resolution of a board of a public health organisation,
- (c) the appointment of, or the holding of office by, any member of a board of a public health organisation,
- (d) the presence of a quorum at any meeting of a board of a public health organisation.

**137 Proceedings for offences** (cf AHS Act s 37)

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**138 Repeal of the [Area Health Services Act 1986 No 50](#) and the [Public Hospitals Act 1929 No 8](#)**

The [Area Health Services Act 1986](#) and the [Public Hospitals Act 1929](#) are repealed.

**139 (Repealed)**

**140 Regulations** (cf AHS Act s 38, PH Act s 42)

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) Without limiting the generality of subsection (1), the regulations may provide for the following:
- (a) accounts to be kept by public health organisations and the auditing of those accounts,
  - (b) records to be kept by public health organisations or public hospitals,
  - (c) the furnishing of information and reports to the Minister, Director-General or other person by public health organisations,
  - (d) the furnishing of information to a patient in the care of a public health organisation and the inspection of records by such a patient in connection with the treatment of the patient by the organisation,
  - (e) the appointment, control and governance of visiting practitioners, including the conditions subject to which they perform work,
  - (f) in the case of public hospitals controlled by area health services or statutory health corporations—the admission and discharge of patients and the payment and collection of fees payable by patients for health services,
  - (g) the authorisation, prohibition and control of fundraising by public appeal or otherwise for the purposes of public hospitals,
  - (h) the administration and management of any affiliated health organisation in relation to its recognised establishments and recognised services,
  - (i) the disposal of unclaimed property of patients in the care of a public health organisation.
- (3) The regulations may make provision for or with respect to any matter for or with respect to which a by-law may be made by a public health organisation.
- (4) A provision of a regulation prevails to the extent to which it is inconsistent with a by-law made by a public health organisation.
- (5) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.
- (6) A regulation made under subsection (2) (e) cannot be made unless the Minister has received advice from the Medical Services Committee in relation to the substance of the regulation.
- (7) Subsection (6) does not apply to a regulation if the Medical Services Committee does not furnish advice in relation to the regulation to the Minister:
- (a) within 30 days after a notice from the Minister requesting such advice has been

served on the Committee, or

- (b) within such further period as the Minister may specify in the notice or in another notice served on the Committee.

**Note—**

Section 42 of the *Interpretation Act 1987* provides for the general matters for which statutory rules (which include regulations) may make provision.

**141 Savings and transitional provisions**

Schedule 7 has effect.

**142 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**Schedule 1 Names and areas of area health services**

(Sections 17 and 18)

| <b>Column 1</b>        | <b>Column 2</b>                                     | <b>Column 3</b>   |
|------------------------|---|---|
| <b>Name of service</b> | <b>Description of local government area or city</b> | <b>Description of area other than local government area</b> |

|                                      |   |
|--------------------------------------|---|
| Greater Southern Area Health Service | Albury<br>Bega Valley<br>Berrigan<br>Bland<br>Bombala<br>Boorowa<br>Carrathool<br>Conargo<br>Coolamon<br>Cooma-Monaro<br>Cootamundra<br>Corowa<br>Deniliquin<br>Eastern Capital City Regional<br>Eurobodalla<br>Greater Argyle<br>Greater Hume<br>Greater Queanbeyan<br>Griffith<br>Gundagai<br>Harden<br>Hay<br>Jerilderie<br>Junee<br>Leeton<br>Lockhart<br>Murray<br>Murrumbidgee<br>Narrandera<br>Snowy River<br>Temora<br>Tumbarumba<br>Tumut<br>Upper Lachlan<br>Urana<br>Wagga Wagga<br>Wakool<br>Yass Valley<br>Young |
|--------------------------------------|---|

|  |                      |                     |
|--|----------------------|---------------------|
|  | Balranald            |                     |
|  | Bathurst Regional    |                     |
|  | Blayney              |                     |
|  | Bogan                |                     |
|  | Bourke               |                     |
|  | Brewarrina           |                     |
|  | Broken Hill          |                     |
|  | Cabonne              |                     |
|  | Central Darling      |                     |
|  | Cobar                |                     |
|  | Coolah               |                     |
|  | Coonabarabran        |                     |
|  | Coonamble            |                     |
| Greater Western Area Health<br>Service | Cowra                | Unincorporated area |
|  | Dubbo                |                     |
|  | Forbes               |                     |
|  | Gilgandra            |                     |
|  | Lachlan              |                     |
|  | Mid-Western Regional |                     |
|  | Narromine            |                     |
|  | Oberon               |                     |
|  | Orange               |                     |
|  | Parkes               |                     |
|  | Walgett              |                     |
|  | Warren               |                     |
|  | Weddin               |                     |
|  | Wellington           |                     |
|  | Wentworth            |                     |

|   |                   |
|---|-------------------|
| Hunter and New England Area Health Service            | Armidale Dumaresq |
|   | Cessnock          |
|   | Dungog            |
|   | Glen Innes Severn |
|   | Gloucester        |
|   | Great Lakes       |
|   | Greater Taree     |
|   | Gunnedah          |
|   | Guyra             |
|   | Gwydir            |
|   | Inverell          |
|   | Lake Macquarie    |
|   | Liverpool Plains  |
|   | Maitland          |
|   | Moree Plains      |
|   | Muswellbrook      |
|   | Narrabri          |
|   | Newcastle         |
|   | Port Stephens     |
|   | Singleton         |
| North Coast Area Health Service                       | Tamworth Regional |
|   | Tenterfield       |
|   | Upper Hunter      |
|   | Uralla            |
|   | Walcha            |
|   | Ballina           |
|   | Bellingen         |
|   | Byron             |
|   | Clarence Valley   |
|   | Coffs Harbour     |
|   | Hastings          |
|   | Kempsey           |
|   | Kyogle            |
| Lismore   |                   |
| Nambucca  |                   |
| Richmond Valley                                       |                   |
| Tweed   |                   |
| Northern Sydney and Central Coast Area Health Service | Gosford           |
|   | Hornsby           |
|   | Hunters Hill      |
|   | Ku-ring-gai       |
|   | Lane Cove         |
|   | Manly             |
|   | Mosman            |
|   | North Sydney      |
|   | Pittwater         |
|   | Ryde              |
|   | Warringah         |
| Willoughby  |                   |
| Wyong   |                   |

|  |  |                  |
|--|--|------------------|
| South Eastern Sydney and Illawarra Area Health Service | Botany Bay<br>Hurstville<br>Kiama<br>Kogarah<br>Randwick<br>Rockdale<br>Shellharbour<br>Shoalhaven<br>Sutherland<br>Sydney (part)<br>Waverley<br>Woollahra<br>Wollongong                                       | Lord Howe Island |
| Sydney South West Area Health Service                  | Ashfield<br>Bankstown<br>Burwood<br>Camden<br>Campbelltown<br>Canada Bay<br>Canterbury<br>Fairfield<br>Leichhardt<br>Liverpool<br>Marrickville<br>Strathfield<br>Sydney (part)<br>Wingecarribee<br>Wollondilly |                  |
| Sydney West Area Health service                        | Auburn<br>Baulkham Hills<br>Blacktown<br>Blue Mountains<br>Hawkesbury<br>Holroyd<br>Lithgow<br>Parramatta<br>Penrith   |                  |

## Schedule 2 Statutory health corporations

(Section 41)

| <b>Column 1</b>                             | <b>Column 2</b>             |
|---|-----------------------------|
| <b>Name of statutory health corporation</b> | <b>Nature of governance</b> |
| Clinical Excellence Commission              | Board                       |
| HealthQuest                                 | Board                       |
| Justice Health                              | Board                       |
| The Royal Alexandra Hospital for Children   | Chief executive             |

