

Health Services Act 1997 No 154

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New South Wales

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The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
 - [Pharmacy Practice Act 2006 No 59](#) (not commenced)
 - [Police Amendment \(Miscellaneous\) Act 2006 No 94](#) (not commenced)

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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 in the public health system to disclose 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 in the public health system, 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

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 Director-General in respect of the provision of ambulance services under Chapter 5A and the provision of health support services under Part 1A of Chapter 10.

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 (Repealed)

Chapter 3 Area health services

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)

- (1) 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.

- (2) However, an area health service cannot employ any staff.

Note—

Staff may be employed under Part 1 of Chapter 9 in the NSW Health Service to enable an area health service to exercise its functions.

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 employment of the chief executive is subject to Part 3 of Chapter 9.

Note—

Under Part 3 of Chapter 9, the chief executive is a member of the Health Executive Service.

- (3) (Repealed)

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 (Repealed)

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) (Repealed)
 - (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 member of the NSW Health Service 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) (Repealed)

Chapter 4 Statutory health corporations

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))

- (1) 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.

- (2) However, a statutory health corporation cannot employ any staff.

Note—

Staff may be employed under Part 1 of Chapter 9 in the NSW Health Service to enable a statutory health corporation to exercise its functions.

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) One of the persons appointed by the Minister is to be a member of the NSW Health Service who is employed in connection with the board governed health corporation concerned.

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) If the position of chief executive is an executive position within the meaning of Part 3 of Chapter 9, the employment of the chief executive is subject to that Part.

- (3) If the position of chief executive is not an executive position within the meaning of Part 3 of Chapter 9, the chief executive is, while holding that office, to be employed under Part 1 of Chapter 9 in the NSW Health Service.
- (4), (5) (Repealed)
- (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) (Repealed)

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) If the position of chief executive is an executive position within the meaning of Part 3 of Chapter 9, the employment of the chief executive is subject to that Part.
- (3) If the position of chief executive is not an executive position within the meaning of Part 3 of Chapter 9, the chief executive:
 - (a) is, while holding that office, taken to be employed under Part 1 of Chapter 9 in the NSW Health Service, and
 - (b) may at any time, for any reason or no reason and without notice, be removed from office by the Director-General.
- (4) (Repealed)

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 (Repealed)

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) (Repealed)
 - (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 member of the NSW Health

Service 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, the functions of a board governed health corporation include the functions of its health corporation board.
- (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

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.

62A Declared affiliated health organisations

- (1) The affiliated health organisations specified in the regulations under this section are ***declared affiliated health organisations*** for the purposes of this Act.
- (2) Any such regulation may apply only to such of the recognised establishments or recognised services (or parts of them) of an affiliated health organisation as are specified in the regulation. In any such case, the organisation concerned is a declared affiliated health organisation for the purposes of this Act only to the extent of its recognised establishments or services (or parts of them) that are so specified.
- (3) A declared affiliated health organisation must not employ any staff in respect of its recognised establishments and recognised services.

Note—

Staff may be employed under Part 1 of Chapter 9 in the NSW Health Service to enable a declared affiliated health organisation to exercise its functions in respect of its recognised establishments and recognised services.

- (4) However, nothing in this section prevents a declared affiliated health organisation from entering into arrangements for the management, on its behalf, of its recognised establishments or recognised services.
- (5) A regulation cannot be made under this section in relation to an affiliated health organisation except with the concurrence of the affiliated health organisation.

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.

(1A) Subsection (1) (e) does not apply in relation to a declared affiliated health organisation.

(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.

63A Criminal and disciplinary matters concerning employees of non-declared affiliated health organisations

- (1) In this section, **non-declared organisation** means an affiliated health organisation that is not a declared affiliated health organisation.
- (2) The provisions of Part 2 of Chapter 9 apply, with such modifications as are necessary, to and in respect of a non-declared organisation and its employees in the same way as those provisions apply to and in respect of a declared affiliated health organisation and the members of the NSW Health Service who are employed under Part 1 of Chapter 9 in connection with the declared affiliated health organisation.

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.

64A Regulations relating to movement of staff between NSW Health Service and non-declared affiliated health organisations

- (1) This section does not apply to or in respect of a declared affiliated health organisation.
- (2) The regulations may make provision for or with respect to the movement of staff between affiliated health organisations and the NSW Health Service.
- (3) Without limiting subsection (2), any such regulations may provide for:
 - (a) the retention by any such staff of their accrued leave entitlements, and
 - (b) the apportioning of the liability for the cost of accrued leave entitlements of staff who move between affiliated health organisations and the NSW Health Service.
- (4) The Minister may give directions to an affiliated health organisation for the purpose of making due allowance and appropriate adjustments for liabilities incurred by reason of the operation of any regulation made under this section (or liabilities with respect to accrued leave entitlements generally). Any such direction has effect despite any determination made in respect of the affiliated health organisation under section 127.

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 5A Ambulance services

67A Ambulance Service of NSW

- (1) The Ambulance Service of NSW comprises those staff of the NSW Health Service who are employed primarily in connection with the provision of ambulance services under this Chapter.

- (2) The Director-General may appoint a chief executive of the Ambulance Service of NSW.
- (3) The employment of the chief executive is subject to Part 3 of Chapter 9.

