

# Health Administration Act 1982 No 135

[1982-135]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Does not include amendments by**
  - [Health Legislation Amendment Act 2010 No 52](#), Sch 2.1 (not commenced — to commence on 1.2.2011)
  - [Health Services Amendment \(Local Health Networks\) Act 2010 No 97](#) (not commenced — to commence on 1.1.2011)

### Authorisation

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# Health Administration Act 1982 No 135



New South Wales

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# Health Administration Act 1982 No 135



New South Wales

An Act to establish a Department of Health and certain other bodies; to vest certain functions in the Minister for Health and certain other bodies and persons; to provide for the transfer of certain employees; to repeal the *Health Commission Act 1972*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Health Administration Act 1982*.

### 2 Commencement

- (1) Sections 1, 2, 33 and 34 and Schedule 3 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 3 (Repealed)

### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**area health service** means an area health service constituted under the *Health Services Act 1997*.

**Corporation** means the Health Administration Corporation constituted by section 9.

**Department** means the Department of Health.

**Director-General** means the Director-General of the Department.

**Foundation** means the New South Wales Health Foundation constituted by section 16.

**health service** means any medical, hospital, ambulance, paramedical, community

health or environmental health service or any other service (including any service of a prescribed class or description) 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.

**regulations** means regulations under this Act.

- (1A) The expression “NSW Health” may be used to describe the Corporation, the Department and any other body and organisation under the control and direction of the Minister or the Director-General.
- (2) A reference in this Act to an ambulance service is a reference to a service relating to the work of rendering first aid to, and the transport of, sick and injured persons.
- (3) A reference in this Act to:
  - (a) a function includes a reference to a power, authority and duty, and
  - (b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

## **Part 2 Administration**

### **Division 1 The Minister**

#### **5 Functions of the Minister**

- (1) The Minister may formulate general policies, in accordance with which the functions of the Minister, Department, Director-General, Corporation and Foundation are to be exercised, for the purpose of promoting, protecting, developing, maintaining and improving the health and well-being of the people of New South Wales to the maximum extent possible having regard to the needs of and financial and other resources available to the State.
- (2) The Minister may:
  - (a) provide, conduct, operate and maintain and, where necessary, improve and extend any health service or any ancillary or incidental service and arrange for the construction of any buildings or works necessary for or in connection with any such service,
  - (b) enter into any agreement or arrangement for any other person to provide, conduct, operate and maintain any health service, and
  - (c) do such supplemental, incidental or consequential acts as may be necessary or expedient for the exercise of the functions under the foregoing provisions of this subsection.

- (3) Nothing in this section takes away or affects any function that the Minister has apart from this section.

**5A Exercise of Minister's functions through Corporation, joint ventures or other associations**

- (1) A function of the Minister may, if the Minister so determines, be exercised:
- (a) by the Corporation, or
  - (b) by the Minister (or by the Corporation) in a partnership, joint venture or other association with other persons or bodies.
- (2) A function of the Minister that is exercisable in relation to anything belonging to, or controlled by, the Minister is also exercisable in relation to anything belonging to, or controlled by, the Corporation.
- (3) Nothing in this section prevents the Minister from exercising a function in his or her capacity as the Minister and entering into contracts or doing other things on behalf of the Crown.

**Division 2**

**6, 7 (Repealed)**

**Division 3 The Director-General**

**8 Functions of the Director-General**

- (1) The Director-General shall have and may exercise such functions as are conferred or imposed on the Director-General by or under this or any other Act.
- (2) The Director-General shall have and may exercise the following functions:
- (a) to initiate, promote, commission and undertake surveys and investigations into:
    - (i) the health needs of the people of New South Wales,
    - (ii) the resources of the State available to meet those needs, and
    - (iii) the methods by which those needs should be met,
  - (b) to inquire into the nature, extent and standards of the health services, facilities and personnel required to meet the health needs of the people of New South Wales and to determine the cost of meeting those needs,
  - (c) to plan the provision of comprehensive, balanced and co-ordinated health services throughout New South Wales,
  - (d) to formulate the programs and methods by which the health needs of the people