The Stewart House Preventorium, Curl Curl

Board

**Schedule 3 Affiliated health organisations**

(Section 62)

| <b>Column 1</b>  | <b>Column 2</b>  |
|--|--|
| <b>Name of organisation</b>                                      | <b>Recognised establishment or recognised service</b>  |
| Australian Red Cross Society                                     | Glen Mervyn Junior Red Cross Children's Home, Randwick.<br>Eleanor Mackinnon Junior Red Cross Home, Cronulla.  |
| Benevolent Society of New South Wales                            | Central Sydney Scarba Services.<br>Early Intervention Program.<br>Eastern Sydney Scarba Services.<br>South West Sydney Scarba Services.  |
| Buckland Convalescent Hospital Ltd                               | Buckland Convalescent Hospital, Springwood.  |
| Calvary Health Care Sydney Limited                               | Calvary Hospital, Kogarah.   |
| Catholic Health Care Services Limited                            | St Vincent's Health Service, Bathurst.<br>Lourdes Hospital and Community Health Service (other than Holy Spirit Dubbo).  |
| Hope HealthCare Ltd  | Eversleigh Hospital, Petersham.<br>Graythwaite Nursing Home, North Sydney.<br>Greenwich Hospital, Greenwich.<br>Braeside Hospital, Prairiewood.<br>Neringah Hospital, Wahroonga. |
| Karitane   | Child and Family health services at Carramar, Fairfield, Liverpool and Randwick.   |
| Mercy Care Centre, Young   | Mercy Care Centre, Young excluding Mt St Joseph's Residential Care Facility.   |
| Mercy Health Care (Newcastle) Limited                            | Newcastle Mater Misericordiae Hospital   |
| Mercy Health Service Albury Limited                              | Mercy Health Service Albury.   |
| Royal Flying Doctor Service of Australia (South Eastern Section) | All services.  |
| Royal Rehabilitation Centre Sydney                               | Royal Rehabilitation Centre Sydney.  |
| Royal Society for the Welfare of Mothers and Babies              | Tresillian Family Care Centres at Belmore, Penrith, Willoughby and Wollstonecraft.   |
| Sacred Heart Hospice Limited                                     | Sacred Heart Hospice.  |
| St Anthony's and St Joseph's Centre of Care Ltd                  | St Anthony's Home, Croydon.  |
| St Joseph's Hospital Ltd   | St Joseph's Hospital (Auburn).   |



|  |  |
|--|--|
| St Vincent's Hospital Sydney Ltd                                     | St Vincent's Hospital, Darlinghurst.<br>Babworth House (After Care Unit), Darling Point.   |
| The College of Nursing   | Nursing Education Programs conducted under agreement with the NSW Department of Health.  |
| The Trustees of the Carrington Centennial Trust                      | Carrington Centennial Nursing Home.  |
| The Trustees of the Roman Catholic Church for the diocese of Lismore | St Vincent's Community Hospital (Lismore) in respect of the day hospital, the rehabilitation unit and the community health facilities. |
| Uniting Church in Australia  | Lottie Stewart Hospital.<br>War Memorial Hospital (Waverley).  |

## Schedule 4 Transfers, dissolutions, amalgamations and changes of name or nature of governance

(Sections 21, 44, 64 and 132)

### Part 1 General

#### Division 1 Interpretation

##### 1 Definitions

In this Schedule:

**instrument** means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

**transferee** means the person or body to which any staff, assets, rights or liabilities are transferred.

**transferor** means the person or body from which any staff, assets, rights or liabilities are transferred.

**transferred public health organisation** means a public health organisation that is transferred to another public health organisation.

##### 2 Orders to which this Schedule applies

This Schedule applies to the following orders:

- (a) an order under section 20 (Dissolution, amalgamation or change of name of area health services),
- (b) an order under section 43 (Dissolution, transfer, amalgamation, or change of name or nature of governance of statutory health corporations),

- (c) an order under section 64 (Transfer of recognised establishments and recognised services of affiliated health organisations),
- (d) an order under section 131 (Transfer of hospitals, health institutions, services and property between area health services and statutory health corporations).

## **Division 2 Consequences of orders to which this Schedule applies**

### **3 Orders relating to area health services**

- (1) **Dissolution orders** On and from the date specified in an order under section 20 (1) (a) for the dissolution of an area health service:
  - (a) the area health service is dissolved, and
  - (b) (Repealed)
  - (c) the staff, assets, rights and liabilities of the area health service are transferred to the Minister (or any other person or body specified in the order), and
  - (d) Part 2 applies to that transfer.
- (2) **Amalgamation orders** On and from the date specified in an order under section 20 (1) (b) for the amalgamation of 2 or more area health services:
  - (a) each area health service amalgamated by the order is dissolved, and
  - (b) (Repealed)
  - (c) the staff, assets, rights and liabilities of each amalgamating service are transferred to the amalgamated area health service, and
  - (d) Part 2 applies to that transfer.
- (3) **Name change orders** On and from the date specified in an order made under section 20 (1) (c) changing the name of an area health service, Part 3 applies to that change of name.
- (4) **Effect on compensation rights** Nothing in this Schedule affects any compensation rights to which the chief executive of a dissolved or amalgamating area health service may be entitled under Part 3 of Chapter 9 as a consequence of ceasing to hold office.

### **4 Orders relating to statutory health corporations**

- (1) **Dissolution orders** On and from the date specified in an order made under section 43 (1) (a) dissolving a statutory health corporation:
  - (a) the statutory health corporation is dissolved, and
  - (b) in the case of a board governed health corporation, the members of the board

cease to hold office, but are not entitled to be paid any compensation by reason of ceasing to hold office, and

(c) the staff, assets, rights and liabilities of the statutory health corporation are transferred to the Minister (or any other person or body specified in the order), and

(d) Part 2 applies to that transfer.

(2) **Transfer orders** On and from the date specified in an order made under section 43 (1)

(b) transferring a statutory health corporation to an area health service:

(a) the statutory health corporation is dissolved, and

(b) in the case of a board governed health corporation, the members of the board cease to hold office, but are not entitled to be paid any compensation by reason of ceasing to hold office, and

(c) the staff, assets, rights and liabilities of the statutory health corporation are transferred to the area health service, and

(d) Part 2 applies to that transfer.

(3) **Amalgamation orders** On and from the date specified in an order made under section 43 (1) (c) for the amalgamation of 2 or more statutory health corporations:

(a) each statutory health corporation amalgamated by the order is dissolved, and

(b) the members of any board governed health corporation involved in the amalgamation cease to hold office, and:

(i) if the amalgamated corporation is a board governed health corporation, are eligible (if otherwise qualified) to be appointed as members of the board of the amalgamated corporation, and

(ii) are not entitled to be paid any compensation by reason of ceasing to hold office, and

(c) the staff, assets, rights and liabilities of each amalgamating service are transferred to the amalgamated statutory health corporation, and

(d) Part 2 applies to that transfer.

(4) **Name change orders** On and from the date specified in an order made under section 43

(1) (d) changing the name of a statutory health corporation, Part 3 applies to that change of name.

(4A) **Change of governance orders** 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.

- (5) **Effect on compensation rights** Nothing in this section affects any compensation rights to which the chief executive of a dissolved or amalgamating statutory health corporation may be entitled under Part 3 of Chapter 9 of this Act or Part 3.1 of the *Public Sector Employment and Management Act 2002* as a consequence of ceasing to hold office as such.

## **5 Orders relating to affiliated health organisations**

- (1) **Transfer of hospitals and health institutions** On and from the date specified in an order under section 64 (1) (a) transferring any public hospital or health institution of an affiliated health organisation that is a recognised establishment of the organisation to an area health service or statutory health corporation, Part 2 has effect to the extent of that transfer.
- (2) **Transfer of health services and health support services** On and from the date specified in an order under section 64 (1) (b) transferring any health service or health support service of an affiliated health organisation that is a recognised service of the organisation to an area health service or statutory health corporation, Part 2 has effect to the extent of that transfer.
- (3) **Transfer of assets, rights or liabilities** On and from the date specified in an order under section 64 (1) (c) transferring any assets, rights or liabilities of an affiliated health organisation relating to a recognised establishment or recognised service of the organisation to an area health service or statutory health corporation, Part 2 has effect to the extent of that transfer.
- (4) **Consents to transfers of property** An order under section 64 (1) that purports to transfer any property of an affiliated health organisation operates to transfer only such property in respect of the transfer of which the organisation has consented.
- (5) **Effect on trustees of transfer order** If any such order operates to transfer all of the property of an affiliated health organisation that is held in trust for it by trustees, the trustees cease to hold office as trustees in respect of that property on and from the transfer date specified in the order.