67B Provision etc of ambulance services

- (1) The Director-General has, on behalf of the Crown, the following functions:
 - (a) to provide, conduct, operate and maintain ambulance services,
 - (b) to co-operate with or provide assistance to any person or organisation for the purposes of providing, conducting, operating and maintaining ambulance services,
 - (c) in connection with ambulance services referred to in paragraph (a), to protect persons from injury or death, whether or not those persons are sick or injured,
 - (d) to adopt and implement all necessary measures (including systems of planning, management and quality control) as will best ensure the efficient and economic operation and use of resources in the provision of ambulance services,
 - (e) to consult and co-operate with individuals and organisations (including voluntary agencies, private agencies and public or local authorities) concerned with the provision of ambulance services,
 - (f) to co-ordinate and plan the future development of ambulance services, and towards that end, to support, encourage and facilitate the organisation of community involvement in the planning of those services,
 - (g) to set objectives and determine priorities in relation to the provision of ambulance services and to monitor whether those objectives are achieved,
 - (h) to achieve and maintain adequate standards of ambulance services,
 - (i) to make available to the public reports, information and advice concerning the operation of ambulance services,
 - (j) to provide assistance to, or co-operate with, any person or organisation in connection with the depiction of ambulance services in the news or entertainment media,
 - (k) to exercise such other functions in relation to ambulance services as may be conferred or imposed on the Director-General by the regulations.
- (2) The exercise of functions under this section in emergencies and rescue operations is subject to the [State Emergency and Rescue Management Act 1989](#).

67C Ambulance Services Advisory Council

- (1) There is established by this Act an Ambulance Services Advisory Council.

- (2) The members of the Advisory Council are as follows:
 - (a) the chief executive of the Ambulance Service of NSW,
 - (b) not fewer than 8 and not more than 12 persons appointed by the Minister.
- (3) At least 3 of the appointed members are to be members of the Ambulance Service of NSW.
- (4) The other appointed members must each have such qualifications as the Minister considers necessary to enable the members to carry out their functions.
- (5) The function of the Advisory Council is to provide advice to the Director-General in relation to the exercise of the Director-General's functions under this Chapter in relation to the provision of ambulance services.
- (6) The Advisory Council has such other functions as may be conferred or imposed on it by the Director-General.
- (7) Schedule 6 has effect with respect to the members and procedure of the Advisory Council.

67D Scale of fees

- (1) The Minister may, by order published in the Gazette:
 - (a) fix a scale of fees in respect of ambulance services provided by the Director-General, and
 - (b) amend or revoke any scale of fees so fixed.
- (2) The Director-General may remit or postpone payment of any amount due in respect of ambulance services provided by the Director-General.
- (3) Nothing in this section affects Part 4 of the [Health Insurance Levies Act 1982](#).

67E Unauthorised provision of ambulance transport

- (1) A person must not:
 - (a) directly or indirectly provide or take part in the provision of transport for sick or injured persons for fee or reward, or
 - (b) conduct for fee or reward any operations similar to the operations carried on by the Director-General under this Chapter,

without the consent of the Director-General and except in accordance with such conditions (if any) as the Director-General may from time to time impose.

Maximum penalty: 50 penalty units.

- (2) The Director-General may revoke any consent given, or revoke or vary any condition imposed, under this section.
- (3) This section does not apply to:
 - (a) the St John Ambulance Australia (NSW) in respect of operations similar to the operations lawfully carried on by that body immediately before the day on which this section commences, or
 - (b) the Royal Flying Doctor Service of Australia (NSW Section), or
 - (c) the mines rescue company, within the meaning of the *Coal Industry Act 2001*, (or a member, director or employee of that company) in the exercise of mines rescue functions under Division 3 of Part 3, or Part 4, of that Act, or
 - (d) a member of the New South Wales Mines Rescue Brigade established under the *Coal Industry Act 2001*, or
 - (e) any person (or class of persons) prescribed by the regulations.

67F Unauthorised collections

- (1) A person must not organise, conduct or take part in the collection or soliciting of money or property from the public for, towards or in return for the provision of ambulance services without the consent of the Director-General and except in accordance with such conditions (if any) as the Director-General may from time to time impose.

Maximum penalty: 50 penalty units.

- (2) The Director-General may revoke any consent given, or revoke or vary any condition imposed, under this section.
- (3) This section does not apply to:
 - (a) any person engaged in the conduct or operation of the State Ambulance Insurance Plan established under the *Health Insurance Levies Act 1982*, or
 - (b) an insurer under a policy of insurance to the extent that the money or the property represents consideration for an indemnity provided in that policy against the cost of the transport of a sick or injured person, being an indemnity incidental to the risks insured under that policy, or
 - (c) any person (or class of persons) prescribed by the regulations.

67G False calls for provision of ambulance services

A person who requests the provision of an ambulance service knowing that no ambulance service is in the circumstances required or likely to be required by any person is guilty of

an offence.

Maximum penalty: 50 penalty units.

67H Honorary ambulance officers

- (1) The Director-General may appoint such persons as the Director-General thinks fit to be honorary ambulance officers.

Note—

Honorary ambulance officers are not members of the NSW Health Service employed under Part 1 of Chapter 9.

- (2) Honorary ambulance officers:

- (a) may carry out, without remuneration, such of the functions of the Director-General under this Act as the Director-General may from time to time direct, and
- (b) are subject to the control and supervision of the Director-General.