of New South Wales may be met,

- (e) to undertake, promote and encourage research in relation to any health service,
  - (f) to facilitate the provision of health services by any council (within the meaning of the *Local Government Act 1993*) or by any other body or person,
  - (g) to facilitate the provision by any Government Department, statutory authority, other body or person of social welfare services necessary or desirable to complement any health service,
  - (h) to promote and facilitate the provision of the professional, technical or other education or training of any persons employed or to be employed in the provision of any health service,
  - (i) to promote and facilitate a system of health care for the people of New South Wales provided by private bodies, institutions, associations and persons, as well as by the State and public bodies,
  - (j) to do such supplemental, incidental or consequential acts as may be necessary or expedient for the exercise of the Director-General's functions under the foregoing provisions of this subsection.
- (3) The Director-General is, in the exercise of functions conferred or imposed on the Director-General by or under any Act administered by the Minister for Health, subject to the control and direction of the Minister, except in relation to the contents of a recommendation or report made by the Director-General to the Minister.

**8A Exercise of Director-General's functions through Corporation, joint ventures or other associations**

- (1) A function of the Director-General may, if the Director-General so determines, be exercised:
  - (a) by the Corporation, or
  - (b) by the Director-General (or by the Corporation) in a partnership, joint venture or other association with other persons or bodies.
- (2) A function of the Director-General that is exercisable in relation to anything belonging to, or controlled by, the Director-General is also exercisable in relation to anything belonging to, or controlled by, the Corporation.
- (3) Nothing in this section prevents the Director-General from exercising a function in his or her capacity as the Director-General and entering into contracts or doing other things on behalf of the Crown.



## **Division 4 The Corporation**

### **9 Corporation**

- (1) The Director-General is, for the purpose of exercising the functions expressed to be conferred or imposed on the Corporation by or under this or any other Act, hereby incorporated as a corporation sole with the corporate name “Health Administration Corporation”.
- (2) The Corporation:
  - (a) has perpetual succession,
  - (b) shall have an official seal,
  - (c) may take proceedings, and be proceeded against in its corporate name,
  - (d) subject to this Act, may, for the purposes for which it is constituted, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property,
  - (e) 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
  - (f) is, for the purpose of any Act, a statutory body representing the Crown.
- (2A) However, the Corporation cannot employ any staff.

**Note—**

Staff may be employed under Part 1 of Chapter 9 of the [Health Services Act 1997](#) in the NSW Health Service to enable the Corporation to exercise its functions under this or any other Act.

- (3) The regulations may make provision for or with respect to:
  - (a) the custody and use of the seal of the Corporation, and
  - (b) the keeping of records concerning the acts, decisions and proceedings of the Corporation.
- (4) All courts and persons acting judicially:
  - (a) shall take judicial notice of the seal of the Corporation that has been affixed to any instrument or document, and
  - (b) shall, until the contrary is proved, presume that the seal was properly affixed.
- (5) The Corporation is subject to the control and direction of the Minister.

### **10 Acquisition of land by Corporation**

- (1) The Corporation, with the approval of the Minister and subject to such terms and

conditions as the Minister may attach to the approval, may, for the purpose of the exercise by the Minister, Department, Director-General, Corporation or Foundation of their functions, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

- (2) Without limiting the generality of subsection (1), the Corporation may acquire in any manner authorised by subsection (1):
  - (a) any land of which that proposed to be acquired under this section forms part, and
  - (b) any land adjoining or in the vicinity of any land proposed to be acquired under this section.
- (3) For the purposes of the *Public Works Act 1912*, any such acquisition of land is taken to be for an authorised work and the Corporation is, in relation to that authorised work, taken to be the Constructing Authority.
- (4) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply in respect of works constructed under this Act.
- (5) (Repealed)
- (6) Nothing in this section affects any operation that the *Public Works Act 1912* would have if this section had not been enacted and the Corporation had not been constituted.