## **6 Orders transferring hospitals, health institutions, services or property between area health organisations and statutory health corporations**

- (1) **Transfer of public hospitals and health institutions** On and from the date specified in an order under section 131 (1) (a) transferring any public hospital or health institution under the control of a statutory health organisation to another statutory health organisation, Part 2 has effect to the extent of that transfer.

- (2) **Transfer of health services and health support services** On and from the date specified in an order under section 131 (1) (b) transferring any health service or health support service under the control of a statutory health organisation to another statutory health organisation, Part 2 has effect to the extent of that transfer.
- (3) **Transfer of services provided by Crown** On and from the date specified in an order under section 131 (1) (c) transferring any hospital or health service controlled by the Crown, Part 2 has effect to the extent of that transfer.
- (4) **Transfer of assets, rights or liabilities** On and from the date specified in an order under section 131 (1) (d) transferring any assets, rights or liabilities of a statutory health organisation to another statutory health organisation, Part 2 has effect to the extent of that transfer.

## **Part 2 Transfers**

### **Division 1 Staff**

#### **7 Transfer of staff**

A member of staff who is transferred by a transfer to which this Part applies is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person had the person not been transferred but remained a member of staff of the transferor.

### **Division 2 Transfer of hospitals, health institutions, health services and health support services**

#### **8 Transfer of hospitals and health institutions**

- (1) An order that transfers a hospital or health institution from any public health organisation to another public health organisation is taken to transfer (unless the order provides otherwise):
  - (a) the staff employed in the hospital or institution, and
  - (b) the assets, rights and liabilities used principally for the conduct of the hospital or institution.
- (2) An order that transfers a hospital or health institution controlled by the Crown to a public health organisation is taken (unless the order provides otherwise) to transfer the personal property of the Crown used principally for the conduct of the hospital or institution.

#### **9 Transfer of health services and health support services**

An order that transfers a health service or health support service from any public health

organisation to another public health organisation may specify the staff, assets, rights or liabilities of that health service or health support service that are to be transferred from the other public health organisation along with the health service or health support service.

### **Division 3 Assets, rights or liabilities**

#### **10 Vesting of undertaking in transferee**

- (1) When any assets, rights or liabilities are transferred by a transfer to which this Part applies, the following provisions have effect:
  - (a) the assets of the transferor vest in the transferee by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance,
  - (b) the rights or liabilities of the transferor become by virtue of this clause the rights or liabilities of the transferee,
  - (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
  - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
  - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent to which it relates to those assets, rights or liabilities) taken to include a reference to the transferee.
- (2) The operation of this clause is not to be regarded:
  - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
  - (d) as an event of default under any contract or other instrument.
- (3) No attornment to the transferee by a lessee from the transferor is required.

- (4) A transfer is subject to the terms and conditions of the order by which it is effected.
- (5) No compensation is payable to any person or body in connection with a transfer to which this Part applies except to the extent (if any) to which the order giving rise to the transfer so provides.
- (6) Subclause (5) does not affect the rights of any member of staff who is the subject of a transfer to which this Part applies.

## **Division 4 Other general provisions concerning transfers**

### **11 Date of vesting**

A transfer to which this Part applies takes effect on the date specified in the order by which it is effected.

### **12 Consideration for vesting**

The Minister may, by order in writing, specify the consideration on which a transfer to which this Part applies is made and the value or values at which the assets, rights or liabilities are transferred.

### **13 Stamp duty**

Stamp duty is not chargeable for or in respect of:

- (a) a transfer to which this Part applies, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or conveyance of an interest in land).

### **14 Confirmation of vesting**

- (1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities by operation of this Part.
- (2) Such a notice is conclusive evidence of that transfer.

### **15 By-laws of public health organisation**

The by-laws of a transferred public health organisation in force at the transfer date continue to apply to and in respect of any hospital, health institution, health service or health support service it conducts or provides until by-laws are made under this Act by the transferee in relation to that hospital, institution or service.

### **16 Functions of transferred public health organisation**

- (1) Any function conferred or imposed immediately before the transfer date on a transferred public health organisation, or on the board (or managing body) of a public health organisation, in relation to the administration and operation of any of the

hospitals, health institutions, health services or health support services it conducts or provides may continue to be exercised on and from the transfer date by the transferee.

- (2) Subclause (1) has effect despite any other provision of this Act.
- (3) Without limiting subclause (1), a reference in that subclause to a function includes a reference to a power of investment.

## **Part 3 Changes of name**

### **17 Name changes do not affect status of service**

A change of name of an area health service or a statutory health corporation by an order does not operate:

- (a) to create a new legal entity, or
- (b) to prejudice or affect the identity of the body corporate constituted as an area health service or statutory health corporation or its continuity as a body corporate, or
- (c) to affect the property, or the rights or obligations, of the area health service or statutory health corporation, or
- (d) to render defective any legal proceedings by or against the area health service or statutory health corporation,

and any legal proceedings that could have been continued or commenced by or against the area health service or statutory health corporation by its former name may be continued or commenced by or against it by its new name.

## **Part 4 Savings and transitional regulations**

### **18 Regulations**

- (1) The regulations may contain other provisions of a savings or transitional nature consequent on the making of an order to which this Schedule applies.
- (2) A provision referred to in subclause (1) which relates to a particular order may, if the regulations so provide, take effect as from the date of the order or a later day.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State, an authority of the State, an area health service or a statutory health corporation), the rights of that person existing before the date of its publication in the Gazette, or



(b) to impose liabilities on any person (other than the State, an authority of the State, an area health service or a statutory health corporation) in respect of anything done or omitted to be done before the date of its publication in the Gazette.

(4) A provision referred to in subclause (1) has, if the regulations so provide, effect despite any other clause of this Schedule.

## **Schedule 5 Provisions relating to members and procedure of health corporation boards**

(Section 50)

### **Part 1 General**

#### **1 Definitions**

In this Schedule:

**appointed member** means a member other than the chief executive.

**Board** means a health corporation board.

**elected staff member** means a member of a health corporation board elected in accordance with clause 2.

**member** means:

(a) (Repealed)

(b) in relation to a health corporation board—a member of a health corporation board.

### **Part 2 Constitution**

#### **2 Elected staff member**

(1) In this clause:

**employee** means:

(a) (Repealed)

(b) in relation to a statutory health corporation—an employee of that corporation employed under section 54.

(2) Regulations may be made for or with respect to the election of a person to hold office as an elected staff member.

(3) The Electoral Commissioner for New South Wales, or a person employed in the office of and nominated by the Electoral Commissioner:

(a) is to be the returning officer for an election, and

- (b) has the functions conferred or imposed on the returning officer by the regulations made under this clause in relation to the election.
- (4) Employees of a statutory health corporation are entitled to vote at an election in accordance with the regulations made under this clause for the elected staff member of the Board for that corporation.
- (5) A person's nomination as a candidate for election as the elected staff member is invalid if:
  - (a) the nomination is not made by at least 2 persons who are employees of the relevant statutory health corporation, or
  - (b) the person is not, at the time of nomination, an employee of the relevant statutory health corporation.
- (6) A person may be, at the same time, both the elected staff member and an employee of the relevant statutory health corporation.
- (7) Nothing in any law, rule, direction or other requirement that:
  - (a) is applicable to the elected staff member in his or her capacity as an employee of the relevant statutory health corporation, and
  - (b) would not be so applicable if the elected staff member were not such an employee,operates so as to prevent or restrict the exercise by the elected staff member of any of the functions of an elected staff member.
- (8) If no person is nominated at an election, or if for any other reason an election fails:
  - (a) the Minister may appoint a person eligible for election to be an appointed member, and
  - (b) that person is, on being appointed, taken to be a person elected in the manner prescribed by the regulations made under this clause.
- (9) If a vacancy occurs in the office of an elected staff member (other than an elected staff member appointed under subclause (11)) otherwise than by reason of the expiration of the period for which the elected staff member was appointed:
  - (a) the Minister may appoint a person eligible for election to hold, subject to this Schedule, the office of elected staff member for a term commencing on the date of appointment or a later date specified in the relevant instrument of appointment and ending on the commencement of the term of office of the next elected staff member, and
  - (b) the person is, on being so appointed, taken to be a person elected in the manner

prescribed by the regulations made under this clause.