67I Exculpation from personal liability

A member of staff of the Ambulance Service of NSW or an honorary ambulance officer is not liable for any injury or damage caused by the member of staff or officer in the carrying out, in good faith, of any of the member's or officer's duties relating to:

- (a) the provision of ambulance services, or
- (b) the protection of persons from injury or death, whether or not those persons are or were sick or injured.

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 29O)

- (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 an Australian 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.

99A Duty of chief executive to report certain conduct of visiting practitioner

- (1) The chief executive of a public health organisation is to report to a registration authority any conduct of a visiting practitioner that the chief executive suspects on

reasonable grounds may constitute professional misconduct or unsatisfactory professional conduct under the health registration Act by which the registration authority is constituted.

- (2) In this section, **health registration Act** and **registration authority** have the same meanings as in the *Health Care Complaints Act 1993*.

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 331)

(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) an Australian lawyer 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 an Australian 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

Part 1 Employment of staff in the NSW Health Service

115 The NSW Health Service

(1) The NSW Health Service consists of those persons who are employed under this Part

by the Government of New South Wales in the service of the Crown.

- (2) This Part does not affect any other means (statutory or otherwise) by which persons may be employed in the service of the Crown.

Note—

Other ways in which persons are employed in the service of the Crown include employment in the Government Service (see Chapter 1A of the [Public Sector Employment and Management Act 2002](#)), employment in the Teaching Service or employment in NSW Police.

116 Employment of staff generally

- (1) The Government of New South Wales may employ staff under this Part:
- (a) to enable area health services and statutory health corporations, and the public hospitals that they control, to exercise their functions, and
 - (b) to enable declared affiliated health organisations to exercise their functions in relation to their recognised establishments and recognised services, and
 - (c) to enable the Director-General to exercise his or her functions under Chapter 5A in relation to ambulance services, and
 - (d) to enable the Director-General to exercise his or her functions under Part 1A of Chapter 10 in relation to the provision of health support services to public health organisations and the public hospitals that they control, and
 - (e) to enable the Health Administration Corporation to exercise its functions under this or any other Act.
- (2) The employment of staff in the NSW Health Service, including the exercise of employer functions in relation to that staff, is subject to the requirements of this or any other Act relating to that staff.
- (3) The Director-General may, subject to subsection (2), exercise on behalf of the Government of New South Wales, the employer functions of the Government in relation to the staff employed in the NSW Health Service.

Note—

The Director-General's functions under this or any other Act may, under section 21 of the [Health Administration Act 1982](#), be delegated to any person.

- (4) The Director-General may create divisions (however described) of staff in the NSW Health Service.
- (5) This section does not limit the purposes for which, or the manner in which, staff may be employed in the NSW Health Service.

116A Salary, conditions etc of staff employed in the NSW Health Service

- (1) The Director-General may fix the salary, wages and conditions of employment of staff employed under this Part in so far as they are not fixed by or under any other law.
- (2) The Director-General may give directions to a public health organisation requiring the payment by the organisation, on behalf of the Government of New South Wales, of the salary, wages and other employment-related costs (such as superannuation, workers compensation, public liability insurance and vicarious tortious liability) of those members of the NSW Health Service who are employed under this Part to enable the public health organisation to exercise its functions.
- (3) The Director-General may enter into an agreement with any association or organisation representing a group or class of members of 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.
- (4) An agreement under subsection (3) binds all members of staff in the group or class affected by the agreement, and no such member, 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.
- (5) This section does not apply in relation to any conditions of employment determined under Part 3 of this Chapter of any member of staff of the NSW Health Service whose employment is subject to that Part.

116B Special provisions relating to staff employed in connection with declared affiliated health organisations

- (1) A person cannot be employed under this Part to enable a declared affiliated health organisation to exercise its functions in connection with its recognised establishments and recognised services unless the affiliated health organisation is satisfied that the person is suitable to carry out duties in connection with the organisation having regard to the health care philosophy of the organisation.
- (2) Section 56 of the [Anti-Discrimination Act 1977](#) applies in relation to the employment under this Part of staff in connection with a declared affiliated health organisation.

116C Transfer of staff within the NSW Health Service

- (1) The Director-General may, on the ground of redundancy, direct the transfer of a member of the NSW Health Service (***the staff member***) from one position in the NSW Health Service to another position in the Service at a salary in accordance with any general determination under section 116A (1), but only if:

- (a) the Director-General is satisfied that:
 - (i) the number of persons who are employed in or in connection with the public health organisation concerned exceeds the number that appears to be necessary for the effective, efficient and economical management of the functions and activities of the organisation, either generally or at a particular location, or
 - (ii) the mix of skills or other expertise of the persons who are employed in or in connection with the public health organisation concerned appears to be unsuitable for the effective, efficient and economical management of the functions and activities of the organisation, either generally or at a particular location, and
 - (b) the Director-General is satisfied that the staff member 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 staff member, and
 - (c) if the staff member is to be transferred to a position in connection with a declared affiliated health organisation—the affiliated health organisation has been consulted by the Director-General as to the suitability of the staff member to carry out duties in connection with the organisation having regard to the health care philosophy of the organisation.
- (2) If a staff member refuses a transfer from one position to another under this section, the Director-General may, if satisfied that the staff member has no valid reason for so refusing, dismiss the member from the NSW Health Service.
 - (3) No compensation is payable in respect of the dismissal.
 - (4) Nothing in this section affects the operation of Part 6 (Unfair dismissals) of Chapter 2 of the *Industrial Relations Act 1996* or any other statutory right that a member of staff may have in relation to his or her dismissal from the NSW Health Service under this section.
 - (5) Nothing in this section prevents the transfer, under any other law, of members of staff of the NSW Health Service.