## **11 Disposal of land by Corporation**

The Corporation may, with the approval of the Minister and subject to such terms and conditions as the Minister may attach to the approval, sell, lease, exchange or otherwise deal with or dispose of land that has been acquired by the Corporation under this or any other Act, or any part thereof, and may, with the like approval and subject to the like terms and conditions, grant easements or rights-of-way over any such land so acquired or any part thereof.

## **12 Power to accept gifts etc**

- (1) The Corporation may acquire, for any purpose connected with:
  - (a) the provision of any health service, or
  - (b) any of the functions of the Minister, Department, Director-General or Corporation,any property by gift, devise or bequest and may agree to and carry out the conditions of any such gift, devise or bequest.
- (2) The rule of law against remoteness of vesting shall not apply to any such condition to which the Corporation has agreed.

### **13 Contracts of Corporation**

- (1) The 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 with respect to the exercise by the Minister, Department, Director-General, Corporation or Foundation of their functions under this or any other Act.
- (2) Any such contract or agreement shall be deemed, 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.
- (3) The Corporation may, on such terms and conditions as may be agreed upon, sell or let out on hire any goods, plant, machinery or material acquired by it under this or any other Act.

### **13A Corporation to manage accounts of health professional councils**

- (1) The Corporation is to establish in the Special Deposits Account in the Treasury a separate account in respect of each of the health professional councils referred to in Schedule 2A.
- (2) There is to be paid into each such account:
  - (a) the money transmitted to the Corporation in accordance with the *Health Practitioner Regulation National Law (NSW)*, and
  - (b) any other money which may lawfully be paid into the account.
- (3) The Corporation may pay out of such an account:
  - (a) amounts required to meet the costs incurred in the administration or execution of the *Health Practitioner Regulation National Law (NSW)* and the regulations made under that Law, and
  - (b) amounts necessary to meet any costs associated with the employment of NSW Health Service staff to enable the Corporation to exercise its functions in respect of that council.
- (3A) For the purposes of section 4E (2) of the *Public Sector Employment and Management Act 2002*, the Corporation is taken to be the statutory corporation in respect of which staff are employed under Chapter 1A of that Act to enable a health professional council to exercise its functions. Accordingly, the Corporation is authorised to pay out of an account under this section any employment-related costs that the Corporation is directed to pay under section 4E (2) of that Act.
- (4) The Corporation may invest money in such an account:
  - (a) in the manner authorised by the *Public Authorities (Financial Arrangements) Act*

1987, or

(b) if that Act does not confer power on the Corporation to invest the money, in any other manner approved by the Treasurer.

(5) The interest or profits accruing from any such investment are to be paid into the relevant account.

**14, 15 (Repealed)**

**Division 5 The Foundation**

**16 Foundation**

(1) There is hereby constituted a Corporation with the corporate name “New South Wales Health Foundation”.

(2) The affairs of the Foundation shall be managed by the Minister.

(3) Any act, matter or thing done in the name of, or on behalf of, the Foundation by the Minister, or with the authority of the Minister, shall be deemed to have been done by the Foundation.

(4) The Foundation:

(a) has perpetual succession,

(b) shall have an official seal,

(c) may take proceedings, and be proceeded against, in its corporate name,

(d) subject to this Act, may, for the purposes for which it is constituted, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property,

(e) 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 Foundation is constituted, and

(f) is, for the purposes of any Act, a statutory body representing the Crown.

(5) The regulations may make provision for or with respect to:

(a) the custody and use of the seal of the Foundation, and

(b) the keeping of records concerning the acts, decisions and proceedings of the Foundation.

(6) All courts and persons acting judicially:

(a) shall take judicial notice of the seal of the Foundation that has been fixed to any

instrument or document, and

(b) shall, until the contrary is proved, presume that the seal was properly affixed.