- (10) The Minister may, pending the election of the first elected staff member of a Board after the constitution of the statutory health corporation concerned:
- (a) appoint any person as the elected staff member to hold, subject to this Schedule, the office of elected staff member until the election of that member and the person is, on being so appointed, taken to be a person elected in the manner prescribed by the regulations made for the purposes of this clause, or
  - (b) appoint the other members of that Board and leave the office of elected staff member vacant pending the election of that member.
- (11) If a statutory health corporation has fewer than 50 employees:
- (a) the Minister may direct that an election for an appointed staff member of the Board for the corporation not be held and the Minister may appoint any person to be an appointed member, and
  - (b) that person is, on being appointed, taken to be a person elected in the manner prescribed by the regulations made under this clause.
- (12) If a vacancy occurs in the office of a member appointed under subclause (11) otherwise than by reason of the expiration of the period for which the member was appointed:
- (a) the Minister may appoint any person to hold, subject to this Schedule, the office for a term commencing on the date of appointment or a later date specified in the relevant instrument of appointment and ending on the commencement of the term of office of the next member elected or appointed under this clause, and
  - (b) the person is, on being so appointed, taken to be a person elected in the manner prescribed by the regulations made under this clause.

### **3 Chairperson of the Board**

- (1) The Minister may, from time to time, appoint an appointed member to be the Chairperson of a Board.
- (2) The Minister may at any time remove the Chairperson from office as Chairperson of a Board.
- (3) A person who is an appointed member and Chairperson of a Board is taken to have vacated office as Chairperson if the person:
- (a) is removed from that office by the Minister under subclause (2), or
  - (b) resigns that office by instrument in writing addressed to the Minister, or

(c) ceases to be an appointed member.

#### **4 Acting members and Acting Chairperson**

- (1) The Minister may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be a member.
- (2) The Minister may, from time to time, appoint an appointed member of a Board to act in the office of Chairperson of that Board during the illness or absence of the Chairperson, and the appointed member, while so acting, has and may exercise all the functions of the Chairperson and is taken to be the Chairperson.
- (3) The Minister may remove any person from any office to which the person was appointed under this clause.
- (4) For the purposes of this clause:
  - (a) a vacancy in the office of a member or the Chairperson is taken to be an absence from office of the member or Chairperson (as the case may be), and
  - (b) an appointed member is taken to be absent from office as an appointed member during any period when the member acts in the office of the chief executive pursuant to an appointment under subclause (1).

#### **5 Terms of office**

- (1) Subject to this Schedule, a member holds office:
  - (a) in the case of an appointed member (other than an elected staff member)—for such period (not exceeding 4 years) as may be specified in the instrument of appointment of the member, or
  - (b) in the case of an elected staff member—for such period (not exceeding 4 years but not less than 2 years) as may be specified in the instrument of appointment of the member.
- (2) However, any member whose term of office expires is eligible (if otherwise qualified) for re-appointment.

#### **6 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

#### **7 Vacancy in office of member**

The office of a member becomes vacant if the member:

- (a) dies, or

- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) being an appointed member, is absent from 4 consecutive meetings of that Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by that Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by that Board for being absent from those meetings, or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (f) becomes a mentally incapacitated person, or
- (g) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (h) being the elected staff member, ceases to be an employee of the relevant statutory health corporation, or
- (i) is removed from office by the Governor under section 52.

## **8 Disclosure of pecuniary interests**

(1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a member at a meeting of the Board that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the

disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of the fee determined by the Board.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:
  - (a) be present during any deliberation of the Board with respect to the matter, or
  - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Board for the purpose of making the determination, or
  - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.

## **9 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member.
- (2) If by or under any other Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as an appointed member.

- (3) The office of an appointed member is, for the purposes of any Act, taken not to be an office or place of profit under the Crown.

## **10 Remuneration**

An appointed member 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.

### **11 Liability of members**

A matter or thing done by an area health service or statutory health corporation, a Board, any member or any person acting under the direction of that service, corporation or Board does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

### **12 No compensation for removal from office or failure to re-appoint**

A member who is removed from office or not re-appointed at the end of his or her term of office is not entitled to be paid any compensation by reason of ceasing to hold office.

## **Part 3 Procedure**

### **13 General procedure**

The procedure for the calling of meetings of a Board and for the conduct of business at those meetings is, subject to this Act, the regulations and any by-laws relating to that Board, to be as determined by that Board.

### **14 Quorum**

The quorum for a meeting of the Board is a majority of its members.

### **15 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, another appointed member elected as Chairperson for that meeting by the members present) is to preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **16 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

### **17 Transaction of business outside meetings or by telephone**

- (1) A Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) A Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can

be heard by the other members.

(3) For the purposes of:

(a) the approval of a resolution under subclause (1), or

(b) a meeting held in accordance with subclause (2),

the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.

(5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **18 First meeting of a Board**

The Chairperson may call the first meeting of a Board in such manner as the Chairperson thinks fit.

## **Schedule 6 (Repealed)**

## **Schedule 7 Savings and transitional provisions**

(Section 141)

## **Part 1 General**

### **1 Regulations**

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Health Legislation Amendment Act 1999*

*Health Legislation Further Amendment Act 2004* (but only to the extent that it amends this Act)

*Health Services Amendment Act 2004* (but only to the extent that it amends this Act)

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:



- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **Division 1 General**

#### **2 Definitions**

In this Part:

**associated organisation** means an organisation or institution mentioned in the Fourth Schedule to the repealed hospitals Act as in force immediately before its repeal.

**former area health board** means an area health board constituted under section 12 of the repealed area Act and as constituted immediately before its repeal.

**former area health service** means an area health service constituted by section 5 of the repealed area Act and specified in Schedule 2 of that Act as in force immediately before its repeal.

**former health organisation** means:

- (a) an associated organisation, or
- (b) a former area health service, or
- (c) an incorporated hospital, or
- (d) a separate institution.

**incorporated health service** means any of the following incorporated hospitals:

- (a) Far West Health Service,
- (b) Greater Murray Health Service,
- (c) Macquarie Health Service,
- (d) Mid North Coast Health Service,
- (e) Mid Western Health Service,
- (f) New England Health Service,

(g) Northern Rivers Health Service,

(h) Southern Health Service.

**incorporated hospital** means a hospital mentioned in the Second Schedule to the repealed hospitals Act as in force immediately before its repeal.

**repealed area Act** means the [Area Health Services Act 1986](#) as in force immediately before its repeal.

**repealed hospitals Act** means the [Public Hospitals Act 1929](#) as in force immediately before its repeal.

**separate institution** means an institution mentioned in the Third Schedule to the repealed hospitals Act as in force immediately before its repeal.

**successor:**

- (a) of a former area health service means an area health service constituted under this Act on the commencement of Schedule 1 and having the same name as the former area health service, or
- (b) of an incorporated hospital that was an incorporated health service means an area health service constituted under this Act on the commencement of Schedule 1 and having the same (or substantially the same) name as the incorporated health service, or
- (c) of an incorporated hospital that was not an incorporated health service means a statutory health corporation constituted under this Act on the commencement of Schedule 2 and having the same (or substantially the same) name as the incorporated hospital, or
- (d) of a separate institution means an affiliated health organisation specified in Schedule 3 on its commencement having the same name (or having a different name, but being substantially the same organisation or institution) as the separate institution, or
- (e) of an associated organisation means an affiliated health organisation specified in Schedule 3 on its commencement and having the same name (or having a different name, but being substantially the same organisation or institution) as an associated organisation.

## **Division 2 Former area health services**

### **3 Dissolution of former area health services**

A former area health service:

- (a) is dissolved on and from the repeal of the repealed area Act, and

- (b) its assets, rights and liabilities immediately before its dissolution become assets, rights and liabilities of its successor.

#### **4 Agreements by former area health services**

Any agreement between a former area health service and any person that was in force immediately before the dissolution of the former area health service is taken on and from that dissolution to have been entered into between its successor and the person.

#### **5 Delegations by former area health services**

Any delegation given by a former area health service under the repealed area Act and in force immediately before the dissolution of that service is taken on and from that dissolution to have been given by its successor.