116D Director-General may arrange for use of services or facilities outside of NSW Health Service

For the purposes of facilitating the exercising of functions within the public health system, the Director-General may arrange for the use of the services of any staff (including by way of secondment to the NSW Health Service) or facilities of any Division of the Government Service or of a public or local authority.

116E Obligations of declared affiliated health organisations under certain legislation

- (1) For the purposes of the *Occupational Health and Safety Act 2000*, a declared affiliated health organisation has the functions and liabilities of an employer in respect of the staff who are employed in the NSW Health Service to enable the organisation to exercise its functions in relation to its recognised establishments and recognised services.
- (2) A reference in the *Anti-Discrimination Act 1977* to an employer in relation to employment in the NSW Health Service in connection with a declared affiliated health organisation and its recognised establishments and recognised services is taken to be a reference to the declared affiliated health organisation.

116F Operation of privacy legislation

If any staff are employed under this Part in the NSW Health Service to enable a public health organisation to exercise its functions, the staff are (however described) taken, for the purposes of the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*, to be part of the public health organisation.

116G Miscellaneous provisions relating to civil liability

- (1) A reference in this section to a public health organisation does not include a reference to an affiliated health organisation unless it is a declared affiliated health organisation.
- (2) Part 5 of the *Workers Compensation Act 1987* applies to work injury damages recoverable from the Government of New South Wales, and to work injury damages recoverable from a public health organisation, by or in respect of a person employed in the NSW Health Service to enable the public health organisation to exercise its functions. That Part so applies as if the public health organisation:
 - (a) were an employer of the person in addition to the Government, and
 - (b) were an employer liable to pay compensation under that Act.
- (3) A policy of insurance may be issued to the Government of New South Wales under the *Workers Compensation Act 1987* that is limited to workers employed in connection with a particular public health organisation.
- (4) If:
 - (a) a person is employed in the NSW Health Service to enable a public health organisation to exercise its functions, and
 - (b) the Government of New South Wales is, as the person's employer, proceeded against for any negligence or other tort of the person (whether the damages are recoverable in an action for tort or breach of contract or in any other action), and

(c) the public health organisation is entitled under a policy of insurance or indemnity to be indemnified in respect of liability that the organisation may incur in respect of that negligence or other tort,

the Government is subrogated to the rights of the public health organisation under that policy in respect of the liability incurred by the Government arising from that negligence or other tort.

(5) For the purposes of Division 2 of Part 9 of Chapter 2 of the *Industrial Relations Act 1996*:

(a) if a person who is member of the NSW Health Service is appointed (otherwise than on an acting basis) to another position in the NSW Health Service in connection with a different public health organisation or a different division of that Service, the person is taken to have entered into a new contract of employment in respect of that other position, and

(b) the cessation of a person's appointment (whether by way of dismissal, resignation, transfer or otherwise) to a position in the NSW Health Service is taken to terminate the person's contract of employment in respect of that position.

(6) However, a person who holds an appointment to a position that is abolished does not, for the purposes of subsection (5) (b), cease to be appointed to that position until:

(a) such time as the person is appointed to another position in the NSW Health Service, or

(b) such time as the person's employment in the NSW Health Service is terminated, whichever occurs first.

(7) In this section:

work injury damages means damages recoverable from a public health organisation or the Government of New South Wales in respect of injury to or the death of a person employed in the NSW Health Service to enable the public health organisation to exercise its functions caused by the negligence or other tort of the public health organisation or the Government and arising out of the employment of the person by the Government, whether the damages are recoverable in an action for tort or breach of contract or in any other action, but does not include motor accident damages to which Chapter 5 of the *Motor Accidents Compensation Act 1999* applies.

Part 2 Criminal and disciplinary matters concerning staff of NSW Health Service

117AA Definitions

In this Part:

member of staff means a member of the NSW Health Service who is employed under Part 1 of this Chapter to enable a public health organisation to exercise its functions.

117 Duty to report certain criminal conduct and disciplinary matters

- (1) A member of staff who is charged with having committed, or is convicted of, a serious sex or violence offence must, within 7 days of the charge being laid or conviction, report that fact in writing to the chief executive of the relevant 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 member of staff 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 relevant organisation, and
 - (b) provide the chief executive with a copy of that finding.
- (3) In this section:

chief executive of the relevant organisation, in relation to a member of staff, means the chief executive of the public health organisation to which the member of staff has been assigned.