### **17 Functions of the Foundation**

- (1) The Foundation shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.
- (2) The Foundation may provide funds and make grants, and provide other support, for any purpose connected with:
  - (a) the provision of any health service, or
  - (b) any of the functions of the Minister, Department, Director-General or Corporation.
- (3) The Foundation may, subject to such terms and conditions as it thinks appropriate, give or make available real or personal property (with or without consideration) to or for any person, body or organisation who or which provides any health service.
- (4) The Foundation may promote and facilitate the raising of funds by means of public appeal or otherwise by any body, institution, association or person for the purposes of subsection (2) or (3).

### **18 Power to accept gifts etc**

- (1) The Foundation may acquire, for the purposes for which it is constituted, any property by gift, devise or bequest and may agree to and carry out the conditions of any such gift, devise or bequest.
- (2) The rule of law against remoteness of vesting shall not apply to any such condition to which the Foundation has agreed.
- (3) The Foundation may act as trustee of money or other property vested in the Foundation upon trust.
- (4) The Corporation may, with the approval of the Minister, declare, by instrument published in the Gazette, any specified property (including money) acquired by the Corporation under section 12 to be property to which this subsection applies, and the property thereupon becomes vested in the Foundation, and any relevant condition to which the Corporation has agreed shall be deemed to be a condition to which the Foundation has agreed.

### **19 New South Wales Health Foundation Fund**

- (1) There shall be established and kept in the Treasury an account in the Special Deposits Account to be called the "New South Wales Health Foundation Fund" (referred to in this section as ***the Fund***).

- (2) The Fund shall consist of any money received from any source by the Foundation.
- (3) There may be paid out of the Fund:
  - (a) all charges, costs and expenses incurred by or with the authority of the Minister in the administration of the Foundation, and
  - (b) all funds and grants provided, and other payments made, by the Foundation in the exercise of its functions.
- (4) Any money acquired by the Foundation shall, for the purposes of the [Audit Act 1902](#), be deemed to be public moneys.

## **Division 6 Councils, committees and advisory bodies**

### **20 Appointment of advisory bodies**

- (1)-(3) (Repealed)
- (4) The Minister may appoint such councils, committees and advisory bodies as the Minister may consider appropriate.
- (5) A council, committee or advisory body appointed under this section shall have such functions as the Minister may from time to time direct.
- (6) A council, committee or advisory body appointed under this section shall consist of a person appointed as Chairperson by the Minister and such other persons appointed by the Minister as the Minister thinks fit.
- (7) The Chairperson and other members so appointed shall hold office for such term as the Minister may specify in respect of each of them in the instruments of their appointment and any such appointment may be terminated by the Minister at any time.
- (8) The Chairperson and any other member of a council, committee or advisory body appointed under this section shall each be entitled to be paid such fees and allowances (if any) as may be from time to time determined in respect of the Chairperson or member by the Minister.
- (9) The office of a member of a council, committee or advisory body appointed under this section shall, for the purposes of any Act, be deemed not to be an office or place of profit under the Crown.

## **Division 6A Medical Services Committee**

### **20A Definitions**

In this Division:

**Committee** means the Medical Services Committee established under section 20B.

**legislation** means legislation of New South Wales, and includes regulations or by-laws made under any Act.

**patient** means a patient or prospective patient of a medical practitioner or of a hospital.

**subcommittee** means a subcommittee of the Committee.

## **20B Establishment of Medical Services Committee**

- (1) There is hereby established a committee, to be called the “Medical Services Committee”.
- (2) The Committee shall consist of 10 medical practitioners, being:
  - (a) a Chairperson appointed as such by the Minister on the nomination of the Committee, and
  - (b) 9 other members appointed by the Minister, of whom:
    - (i) 4 shall be appointed on the nomination of the Council of the Australian Medical Association (NSW) Limited, one of whom shall be a general practitioner and one of whom shall be a salaried medical officer,
    - (ii) 2 shall be appointed on the nomination of the New South Wales State Committee of the Australian Association of Surgeons, one of whom shall be a salaried specialist,
    - (iii) 1 shall be appointed on the nomination of the New South Wales State Committee of the Australian Society of Orthopaedic Surgeons,
    - (iv) 1 shall be appointed on the nomination of the New South Wales Section of the Australian Society of Anaesthetists or the appropriate executive body of that Section, and
    - (v) 1 shall be appointed on the nomination of the Internal Medicine Society of Australia & New Zealand Incorporated.
- (3) The Committee may, after consultation with the Minister, appoint subcommittees of the Committee for the purpose of advising, consulting with and assisting the Committee, and persons may be appointed as members of such a subcommittee whether or not they are members of the Committee.
- (4) The members of a subcommittee shall hold office for such term as the Committee may specify in respect of each of them in the instruments of their appointment and any such appointment may be terminated by the Committee at any time.
- (5) The office of a member of the Committee or of a subcommittee shall, for the purposes

of any Act, be deemed not to be an office or place of profit under the Crown.

(6) Schedule 4 has effect with respect to the Committee.

## **20C Functions of Medical Services Committee etc**

(1) The functions of the Committee are to advise and consult with the Minister and officers of the Department as to:

(a) matters affecting the practice of medicine in New South Wales (other than matters arising under State industrial instruments and other industrial matters within the meaning of the *Industrial Relations Act 1996*), and

(b) in particular:

(i) existing and proposed legislation, including proposed amendments to existing legislation, affecting or likely to affect patients or medical practitioners or both, in their respective capacities as such, and

(ii) existing and proposed administrative arrangements, including proposed changes to existing administrative arrangements, affecting or likely to affect patients or medical practitioners or both, in their respective capacities as such.

(2) The Committee shall have such other functions as the Minister may from time to time determine or as are conferred on it by or under this or any other Act.

(3) A notice may be served on the Committee in any of the following ways:

(a) by instrument in writing served on the Chairperson of the Committee,

(b) in such manner as the Committee from time to time determines and communicates to the Minister,

(c) in such manner as may be prescribed.

## **Division 6B Quality assurance committees**

### **20D Definitions**

In this Division:

**Committee** means a committee declared to be an approved quality assurance committee under section 20E.

**prescribed establishment** means:

(a) any public hospital or public health organisation within the meaning of the *Health Services Act 1997*, or

(b) (Repealed)



- (c) an establishment, college, association or other body (other than an industrial or trade union) prescribed by the regulations.

**service** means a health service, and includes any administrative or other service related to a health service.

#### **20E Approved quality assurance committees**

- (1) The Minister may, by order published in the Gazette, declare that a specified committee established by a prescribed establishment is an approved quality assurance committee for the purposes of this Division.
- (2) The Minister is not to make such a declaration unless the Minister is satisfied that:
  - (a) the committee is established by or within a prescribed establishment in accordance with the rules or official procedures of the establishment, and
  - (b) its functions are to assess and evaluate services provided by one or more prescribed establishments (whether or not provided by the establishment which established the committee), to report and make recommendations concerning those services and to monitor the implementation of its recommendations, and
  - (c) the committee comprises individuals with training and experience appropriate to the services to be assessed and evaluated by the committee, and
  - (d) the exercise of those functions would be facilitated by the provision of immunities and protections afforded by this Division, and
  - (e) it is in the public interest to restrict the disclosure of information compiled by the committee in the course of the exercise of those functions.

#### **20F Restrictions on Committees**

- (1) A Committee does not have authority to conduct an investigation relating to the competence of an individual in providing services.
- (2) A report furnished or information made available by a Committee must not disclose the identity of an individual who is a provider or recipient of services unless the individual has consented in writing to that disclosure.
- (3) A Committee is to have regard to the rules of natural justice in so far as they are relevant to the functions of a Committee.