#### **6 Staff of former area health service**

A member of staff of a former area health service is (until other provision is duly made under any Act or law) to be employed as a member of staff of its successor in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person had the person remained a member of staff of the former area health service and that service not been dissolved.

#### **7 By-laws under repealed area Act**

The by-laws in force under section 32 of the repealed area Act immediately before its repeal are taken to have been made under section 39 of this Act. However, this does not prevent the future amendment or repeal of those by-laws.

#### **8 Chief executive officers of former area health boards**

- (1) A person holding office as a chief executive officer of a former area health board immediately before its dissolution is taken to have been appointed under this Act as the chief executive officer of its successor. Such an appointment is for the remainder of the period of appointment to the position that is abolished by reason of the dissolution of the former area health service.
- (2) Appointment by virtue of this clause does not change the contract of employment under Part 2A of the *Public Sector Management Act 1988* between the person as an executive officer and the executive officer's employer. The contract is taken to be with the successor of the former area health service.

#### **9 Members of area health boards of former area health services**

Each member of the former area health board (including the chief executive officer) of a former area health service holding office immediately before the dissolution of the service is taken to hold office as a member of the area health board of its successor. Such an appointment is for the remainder of the period of appointment to the office that is

abolished by reason of the dissolution of the former area health service.

#### **10 Successor same legal entity as former area health service**

Subject to this Part, on the dissolution of a former area health service, its successor is taken for all purposes (including the rules of private international law) to be a continuation of and the same legal entity as the former area health service.

#### **11 References to former area health services**

- (1) A reference in any other Act or instrument made under any other Act or in any instrument of any kind:
  - (a) to any particular former area health service is taken to be a reference to its successor, and
  - (b) to an area health service constituted under the repealed area Act is taken to be a reference to an area health service constituted under this Act.
- (2) This clause does not apply to the [State Public Service Superannuation Act 1985](#).

### **Division 3 Incorporated health service**

#### **12 Dissolution of incorporated health service**

An incorporated health service:

- (a) is dissolved on and from the repeal of the repealed hospitals Act, and
- (b) its assets, rights and liabilities immediately before its dissolution become assets, rights and liabilities of its successor.

#### **13 Assets, rights, liabilities, staff and other things of certain hospitals taken to belong to certain incorporated health services**

- (1) **Wyalong Health Service** On and from 16 March 1996:
  - (a) the Wyalong Health Service is taken to have been transferred to the Greater Murray Health Service, and
  - (b) the assets, rights and liabilities relating solely or principally to the operation of the Wyalong Health Service are taken to have been the assets, rights and liabilities of the Greater Murray Health Service, and
  - (c) a member of staff at the Wyalong Health Service is taken to have been employed as a member of staff of the Greater Murray Health Service in accordance with any relevant statutory provisions, awards, agreements and determinations that applied to the person during the relevant period, and
  - (d) any agreement between the hospital owner and another person relating solely or

principally to the operation of the Wyalong Health Service is taken to be an agreement between the Greater Murray Health Service and the person, and

- (e) any delegation given by the hospital owner in respect of the Wyalong Health Service is taken to have been given by the Greater Murray Health Service, and
- (f) any by-laws in force under section 28 of the repealed hospitals Act in respect of the Wyalong Health Service are taken to have been made by the Greater Murray Health Service, and
- (g) any act, matter or thing done by the Greater Murray Health Service during the relevant period in relation to the Wyalong Health Service that could have been done validly by the hospital owner is validated to the extent of any invalidity.

(2) **Balranald District Hospital and Wentworth District Hospital and Health Service** On and from 16 March 1996:

- (a) the Balranald District Hospital and the Wentworth District Hospital and Health Service are taken to have been transferred to the Far West Health Service, and
- (b) the assets, rights and liabilities relating solely or principally to the operation of the hospitals are taken to have been the assets, rights and liabilities of the Far West Health Service, and
- (c) a member of staff at either hospital is taken to have been employed as a member of staff of the Far West Health Service in accordance with any relevant statutory provisions, awards, agreements and determinations that applied to the person during the relevant period, and
- (d) any agreement between the hospital owner and another person relating solely or principally to the operation of the hospital concerned is taken to be an agreement between the Far West Health Service and the person, and
- (e) any delegation given by the hospital owner in respect of the hospital concerned is taken to have been given by the Far West Health Service, and
- (f) any by-laws in force under section 28 of the repealed hospitals Act in respect of either hospital are taken to have been made by the Far West Health Service, and
- (g) any act, matter or thing done by the Far West Health Service during the relevant period in relation to the hospitals that could have been done validly by the hospital owner is validated to the extent of any invalidity.

(3) **Minister may confirm transfer** The Minister may, by notice in writing, confirm a transfer of assets, rights, liabilities or staff by operation of this Part. Such a notice is conclusive evidence of that transfer.

(4) **Definitions** In this clause:

**Balranald District Hospital** means the hospital known as the Balranald District Hospital located at Balranald.

**Far West Health Service** means the incorporated health service named the Far West Health Service.

**Greater Murray Health Service** means the incorporated health service named the Greater Murray Health Service.

**hospital owner** means:

- (a) in relation to the Wyalong Health Service—the Mid Western Health Service, and
- (b) in relation to the Balranald District Hospital and the Wentworth District Hospital and Health Service—the Greater Murray Health Service.

**relevant period** means the period commencing on 16 March 1996 and ending on the date of the repeal of the repealed hospitals Act.

**Wentworth District Hospital and Health Service** means the hospital known as the Wentworth District Hospital and Health Service located at Wentworth.

**Wyalong Health Service** means the hospital known as the Wyalong Health Service located at West Wyalong.

#### **14 Agreements by incorporated health services**

Any agreement between an incorporated health service and any person that was in force immediately before the dissolution of the incorporated health service is taken on and from that dissolution to have been entered into between its successor and the person.

#### **15 Delegations by incorporated health services**

Any delegation given by an incorporated health service under the repealed hospitals Act and in force immediately before the dissolution of that service is taken on and from that dissolution to have been given by its successor.

#### **16 Staff of incorporated health service**

A member of staff of an incorporated health service is (until other provision is duly made under any Act or law) to be employed as a member of staff of its successor in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person had the person remained a member of staff of the incorporated health service and that service not been dissolved.

#### **17 By-laws under repealed hospitals Act**

The by-laws in force under section 28 of the repealed hospitals Act immediately before its repeal in relation to an incorporated health service are taken to have been made under

section 39 of this Act. However, this does not prevent the future amendment or repeal of those by-laws.

### **18 Chief executive officers of incorporated health services**

- (1) A person holding office as a chief executive officer of an incorporated health service immediately before its dissolution is taken to have been appointed under this Act as the chief executive officer of its successor. Such an appointment is for the remainder of the period of appointment to the position that is abolished by reason of the dissolution of the incorporated health service.
- (2) Appointment by virtue of this clause does not change the terms of the contract of employment between the person as an executive officer and the executive officer's employer.
- (3) However:
  - (a) the contract is taken to be with the successor of the incorporated health service, and
  - (b) the chief executive officer's appointment is also taken to be an appointment made under section 28 of this Act and therefore to be an appointment to which Part 2A (but not Part 2) of the *Public Sector Management Act 1988* applies.

### **19 Members of board of directors of incorporated health services**

Each member of the board of directors (including the chief executive officer) of an incorporated health service holding office immediately before the dissolution of the service is taken to hold office as a member of the area health board of its successor. Such an appointment is for the remainder of the period of appointment to the office that is abolished by reason of the dissolution of the incorporated health service.

### **20 Successor same legal entity as incorporated health service**

Subject to this Part, on the dissolution of an incorporated health service, its successor is taken for all purposes (including the rules of private international law) to be a continuation of and the same legal entity as the incorporated health service.

### **21 References to incorporated health services**

- (1) A reference in any other Act or instrument made under any other Act or in any instrument of any kind to any particular incorporated hospital that was an incorporated health service is taken to be a reference to its successor.
- (2) This clause does not apply to the *State Public Service Superannuation Act 1985*.

## **Division 4 Incorporated hospitals other than incorporated health**

## **services**

### **22 Application of this Division**

This Division applies to any incorporated hospital other than an incorporated health service.