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

relevant health professional registration Act means:

- (a) in relation to a member of staff who is employed as a chiropractor or osteopath—the [Chiropractors and Osteopaths Act 1991](#), or
- (b) in relation to a member of staff who is employed as a dental technician or dental prosthetist—the [Dental Technicians Registration Act 1975](#), or
- (c) in relation to a member of staff who is employed as a dentist—the [Dentists Act 1989](#), or
- (d) in relation to a member of staff who is employed as a medical practitioner—the [Medical Practice Act 1992](#), or
- (e) in relation to a member of staff who is employed as a nurse or midwife—the [Nurses and Midwives Act 1991](#), or

- (f) in relation to a member of staff who is employed as an optometrist—the *Optometrists Act 1930*, or
- (g) in relation to a member of staff who is employed as a physiotherapist—the *Physiotherapists Registration Act 1945*, or
- (h) in relation to a member of staff who is employed as a podiatrist—the *Podiatrists Act 1989*, or
- (i) in relation to a member of staff who is employed as a psychologist—the *Psychologists Act 1989*, or
- (j) in relation to a member of staff who is employed as a pharmacist—the *Pharmacy Act 1964*.

117A Duty of chief executive to report certain conduct

- (1) The chief executive of a public health organisation is to report to a registration authority any conduct of a member of staff that the chief executive suspects on reasonable grounds may constitute professional misconduct or unsatisfactory professional conduct under the health registration Act by which the registration authority is constituted.
- (2) In this section, **health registration Act** and **registration authority** have the same meanings as in the *Health Care Complaints Act 1993*.

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

- (1) The chief executive of a public health organisation is, within 30 days (or such further period as may be agreed to by the Director-General) of becoming aware that a member of staff has been convicted (whether before or during his or her employment) of a serious sex or violence offence, to notify the Director-General of the staff member's conviction.
- (2) On being notified under subsection (1), the Director-General is to afford the member of staff concerned a reasonable opportunity to make written submissions concerning any matter relevant to the conviction that the staff member wishes to have considered in determining what (if any) disciplinary action should be taken in relation to the staff member.
- (3) The Director-General may take such disciplinary action as the Director-General considers appropriate (having regard to section 119) against a member of staff who has been convicted (whether before or during his or her employment) of a serious sex or violence offence.
- (4) This section does not apply to a conviction that occurred before a person was employed if, before that employment, the person notified the Director-General in

writing of the fact of the conviction.

(5) This section extends to a conviction that occurred before the commencement of this section (as substituted by the *Public Sector Employment Legislation Amendment Act 2006*).

(6) In this section:

disciplinary action means:

- (a) dismissal from the NSW Health Service, or
- (b) imposing conditions in respect of the supervision of, or reporting by, a member of staff or in respect of the scope of a staff member's duties, or
- (c) transferring a member of staff to another position in the NSW Health Service.

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 a member of staff 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 a member of staff under this Part.

121 Effect of Part

- (1) (Repealed)
- (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 a member of staff may have in relation to the termination of his or her 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 Director-General.

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 Director-General 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 Director-General, 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
 - (a1) the chief executive of the Ambulance Service of NSW, and
- (b) the persons holding:
 - (i) such positions in the NSW Health Service (including the Ambulance Service of NSW), and
 - (ii) such positions as chief executive of a health corporation board, and
 - (iii) such positions in the Health Professional Registration Boards Division of the Government Service,

as are for the time being determined by the Director-General 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 Director-General.
- (2) The Director-General 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 Director-General 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 Director-General.
- (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 Director-General 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 Director-General 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 Director-General.
- (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 Director-General, 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 Director-General in respect of a health executive, including any liability of the Director-General to make any such contributions or to pay approved costs associated with that scheme, or
- (b) the provision by the Director-General 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 Director-

General (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 Director-General 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 Director-General in respect of a health executive that are required to be made by the Director-General 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 Director-General) 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 Director-General 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 Director-General and the Director-General 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 Director-General may remove a health executive from an executive position at any time for any or no reason and without notice.
- (2) The Director-General:
 - (a) may declare a health executive who is removed from an executive position by the Director-General 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 NSW Health Service unless appointed to some other position in the NSW Health Service.

- (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 Director-General.
- (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 Government 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 NSW Health Service (or of the Government Service in the case of a person holding a position referred to in section 121B (1) (b) (iii)) unless appointed to some other position in the NSW Health Service (or in the Government Service in the case of a person holding a position referred to in section 121B (1) (b) (iii)) or unless 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 Director-General.

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

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 (Repealed)

126B Director-General to provide health support services

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

- (3) The Director-General may determine the fees and charges payable for any service provided by or on behalf of the Director-General under this section.
- (4) The Director-General may delegate his or her functions under this section to a person or appointed body.
- (5) 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.
- (6) Section 21 of the *Health Administration Act 1982* does not apply in relation to the functions under this section.
- (7) Nothing in this section limits the Director-General's functions under this or any other Act or law.
- (8) In this section:

appointed body means a committee, board or other body appointed under section 126C by the Director-General.

126C Appointed bodies

- (1) The Director-General 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 Director-General as the Director-General thinks fit.
- (3) The procedure of an appointed body is to be determined by the Director-General or (subject to any determination of the Director-General) 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 Director-General 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 Director-General 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 Director-General.

126D-126F (Repealed)

126G Directions by Minister in relation to acquisition of health support services

- (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 Director-General 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 Director-General in carrying out the Director-General's functions or exercising the Director-General's 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) (Repealed)
- (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 (or part of any subsidy) such conditions as the Minister determines from time to time.
- (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).

133A Nature of staffing arrangements

Any arrangements entered into by or on behalf of the Crown with a public health

organisation in connection with the employment of staff in the NSW Health Service do not constitute an employment placement service for the purposes of Part 5C of the *Fair Trading Act 1987*.