#### **20G Disclosure etc of information**

A person who is or was a member of a Committee must not make a record of, or divulge or communicate to any person, any information acquired by the person as such a member, except:

- (a) for the purpose of exercising the functions of a member, or
- (b) in accordance with the provisions of the regulations as to the furnishing of reports to the Minister or to a prescribed establishment or the making available of information to the public.

Maximum penalty: 50 penalty units.

#### **20H Information not to be given in evidence**

- (1) A person who is or was a member of a Committee is neither competent nor compellable:
  - (a) to produce before any court, tribunal, board or person any document in his or her possession or under his or her control that was created by, at the request of or solely for the purpose of the Committee, or
  - (b) to divulge or communicate to any court, tribunal, board or person any matter or thing that came to the person's notice as such a member.
- (2) Subsection (1) does not apply to a requirement made in proceedings in respect of any act or omission by a Committee or by a member of a Committee as a member.

#### **20I Findings of Committee not evidence of certain matters**

A finding or recommendation by a Committee as to the need for changes or improvements in relation to a procedure or practice is not admissible as evidence in any proceedings that the procedure or practice is or was careless or inadequate.

#### **20J Personal liability of members etc**

- (1) Anything done by a Committee, a member of a Committee or any person acting under the direction of a Committee, in good faith for the purposes of the exercise of the Committee's functions, does not subject such a member or person personally to any action, liability, claim or demand.
- (2) Without limiting subsection (1), a member of a Committee has qualified privilege in proceedings for defamation in respect of:
  - (a) any statement made orally or in writing in the exercise of the functions of a member, or
  - (b) the contents of any report or other information published by the Committee.
- (3) The members of a Committee are, and are entitled to be, indemnified by the prescribed establishment that established the Committee in respect of any costs incurred in defending proceedings in respect of a liability against which they are protected by this section.

## **20K Regulations relating to Committees**

The regulations may make provision for or with respect to:

- (a) the procedure of Committees and the manner in which they are to exercise their functions, and
- (b) permitting or requiring Committees to make specified information available to the public, and
- (c) permitting or requiring Committees to furnish reports concerning their activities to the Minister and to prescribed establishments.

## **Division 6C Root cause analysis teams**

### **20L Definitions**

In this Division:

**RCA team** means a root cause analysis team appointed under section 20M.

**relevant health services organisation** means:

- (a) an area health service, or
- (b) a statutory health corporation prescribed by the regulations, or
- (c) an affiliated health organisation prescribed by the regulations, or
- (d) in the case of an incident involving the provision of ambulance services under Chapter 5A of the *Health Services Act 1997* or the provision of health support services under Part 1A of Chapter 10 of that Act—the Director-General.

**reportable incident** means an incident relating to the provision of health services by a relevant health services organisation, being an incident of a type prescribed by the regulations or set out in a document adopted by the regulations.

**service** means a health service, and includes any administrative or other service related to a health service.

### **20M Appointment of RCA teams to deal with reportable incidents**

- (1) When a reportable incident involving a relevant health services organisation is reported to the chief executive officer of the organisation, the organisation is to appoint a root cause analysis team in relation to the reportable incident.
- (2) The relevant health services organisation is, subject to the regulations, to appoint such members of the RCA team as the organisation considers appropriate to undertake the functions of the RCA team in relation to the reportable incident.

- (3) The relevant health services organisation is to cause a written record to be kept of the persons appointed under this section as members of the RCA team in relation to a particular reportable incident.

#### **20N Restrictions on RCA teams**

- (1) A RCA team does not have authority to conduct an investigation relating to the competence of an individual in providing services.
- (2) A report furnished or information made available by a RCA team must not disclose:
  - (a) the name or address of an individual who is a provider or recipient of services unless the individual has consented in writing to that disclosure, or
  - (b) as far as is practicable, any other material that identifies, or may lead to the identification of, such an individual.
- (3) A RCA team is to have regard to the rules of natural justice in so far as they are relevant to the functions of a RCA team.