### **23 Dissolution of incorporated hospital**

An incorporated hospital:

- (a) is dissolved on and from the repeal of the repealed hospitals Act, and
- (b) its assets, rights and liabilities immediately before its dissolution become assets, rights and liabilities of its successor.

### **24 Agreements by incorporated hospitals**

Any agreement between an incorporated hospital and any person that was in force immediately before the dissolution of the incorporated hospital is taken on and from that dissolution to have been entered into between its successor and the person.

### **25 Delegations by former incorporated hospitals**

Any delegation given by an incorporated hospital under the repealed hospitals Act and in force immediately before the dissolution of that service is taken on and from that dissolution to have been given by its successor.

### **26 Staff of incorporated hospital**

A member of staff of an incorporated hospital is (until other provision is duly made under any Act or law) to be employed as a member of staff of its successor in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person had the person remained a member of staff of the incorporated hospital.

### **27 By-laws under repealed hospitals Act**

The by-laws in force under section 28 of the repealed hospitals Act immediately before its repeal in relation to an incorporated hospital are taken to have been made under section 60 of this Act. However, this does not prevent the future amendment or repeal of those by-laws.

### **28 Chief executive officers of incorporated hospitals**

- (1) A person holding office as a chief executive officer of an incorporated health service immediately before its dissolution is taken to have been appointed under this Act as the chief executive officer of its successor. Such an appointment is for the remainder of the period of appointment to the position that is abolished by reason of the



dissolution of the incorporated hospital.

- (2) Appointment by virtue of this clause does not change the terms of the contract of employment between the person as an executive officer and the executive officer's employer.
- (3) However:
  - (a) the contract is taken to be with the successor of the incorporated hospital, and
  - (b) the chief executive officer's appointment is taken, for the purposes of section 51:
    - (i) if the officer's current appointment is to a position referred to in Schedule 3B to the *Public Sector Management Act 1988*—to be an appointment to which Part 2A of that Act applies, or
    - (ii) in any other case—to be an appointment to which Part 2A of that Act does not apply.

### **29 Members of board of directors of incorporated hospitals**

Each member of the board of directors (including the chief executive officer) of an incorporated hospital holding office immediately before the dissolution of the hospital is taken to hold office as a member of the health corporation board of its successor. Such an appointment is for the remainder of the period of appointment to the office that is abolished by reason of the dissolution of the incorporated hospital.

### **30 Preservation of existing functions**

- (1) The successor of an incorporated hospital has the same functions as the incorporated hospital had immediately before its dissolution.
- (2) However, nothing in this clause prevents the future alteration of the functions of the successor, by or under this Act.

### **31 Successor same legal entity as incorporated hospital**

Subject to this Part, on the dissolution of an incorporated hospital, its successor is taken for all purposes (including the rules of private international law) to be a continuation of and the same legal entity as the incorporated hospital.

### **32 References to incorporated hospitals**

- (1) A reference in any other Act or instrument made under any other Act or in any instrument of any kind:
  - (a) to any particular incorporated hospital is taken to be a reference to its successor, and
  - (b) to an incorporated hospital constituted under the repealed hospitals Act is taken

to be a reference to a statutory health corporation constituted under this Act.

(2) This clause does not apply to the *State Public Service Superannuation Act 1985*.

## **Division 5 Separate institutions**

### **33 By-laws under repealed hospitals Act**

Any by-laws made by a separate institution in force under section 29AE of the repealed hospitals Act immediately before its repeal are taken to have been made under section 63 of this Act by its successor. However, this does not prevent the future amendment or repeal of those by-laws.

### **34 Borrowing by separate institutions**

The repeal of sections 37 and 37A of the repealed hospitals Act does not affect any borrowing by a separate institution effected before the repeal of the repealed hospitals Act. Those provisions continue to apply to that borrowing until such time as it is repaid by its successor.

### **35 Funding agreements under section 17A of repealed hospitals Act**

Any agreement made under section 17A of the repealed hospitals Act in relation to a separate institution that is in force on the repeal of that Act is taken to be an agreement made under section 128 of this Act in relation to its successor.

### **36 References to separate institutions**

(1) A reference in any other Act or instrument made under any other Act or in any instrument of any kind to a separate institution is taken to be a reference to an affiliated health organisation.

(2) This clause does not apply to the *State Public Service Superannuation Act 1985*.

## **Division 6 Associated organisations**

### **37 Borrowing by associated organisations**

The repeal of sections 37 and 37A of the repealed hospitals Act does not affect any borrowing by an associated organisation effected before the repeal of the repealed hospitals Act. Those provisions continue to apply to that borrowing until such time as it is repaid by its successor.

### **38 References to associated organisations**

(1) A reference in any other Act or instrument made under any other Act or in any instrument of any kind to an associated organisation is taken to be a reference to an affiliated health organisation.

- (2) This clause does not apply to the *State Public Service Superannuation Act 1985*.

## **Division 7 Miscellaneous**

### **39 Existing Samaritan Funds**

- (1) Any Samaritan Fund established under section 40A of the repealed hospitals Act and in effect immediately before its repeal is taken to be a Samaritan Fund established under section 133 of this Act by the public health organisation that controls the hospital in respect of which the original Samaritan Fund was established.
- (2) A reference in this clause to a public health organisation includes a reference to the Crown in relation to any public hospital controlled by the Crown (including the Minister or the Health Administration Corporation).

### **40 Debts owing by patients of public hospitals under repealed hospitals Act**

- (1) A debt owing to a board under section 30 or 30A of the repealed hospitals Act is taken to be a debt owing under section 70 or 72 (as the case may be) of this Act to the public health organisation that controls the hospital in respect of which the debt is owed.
- (2) A reference in this clause to a public health organisation includes a reference to the Crown in relation to any public hospital controlled by the Crown (including the Minister or the Health Administration Corporation).

### **41 Employment matters under repealed area Act and repealed hospitals Act**

- (1) In this clause:

***existing employment agreement or determination*** means:

- (a) any agreement or determination in respect of officers or employees of a former area health service or former area health services made under section 26 of the repealed area Act that is in force immediately before the repeal of that section, and
- (b) any agreement or determination in respect of officers or employees of a hospital or hospitals made under section 40BA of the repealed hospitals Act that is in force immediately before the repeal of that section.

***hospital*** has the same meaning as it had in section 40BA of the repealed hospitals Act immediately before its repeal.

- (2) Any existing employment agreement or determination is taken to have been made under section 115 of this Act and therefore binds the successor of the former area health service or hospital to which it originally related.
- (3) Nothing in this clause prevents the making of any future agreement or determination

under section 115 of this Act.

#### **42 Arbitrations under repealed hospitals Act**

- (1) The provisions of Part 5C of the repealed hospitals Act, as in force immediately before its repeal, continue to apply to arbitrations under that Part that have not been determined before that repeal.
- (2) For the purposes of subclause (1), any reference in Part 5C of the repealed hospitals Act (or any instrument made under that Part):
  - (a) is, to the extent that it applies to any particular former area health service, incorporated hospital or separate institution (or governing body), to be read as a reference to the successor of the service, hospital or institution concerned, and
  - (b) to former area health services, incorporated hospitals or separate institutions (or their governing bodies) generally is to be read as a reference to public health organisations.

#### **43 Appeals under repealed hospitals Act**

- (1) The provisions of Part 6B of the repealed hospitals Act, as in force immediately before its repeal, continue to apply to appeals under that Part that have not been determined before that repeal.
- (2) For the purposes of subclause (1), any reference in Part 6B of the repealed hospitals Act (or any instrument under that Part) to the **board** is to be read as a reference to the public health organisation that is the successor to the former area health service, incorporated hospital, separate institution or associated organisation concerned.

#### **44 Approved standard contracts under repealed hospitals Act**

- (1) Any standard conditions approved by the Minister under section 29RB of the repealed hospitals Act and in force immediately before the repeal of that Act are taken to be standard conditions approved under section 87 of this Act.
- (2) Any reference in those standard conditions:
  - (a) to any particular former area health service, incorporated hospital or separate institution is to be read as a reference to the successor of the service, hospital or institution, or
  - (b) to former area health services, incorporated hospitals or separate institutions generally is to be read as a reference to area health services, statutory health corporations and affiliated health organisations, respectively, within the meaning of this Act.
- (3) For the purposes of section 89 (3), 5 years is taken to be the period specified by an

order of the Minister made under section 29RB of the repealed hospitals Act approving any such standard conditions.