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,
 - (j) the control and governance of members of staff of the NSW Health Service and any other matter or thing necessary or convenient to ensure the maintenance of discipline and efficiency of that staff,
 - (k) the conditions of employment (including salaries and wages) of persons employed by affiliated health organisations (other than declared affiliated health

organisations) in respect of their recognised establishments and recognised services,

- (l) the management of, and accounting for, any funds (including the amount of any subsidy determined under section 127) paid by or on behalf of the State to a public health organisation to meet the employment-related costs and liabilities in relation to those members of the NSW Health Service who are employed in connection with the organisation,
 - (m) the recognition of prior government service or public health system service for the purposes of calculating the long service leave entitlements of employees in the public health system.
- (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)

Column 1	Column 2	Column 3
Name of service	Description of local government area or city	Description of area other than local government area

Greater Southern Area Health Service	Albury Bega Valley Berrigan Bland Bombala Boorowa Carrathool Conargo Coolamon Cooma-Monaro Cootamundra Corowa Deniliquin Eastern Capital City Regional Eurobodalla Greater Argyle Greater Hume Greater Queanbeyan Griffith Gundagai Harden Hay Jerilderie Junee Leeton Lockhart Murray Murrumbidgee Narrandera Snowy River Temora Tumbarumba Tumut Upper Lachlan Urana Wagga Wagga Wakool Yass Valley Young
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	Balranald	
	Bathurst Regional	
	Blayney	
	Bogan	
	Bourke	
	Brewarrina	
	Broken Hill	
	Cabonne	
	Central Darling	
	Cobar	
	Coolah	
	Coonabarabran	
	Coonamble	
Greater Western Area Health 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
Northern Sydney and Central Coast Area Health Service	Kempsey
	Kyogle
	Lismore
	Nambucca
	Richmond Valley
	Tweed
	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 Hurstville Kiama Kogarah Randwick Rockdale Shellharbour Shoalhaven Sutherland Sydney (part) Waverley Woollahra Wollongong	Lord Howe Island
Sydney South West Area Health Service	Ashfield Bankstown Burwood Camden Campbelltown Canada Bay Canterbury Fairfield Leichhardt Liverpool Marrickville Strathfield Sydney (part) Wingecarribee Wollondilly	
Sydney West Area Health service	Auburn Baulkham Hills Blacktown Blue Mountains Hawkesbury Holroyd Lithgow Parramatta Penrith	

Schedule 2 Statutory health corporations

(Section 41)

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

The Stewart House Preventorium, Curl Curl

Board

Schedule 3 Affiliated health organisations

(Section 62)

Column 1**Column 2****Name of organisation****Recognised establishment or recognised service**

Australian Red Cross Society	Glen Mervyn Junior Red Cross Children's Home, Randwick. Eleanor Mackinnon Junior Red Cross Home, Cronulla.
Benevolent Society of New South Wales	Central Sydney Scarba Services. Early Intervention Program. Eastern Sydney Scarba Services. 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. Lourdes Hospital and Community Health Service (other than Holy Spirit Dubbo).
Hope HealthCare Ltd	Eversleigh Hospital, Petersham. Graythwaite Nursing Home, North Sydney. Greenwich Hospital, Greenwich. Braeside Hospital, Prairiewood. 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. 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. 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 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 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 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 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 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 or in connection with 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.

member means a member of a health corporation board.

staff member means a member referred to in section 49 (2).

Part 2 Constitution

2 (Repealed)

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 the 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 the 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 staff member, ceases to be a member of staff of the NSW Health Service, 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) (Repealed)
- (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 Provisions relating to members and procedure of Ambulance Services Advisory Council

(Section 67C (7))

1 Definitions

In this Schedule:

appointed member means a member other than the chief executive of the Ambulance Service of NSW.

member means any member of the Advisory Council.

staff member means a member referred to in section 67C (3).

2 Chairperson of Advisory Council

- (1) Of the appointed members of the Advisory Council, one is, in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Minister, to be appointed as Chairperson of the Advisory Council.
- (2) The Minister may remove an appointed member from the office of Chairperson of the Advisory Council.
- (3) A person who is an appointed member and Chairperson of the Advisory Council is to be taken to have vacated office as Chairperson if the person:
 - (a) is removed from that office by the Minister under this clause, or
 - (b) resigns that office by instrument in writing addressed to the Minister, or
 - (c) ceases to be a member.

3 Acting members and acting Chairperson

- (1) The Director-General 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 all the functions of the member and is to be taken to be a member.

- (2) The Director-General may, from time to time, appoint a member to act in the office of Chairperson of the Advisory Council during the illness or absence of the Chairperson, and the member, while so acting, has all the functions of the Chairperson and is to be taken to be the Chairperson.
- (3) The Director-General may remove any person from any office to which the person was appointed under this clause.
- (4) For the purposes of this clause, a vacancy in the office of a member or the Chairperson of the Advisory Council is to be taken to be an absence from office of the member or Chairperson, as the case may be.

4 Terms of office

An appointed member holds office, subject to this Schedule:

- (a) in the case of a staff member—for such period not exceeding 2 years, and
- (b) in any other case, for such period not exceeding 4 years,

as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

5 Vacancy in office of member

An appointed member is to be taken to have vacated office 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) absents himself or herself from 4 consecutive meetings of the Advisory Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council 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 that is punishable by imprisonment for

12 months or upwards 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) in the case of a staff member, ceases to be a member of the Ambulance Service of NSW.