#### **20O Responsibilities of RCA team in relation to reportable incident**

- (1) A RCA team is to notify in writing the relevant health services organisation by which it was appointed if the RCA team is of the opinion that the reportable incident that it is considering raises matters that may involve professional misconduct or unsatisfactory professional conduct by a person who is a visiting practitioner or staff member or may indicate that such a person is suffering from an impairment.
- (2) A RCA team may notify in writing the relevant health services organisation by which it was appointed if the RCA team is of the opinion that the reportable incident that it is considering raises matters that may involve unsatisfactory professional performance by a person who is a visiting practitioner or staff member, but not to the extent that would constitute professional misconduct or unsatisfactory professional conduct.
- (3) On completion of its consideration of a reportable incident, a RCA team must prepare a report in writing that contains the following:
  - (a) a description of the reportable incident,
  - (b) a causation statement, being a statement that indicates the reasons why the RCA team considers the reportable incident concerned occurred,
  - (c) any recommendations by the RCA team as to the need for changes or improvements in relation to a procedure or practice arising out of the incident.
- (4) In this section:

**staff member**, in relation to a relevant health services organisation, means:

- (a) a member of the NSW Health Service who is employed under Part 1 of Chapter 9 of the *Health Services Act 1997* to enable the organisation to exercise its functions, or
- (b) in the case of an affiliated health organisation that is not a declared affiliated health organisation under that Act—an employee of that organisation.

**20P Disclosure etc of information**

A person who is or was a member of a RCA team must not make a record of, or divulge or communicate to any person, any information acquired by the person as such a member, except:

- (a) for the purpose of exercising the functions of a member, or
- (b) for the purposes of any recommendation of a RCA team, or
- (c) for the purposes of any report prepared by a RCA team under section 200 (3), or
- (d) in accordance with the regulations.

Maximum penalty: 50 penalty units.

**20Q Information not to be given in evidence**

- (1) A person who is or was a member of a RCA team and the relevant health services organisation for which the RCA team was appointed are neither competent nor compellable:
  - (a) to produce before any court, tribunal, board or person any document in his, her or its possession or under his, her or its control that was created by, at the request of or solely for the purpose of the RCA team, or
  - (b) to divulge or communicate to any court, tribunal, board or person any matter or thing that came to the notice of a member of the RCA team as such a member.
- (2) Subsection (1) does not apply to a requirement made in proceedings in respect of any act or omission by a RCA team or by a member of a RCA team as a member.

**20R Findings of RCA team not evidence of certain matters**

A notification or report of a RCA team under section 200 is not admissible as evidence in any proceedings that a procedure or practice is or was careless or inadequate.

**20S Personal liability of members etc**

- (1) Anything done by a RCA team, a member of a RCA team or any person acting under the direction of a RCA team, in good faith for the purposes of the exercise of the RCA team's functions, does not subject such a member or person personally to any action,

liability, claim or demand.

- (2) Without limiting subsection (1), a member of a RCA team has qualified privilege in proceedings for defamation in respect of:
  - (a) any statement made orally or in writing in the exercise of the functions of a member, or
  - (b) the contents of any report or other information published by the RCA team.
- (3) The members of a RCA team are, and are entitled to be, indemnified by the relevant health services organisation for which the RCA team is appointed in respect of any costs incurred in defending proceedings in respect of a liability against which they are protected by this section.

#### **20T Regulations relating to RCA teams**

The regulations may make provision for or with respect to the following:

- (a) the constitution and membership of RCA teams,
- (b) the functions of RCA teams,
- (c) the procedure of RCA teams and the manner in which they are to exercise their functions,
- (d) permitting or requiring RCA teams to make specified information available to the public,
- (e) permitting or requiring RCA teams to furnish reports concerning their activities to the Minister and to relevant health services organisations,
- (f) enabling a RCA team to be appointed by a relevant health services organisation in respect of a reportable incident at another relevant health services organisation.