- (4) Nothing in this clause prevents the making of any future orders under section 87 of this Act approving standard conditions.

#### **44A Determination under repealed hospitals Act**

- (1) In this clause:

**existing determination** means the Public Hospitals (Visiting Medical Officers—Sessional Contracts) Determination 1994, made under Division 2 of Part 5C of the *Public Hospitals Act 1929* and which, immediately before the repeal of that Act, applied to sessional visiting medical officers by operation of section 29R of that Act.

- (2) The existing determination is taken to be a determination made under Division 3 of Part 2 of Chapter 8 and applying, by virtue of section 98, in relation to any service contract between an organisation and a visiting medical officer providing his or her services as an individual.

- (3) A reference in that determination:

- (a) to any particular former area health service, incorporated hospital or separate institution is to be read as a reference to the successor of the service, hospital or institution, as the case may be, or
- (b) to former area health services, incorporated hospitals or separate institutions generally is to be read as a reference to area health services, statutory health corporations and affiliated health organisations, respectively.

- (4) On and from a date appointed by proclamation for the purposes of this subclause, the existing determination is taken to also be a determination made under Division 3 of Part 2 of Chapter 8 and applying, by virtue of section 98, in relation to any service contract between an organisation and a practice company through which a visiting medical officer provides services (in accordance with section 85).

#### **Editorial note—**

Date appointed for the purposes of this subclause: 30.6.2000—see Gazette No 81 of 30.6.2000, p 5354.

- (5) On and from that date, a reference in that determination:

- (a) to any particular former area health service, incorporated hospital or separate institution is to be read as a reference to the successor of the service, hospital or institution, as the case may be, or
- (b) to former area health services, incorporated hospitals or separate institutions generally is to be read as a reference to area health services, statutory health corporations and affiliated health organisations, respectively, or

- (c) to a contract with or payment to a visiting medical officer is to be read as including a reference to a contract with or payment to a visiting medical officer's practice company, or
- (d) to the termination of a sessional contract is to be read as including a reference to the termination of a visiting medical officer's appointment as a visiting medical officer.

(6) Nothing in this clause prevents the making of any future orders under section 87 approving standard conditions.

#### **45 Scale of fees under repealed hospitals Act**

- (1) Any scale of fees fixed by the Minister under section 30 (8) of the repealed hospitals Act and in force on the date of the repeal of that Act is taken to be a scale of fees fixed by the Minister under section 69 of this Act.
- (2) Nothing in this clause prevents the future fixing, amendment or revocation of a scale of fees under section 69 of this Act.

#### **46 Descriptions of parts of areas of area health services**

Until a regulation made under section 18 (2) of this Act provides otherwise:

- (a) a reference in column 2 of Schedule 1 to the area "Sydney and South Sydney (part)" in relation to the Central Sydney Area Health Service is a reference to the western sector of the cities of Sydney and South Sydney with the boundaries as shown on the map deposited in the principal office of the Department of Health marked "Area Health Service Boundaries—Cities of Sydney and South Sydney", and
- (b) a reference in column 2 of Schedule 1 to the area "Sydney and South Sydney (part)" in relation to the South Eastern Sydney Area Health Service is a reference to the eastern sector of the cities of Sydney and South Sydney with the boundaries as shown on the map deposited in the principal office of the Department of Health marked "Area Health Service Boundaries—Cities of Sydney and South Sydney".

#### **47 Effect of amendments to other Acts on existing appointments**

An amendment made by Schedule 6 to a provision of any other Act does not affect the validity of any appointment made under that provision before its amendment by that Schedule.

#### **48 Existing visiting practitioners**

- (1) Subject to this Schedule, a person who was a visiting practitioner within the meaning of the repealed hospitals Act of a former health organisation immediately before the repeal of that Act is taken to be a visiting practitioner under this Act appointed as such by the successor of the organisation.

- (2) Section 100 is taken not to apply to any conviction for a serious sex or violence offence of a person referred to in subclause (1) if, before the person was appointed as a visiting practitioner by the former health organisation concerned, the Director-General (or a person acting on behalf of the Director-General) notified the chief executive officer or the governing body of the organisation that, despite the conviction, he or she approved of (or did not object to) the person being appointed as a visiting practitioner.

#### **49 Disclosure of serious sex or violence offences by existing employees**

- (1) Section 118 is taken not to apply to any conviction for a serious sex or violence offence of an existing employee if, before the person was employed by the former health organisation concerned, the Director-General (or a person acting on behalf of the Director-General) notified the chief executive officer or the governing body of the organisation that, despite the conviction, he or she approved of (or did not object to) the person being employed by the organisation.

- (2) In this clause:

**existing employee** means a person who, by operation of this Schedule, is taken to be an employee of the successor of a former health organisation.

#### **50 Model by-laws for former area health services preserved**

- (1) Any order of the Minister setting the terms of model by-laws made under section 32 of the former area Act that was published in the Gazette and was in force immediately before the repeal of that Act is taken:
- (a) to be an order of the Minister made under section 39 (2) of this Act, and
  - (b) to set out model by-laws in respect of which the Minister has received advice from the Medical Services Committee for the purposes of section 39 (3) (a) of this Act.
- (2) Any reference in any such by-laws:
- (a) to an area health service is taken to be a reference to an area health service within the meaning of this Act, and
  - (b) to an area health board is taken to be a reference to an area health board within the meaning of this Act, and
  - (c) to a chief executive officer of an area health board is taken to be a reference to a chief executive officer of an area health service within the meaning of this Act, and
  - (d) to a visiting practitioner in relation to a hospital under the control of an area health service is taken to be a visiting practitioner of an area health service within the meaning of this Act, and

(e) to the clinical privileges of a visiting practitioner is taken to be a reference to clinical privileges within the meaning of section 105 (2) of this Act.

(3) Nothing in this clause prevents the making of a future order under section 39 (2) of this Act.

**51 Minister entitled to certain payments under [Local Government and Other Authorities \(Superannuation\) Act 1927](#) (cf PH Act s 40BB)**

(1) Any money that would, but for this subclause, be payable to a public health organisation under section 15Y or 15Z of the [Local Government and Other Authorities \(Superannuation\) Act 1927](#) is to be paid to the Minister instead.

(2) The Minister may, on the written application of a contributing employer, pay to the employer such part of any money the Minister has received under subsection (1) in respect of a contributor or former contributor as the Minister considers proper having regard to the payments made by the employer to the Board in respect of the contributor or former contributor.

(3) In this clause:

**Board** has the same meaning as in the [Local Government and Other Authorities \(Superannuation\) Act 1927](#).

**contributing employer** means a person who has:

(a) employed a contributor or former contributor, and

(b) made payments to the Board in respect of the contributor or former contributor.

**contributor** and **former contributor** have the same meanings as in sections 15Y and 15Z of the [Local Government and Other Authorities \(Superannuation\) Act 1927](#).

**52 References to repealed area Act and repealed hospitals Act**

(1) A reference in any other Act or instrument made under an Act, or in any instrument of any kind, to the repealed area Act or the repealed hospitals Act is taken to be a reference to this Act.

(2) This clause does not apply to the [State Public Service Superannuation Act 1985](#).

**53 Reference to this Act in [Health Care Complaints Act 1993](#)**

A reference in section 25 (1) of the [Health Care Complaints Act 1993](#) to this Act is taken to include a reference to the repealed area Act and the repealed hospitals Act.

**Note—**

Section 25 of the [Health Care Complaints Act 1993](#) requires the Health Care Complaints Commission to notify the Director-General of the details of a complaint under that Act if it appears to the Commission that it involves a possible breach of any of the various Acts (or the regulations made under them) listed in that section.



This clause ensures that the reference in that Act to this Act will be read so as to require the Commission to notify the Director-General of possible breaches of the repealed area Act and the repealed hospitals Act committed before their repeal.

#### **54 General savings**

Subject to this Schedule, anything done by, to or in relation to a former health organisation is taken to have been done by, to or in relation to the successor of the organisation.