6 Disclosure of pecuniary interests

- (1) A member:

(a) who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Advisory Council, and

(b) whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

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 Advisory Council.

- (2) A disclosure by a member at a meeting of the Advisory Council 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 this clause.

- (3) Particulars of any disclosure made under this clause are to be recorded by the members in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person on payment of the fee determined by the members.

- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Director-General or the other members otherwise determine:

(a) be present during any deliberation of the Advisory Council with respect to the matter, or

(b) take part in any decision of the Council with respect to the matter.

- (5) For the purposes of the making of a determination by the members 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 other members for the purpose of

making the determination, or

(b) take part in the making by the other members of the determination.

(6) A contravention of this clause does not invalidate any decision of the Advisory Council.

7 Effect of certain other Acts

(1) If by or under any 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,

the 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 such a member.

(2) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

8 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.

9 Liability of members etc

A matter or thing done or omitted to be done by the Advisory Council, a member or any person acting under the direction of the Council does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this Act, subject the member or a person so acting personally to any action, liability, claim or demand.

10 General procedure

The procedure for the calling of meetings of the Advisory Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

11 Quorum

The quorum for a meeting of the Advisory Council is a majority of the members for the time being.

12 Presiding member

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

13 Voting

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

14 First meeting of Advisory Council

The Director-General is to call the first meeting of the Advisory Council in such manner as the Director-General thinks fit.

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)

[*Public Sector Employment Legislation Amendment Act 2006*](#)

- (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.

Part 5 Provisions consequent on enactment of **Public Sector**

Employment Legislation Amendment Act 2006

62 Definitions

In this Part:

amending Act means the *Public Sector Employment Legislation Amendment Act 2006*.

former corporation means the Ambulance Service of New South Wales constituted under the repealed Act.

relevant commencement means:

- (a) in relation to an area health service or a statutory health corporation—the commencement of Schedule 2 [27] to the amending Act, or
- (b) in relation to an affiliated health organisation—the day on which the organisation becomes a declared affiliated health organisation.

relevant public health organisation means:

- (a) an area health service, or
- (b) a statutory health corporation, or
- (c) a declared affiliated health organisation.

repeal date means the date on which the repealed Act is repealed by the amending Act.

repealed Act means the *Ambulance Services Act 1990* as in force immediately before its repeal by the amending Act.

63 Transitional provision—construction of superseded references

- (1) In any other Act, or in any instrument made under any Act or in any other instrument of any kind (whether enacted, made or executed before or after the commencement of this clause):
 - (a) a reference to a member of staff or employee (however described) of a relevant public health organisation is to be read as including a reference to a member of staff of that part of the NSW Health Service comprising the group of staff who are employed under Part 1 of Chapter 9 to enable the public health organisation to exercise its functions, and
 - (b) a reference to a relevant public health organisation in its capacity as an employer of staff (however described) is, to the extent that the staff concerned comprise a group of staff employed under Part 1 of Chapter 9 to enable the public health organisation to exercise its functions, to be read as including a reference to the Director-General, and

(c) a reference to the Health Administration Corporation in relation to the employment of staff is to be read as including a reference to the Director-General.

(2) This clause is subject to the regulations.

64 Existing staff of public health organisations and Health Administration Corporation

- (1) A person who, immediately before the relevant commencement, was employed as a member of staff (however described) of a relevant public health organisation or the Health Administration Corporation (***the Corporation***):
- (a) ceases, on that commencement, to be employed by the public health organisation or the Corporation, and
 - (b) is taken, on that commencement, to be employed under Part 1 of Chapter 9 as a member of staff of the NSW Health Service.
- (2) Any such person who, under subclause (1), becomes a member of staff of the NSW Health Service:
- (a) is, until such time as provision is otherwise made under this Act or any other law, to continue to be employed in accordance with the same terms and conditions (including the terms of any State industrial instrument) that applied to the person as a member of staff of the relevant public health organisation or the Corporation, and
 - (b) is taken, for the purposes of this clause, to have been transferred to the NSW Health Service from the employment of the public health organisation or the Corporation.
- (3) If an award under the [Workplace Relations Act 1996](#) of the Commonwealth (***the Federal award***) applied to the person as a member of staff of the public health organisation or Corporation immediately before the relevant commencement, a State industrial instrument in the nature of an award is taken to have been created in the same terms as the Federal award and is taken to apply to the person for the purposes of subclause (2).
- (4) If a certified agreement under the [Workplace Relations Act 1996](#) of the Commonwealth (***the Federal agreement***) applied to the person as a member of staff of the public health organisation or Corporation immediately before the relevant commencement, a State industrial instrument in the nature of an enterprise agreement is taken to have been created in the same terms as the Federal agreement and is taken to apply to the person for the purposes of subclause (2).
- (5) The terms of any such instrument created as provided by subclause (3) or (4) have effect despite anything to the contrary in the [Annual Holidays Act 1944](#), the [Long Service Leave Act 1955](#), the [Industrial Relations Act 1996](#) or any other law of the

State.