### **Part 3 Provisions consequent on the enactment of the [Health Legislation Amendment Act 1999](#)**

#### **55 Validation of loans to public health organisations**

Any loan made before the commencement of this clause to an area health service, statutory health corporation or affiliated health organisation out of money appropriated from the Consolidated Fund to the Minister for Health is validated.

### **Part 4 Provisions consequent on the enactment of the [Health Services Amendment Act 2004](#)**

#### **56 Definition**

In this Part, **the 2004 amending Act** means the [Health Services Amendment Act 2004](#).

#### **57 Abolition of area health boards**

- (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.
- (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.
- (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.

#### **58 Abolition of health corporation board for The Royal Alexandra Hospital for Children**

- (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.
- (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.

## **59 Appointment of first health executives**

- (1) This clause applies to the following positions:
  - (a) the position of chief executive of an area health service,
  - (b) a position that, as at the commencement of this clause, is the subject of a determination in force under section 121B (1) (b).
- (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).
- (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.
- (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.

## **60 Existing executive officers**

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 *Public Sector Employment and Management Act 2002*, is taken, on that commencement, to be a health executive under Part 3 of Chapter 9 of this Act.

## **61 Unattached officers**

Any person who, immediately before the commencement of section 121N, was an unattached officer under section 77 of the *Public Sector Employment and Management Act 2002*, being a person who was then:

- (a) an employee in the NSW Health Service, or
- (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,

is taken, on that commencement, to be an unattached officer under section 121N.

## Dictionary

(Section 3)

### Part 1 Definitions

**affiliated health organisation**—see section 13.

**appellant** means a person who appeals under section 106.

**appoint**, in relation to a visiting practitioner, includes re-appoint.

**arbitrator** means a person appointed under section 90 to be an arbitrator.

**area** of an area health service means the area described in column 2 or 3 (or both) of Schedule 1 in respect of which the area health service is constituted.

**area health service**—see section 8.

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**Association** means the Australian Medical Association (NSW) Limited.

**authorised officer** means a person appointed under section 124.

**board** of a public health organisation means:

- (a) (Repealed)
- (b) in relation to a statutory health corporation—the health corporation board of the corporation, or
- (c) in relation to an affiliated health organisation—the governing body of the organisation.

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

**by-laws** means by-laws under this Act.

**chief executive:**

- (a) of an area health service—means the chief executive of that service, or
- (b) of a statutory health corporation—means the chief executive of that corporation, or
- (c) of an affiliated health organisation—means the person who is responsible to the governing body of the organisation for the management of its recognised establishments and recognised services.

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

**Committee** means a Committee of Review appointed by the Minister under section 108.

**conviction** means a conviction within the meaning of the [Criminal Records Act 1991](#).

**day procedure centre** means a day procedure centre within the meaning of the [Private Hospitals and Day Procedure Centres Act 1988](#).

**dentist** has the same meaning as in the [Dentists Act 1989](#).

**Director-General** means the Director-General of the Department of Health.

**eligible person** has the same meaning as it has in the [Health Insurance Act 1973](#) of the Commonwealth.

**exercise** of a function includes performance of a duty.

**fee-for-service contract**—see section 82.

**financial year** means the period of 12 months beginning on 1 July.

**function** includes a power, authority or duty.

**governing body** of an affiliated health organisation means the person or the board or other body that is responsible for the management of the organisation in relation to its recognised establishments and recognised services.

**Health Administration Corporation** means the Health Administration Corporation constituted by the [Health Administration Act 1982](#).

**health corporation board** means a health corporation board constituted under section 46 for a statutory health corporation.

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

**health institution** means an institution (other than a hospital) by or at which health services or health support services are provided.

**health service** means any of the following:

- (a) any hospital service,
- (b) any medical service,
- (c) any paramedical service,
- (d) any community health service,
- (e) any environmental health service,
- (f) any other service (including any service of a class or description prescribed by the regulations) relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or injury to persons.

**health support service** means a service that is provided in aid or support of a health service, such as:

- (a) the professional, technical or other education or training of persons to be employed within the public health system to provide health services, or
  - (b) the procurement or supply (or both) of goods, substances or services to providers of health services, or
  - (c) the planning or construction of any building or facility for use in the provision of health services, or
  - (d) the provision of corporate services to providers of health services,
- and includes a service prescribed by the regulations.

**honorary contract**—see section 84.

**honorary medical officer**—see section 79.

**hospital** means an institution at which relief is given to sick or injured people through the provision of care or treatment.

**liabilities** means any liabilities, debts or obligations (whether present or future and whether vested or contingent).

**local government area** has the same meaning as **area** has in the [Local Government Act 1993](#).

**Medical Services Committee** means the Medical Services Committee established under section 20B of the [Health Administration Act 1982](#).

**Medicare Agreement** means the Agreement (as in force from time to time) between the Commonwealth and the States referred to in section 24 of the [Health Insurance Act 1973](#) of the Commonwealth.

**Medicare Principles and Commitments**—see section 68.

**non-chargeable hospital service** means any health service provided to a patient by a public hospital that is a recognized hospital and for which it has been agreed under the Medicare Agreement that the patient is not to be charged, but only if the Medicare Agreement is in force at the time the service is provided.

**NSW Health Service**—see section 16.

**nursing home** means a nursing home within the meaning of the [Public Health Act 1991](#).

**practice company** means a corporation (however incorporated) that is controlled or conducted by a medical practitioner and by means of which the medical practitioner conducts his or her medical practice.

**practising legal practitioner** means a practising barrister or a practising solicitor.

**private hospital** means a private hospital within the meaning of the [Private Hospitals and Day Procedure Centres Act 1988](#).

**public health organisation**—see section 7.

**public health system**—see section 6.

**public hospital**—see section 15.

**recognised establishment** of an affiliated health organisation means a hospital or health institution of the organisation that is listed in column 2 of Schedule 3 next to its name.

**recognised service** of an affiliated health organisation means a health service or health support service of the organisation that is listed in column 2 of Schedule 3 next to its name.

**recognized hospital** has the same meaning as it has in the [Health Insurance Act 1973](#) of the Commonwealth.

**relevant Minister** means the Minister administering the [Industrial Relations Act 1996](#) for the time being.

**rights** means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

**serious sex or violence offence** means an offence involving sexual activity, acts of indecency, physical violence or the threat of physical violence that:

- (a) if committed in New South Wales, is punishable by imprisonment for 12 months or more, or
- (b) if committed elsewhere than in New South Wales, would have been an offence punishable by imprisonment for 12 months or more if committed in New South Wales.

**service contract**—see section 80.

**sessional contract**—see section 83.

**standard service contract**—see section 87 (2).

**statutory health corporation**—see section 11.

**visiting medical officer**—see section 78.

**visiting practitioner**—see section 76.

## Part 2 Other expressions

### 1 References to acts, omissions or things of affiliated health organisations

- (1) A reference in this or any other Act (however expressed) to any act, omission or thing of an affiliated health organisation in relation to any of its recognised establishments or recognised services:
  - (a) in the case of an affiliated health organisation that is unincorporated—is a reference to an act, omission or thing of the governing body of the organisation or a member of that body (as the case may be) in relation to that establishment or service, or

(b) in the case of an affiliated health organisation that is incorporated—is a reference to an act, omission or thing of the corporate body constituting the organisation in relation to that establishment or service.

(2) A reference in this or any other Act (however expressed) to:

(a) a hospital, health institution, health service or health support service of an affiliated health organisation is a reference to a hospital, health institution, health service or health support service that is a recognised establishment or recognised service of the organisation, or

(b) the staff, assets, rights or liabilities of an affiliated health organisation is a reference to the staff, assets, rights or liabilities of the organisation relating solely or principally to the operation of the recognised establishments or the provision of the recognised services of the organisation.

## **2 References to control of hospitals, health institutions, health services or health support services**

A reference in this Act to a hospital, health institution, health service or health support service controlled by the Crown or any public health organisation or other body or person includes a reference to a hospital, health institution or service that is conducted by or on behalf of such an organisation, body or person.

## **3 References to serious sex or violence offence**

A reference in this Act to a serious sex or violence offence includes a reference to an attempt to commit a serious sex or violence offence or a conspiracy to commit such an offence.