- (6) A person who is transferred under this clause:
 - (a) retains any rights to annual leave, long service leave, sick leave, and other forms of leave, accrued or accruing in his or her employment with the organisation or body from which the person is transferred, and
 - (b) is not entitled to receive any payment or other benefit merely because the person ceases to be a member of staff of the organisation or body from which the person is transferred, and
 - (c) is not entitled to claim, both under this Act or any other Act, dual benefits of the same kind for the same period of service.
- (7) A relevant public health organisation is liable for the cost of any leave entitlements for a person who is transferred under this clause that have accrued up until the date on which the person is transferred (***the transfer date***).
- (8) The Minister may, from time to time, direct a relevant public health organisation to meet the cost of its liability in respect of any leave entitlements that have accrued before the transfer date. Any such direction has effect despite any determination made in respect of the public health organisation under section 127.
- (9) This clause is subject to the provisions of this Act and the regulations.

65 Existing executive officers

Any person within the NSW Health Service who, immediately before the commencement of Schedule 2 [27] to the 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.

66 Abolition of former corporation

- (1) On the repeal date:
 - (a) the former corporation is abolished, and
 - (b) any assets, rights and liabilities of the former corporation become the assets, rights and liabilities of the Health Administration Corporation.
- (2) Except as provided by clause 71, a reference in any other Act, or in any instrument of any kind (including any contract or agreement) to the former corporation is to be construed as a reference to the Health Administration Corporation.
- (3) In this clause:

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.

liabilities means all liabilities, debts and obligations (whether present or future and whether vested or contingent).

rights means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

67 Ambulance Service Board

- (1) On the repeal date:
 - (a) the Ambulance Service Board constituted under the repealed Act is abolished, and
 - (b) each person who held office as a director of the Board (other than the Chief Executive Officer of the Board) immediately before that date ceases to hold that office.
- (2) A person who, under this clause, ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.
- (3) However, the person is taken to have been appointed as a member of the Ambulance Service Advisory Council, subject to Schedule 6 (as inserted by the amending Act), for the remainder of the term for which the person was appointed as a director of the Ambulance Service Board.

68 Chief Executive Officer of Ambulance Service Board

- (1) The person holding office as the Chief Executive Officer of the Ambulance Service Board immediately before the repeal date ceases to hold that office on that date but is taken to be employed as a health executive (within the meaning of Part 3 of Chapter 9) for the balance of the person's term of appointment as Chief Executive Officer of the Ambulance Service Board.
- (2) The continuation of a person's employment under subclause (1) is subject to Part 3 of Chapter 9.

69 Transfer of staff of former corporation

- (1) A person who, immediately before the repeal date, was employed as a member of staff of the former corporation, is taken, on that date, to be employed as a member of staff of the Ambulance Service of NSW.
- (2) Any such person who, under subclause (1), becomes a member of staff of the Ambulance Service of NSW is, until such time as provision is otherwise made under this Act or any other law, to continue to be employed in accordance with the same terms and conditions (including the terms of any State industrial instrument) that

applied to the person as a member of staff of the former corporation.

- (3) A reference in any other Act or instrument to a member of staff (however described) of the former corporation is to be construed as a reference to a member of staff of the Ambulance Service of NSW.
- (4) This clause is subject to the provisions of this Act (including clause 70) and the regulations.

70 Appointment of certain staff of former corporation as executive officers

- (1) This clause applies to a position on the staff of the former corporation that is, as at the repeal date, the subject of a determination under section 121B (1) (b).
- (2) On the repeal date, a person who, immediately before that date, 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 repeal date.

71 Continuation of regulation made under repealed Act

- (1) The *Ambulance Services Regulation 2005*, as in force immediately before the repeal date, continues in force and is taken to be a regulation made under this Act.
- (2) The Regulation continued in force by subclause (1) (**the continued regulation**) may be amended and repealed in the same way as any other regulation made under this Act.
- (3) A reference in the continued regulation to the Ambulance Service (other than a reference that relates to a member of staff of the Ambulance Service) is to be construed as a reference to the chief executive of the Ambulance Service of NSW.
- (4) In exercising any of the functions of the former corporation under the continued regulation, the chief executive of the Ambulance Service of NSW may delegate to any person any of the functions that the chief executive may exercise as a result of subclause (3).

72 Existing workers compensation policies of insurance

A policy of insurance issued to a public health organisation under the *Workers Compensation Act 1987* and in force immediately before the relevant commencement for the organisation concerned is also taken to have been issued to the Government of New South Wales (but only as a policy that is limited to workers employed in the NSW Health Service to enable the public health organisation to exercise its functions).

73 Special provisions relating to The Stewart House Preventorium, Curl Curl

- (1) The amendments made to this Act by the amending Act do not apply to or in respect of The Stewart House Preventorium until the day appointed by proclamation by the Governor for the purposes of this clause.
- (2) Until that appointed day, this Act continues to apply to and in respect of the The Stewart House Preventorium (including in relation to the employment of any staff) as if the amending Act had not been enacted.

Dictionary

(Section 3)

Part 1 Definitions

affiliated health organisation—see section 13.

Ambulance Service of NSW—see section 67A.

ambulance services means services relating to the work of rendering first aid to, and the transport of, sick and injured persons.

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](#).

declared affiliated health organisation—see section 62A.

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 ambulance officer means a person appointed to be an honorary ambulance officer under section 67H.

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.

member of the NSW Health Service means any person who is employed under Part 1 of Chapter 9 in the NSW Health Service.

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 means the NSW Health Service referred to in section 115.

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.

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.