#### **20U Review of Division**

- (1) The Minister is to review this Division to determine whether the policy objectives of the Division remain valid and whether the terms of the Division remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of commencement of this Division.
- (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 3 years.

## Division 7 Delegation

### 21 Delegation

- (1) The Minister, Director-General or Corporation may, by instrument in writing, under seal (in the case of the Corporation), delegate such of their functions (other than this power of delegation) conferred or imposed by or under this or any other Act as are specified in the instrument to any person, and may, by such an instrument, revoke wholly or in part any such delegation.
- (2) A delegation under subsection (1) may be made to:
  - (a) a specified person (whether a natural person or a corporation), or
  - (b) a person for the time being holding a specified office.
- (3) Except in so far as the instrument of delegation otherwise provides, a person to whom a function has been delegated under subsection (1) may:
  - (a) in the case of a natural person—by writing under the person's hand, or
  - (b) in the case of a corporation—by writing under its seal,authorise another person to exercise the function so delegated, and may, in like manner, revoke wholly or in part any such authority.
- (4) An authority under subsection (3) may be given to:
  - (a) a specified person, or
  - (b) a person for the time being holding a specified office.
- (5) Any act or thing done or suffered in the exercise of a function by a person to whom the function has been delegated under subsection (1) or by a person authorised by the delegate under subsection (3) to exercise the function has the same force and effect as if it had been done or suffered by the Minister, Director-General or Corporation, as the case may require, and shall be deemed to have been done or suffered by the Minister, Director-General or Corporation, as the case may require.
- (6) A delegation under subsection (1) does not prevent the exercise of a function by the Minister, Director-General or Corporation, as the case may require.
- (7) The giving of an authority under subsection (3) does not prevent the exercise of a function by the person by whom the authority was given.
- (8) A document purporting to be signed by a person as a delegate of the Minister, Director-General or Corporation shall be deemed, unless the contrary is established, to have been signed by such a delegate and to have been so signed pursuant to the exercise of a function duly delegated to the person under subsection (1).

- (9) A document purporting to be signed by a person authorised by a delegate of the Minister, Director-General or Corporation to sign the document shall be deemed, unless the contrary is established, to have been signed by a person so authorised and to have been so signed pursuant to the exercise of a function that the person is duly authorised by such a delegate to exercise.
- (10) A delegation or authority under this section may be made or given subject to such conditions or such limitations as to the exercise of any of the functions delegated, or as to time or circumstances, as may be specified in the instrument of delegation or authority.
- (11) The provisions of this section are in addition to and not in derogation of any other provision which authorises or provides for the authorisation of a person to exercise any function of the Minister, Director-General or Corporation.
- (12) This section does not authorise the delegation of any of the following powers:
- (a) the power to give an approval for the purposes of section 23 (3) (b) of this Act,
  - (b) the power to conduct an inquiry referred to in section 123 of the *Health Services Act 1997*,
  - (c) the power to make determinations under section 127 (3) of the *Health Services Act 1997*.

## **Part 3 Miscellaneous**

### **22 Disclosure of information**

If a person discloses any information obtained in connection with the administration or execution of this Act or any other Act conferring or imposing responsibilities or functions on the Minister, Department, Director-General, Corporation or Foundation and the disclosure is not made:

- (a) with the consent of the person from whom the information was obtained,
- (b) in connection with the administration or execution of this Act or any such other Act,
- (c) for the purposes of any legal proceedings arising out of this Act or any such other Act or of any report of any such proceedings,
- (d) with other lawful excuse, or
- (e) in any other prescribed circumstances,

that person is guilty of an offence against this Act and, on conviction by a court of summary jurisdiction, liable to a penalty not exceeding 10 penalty units or to imprisonment for a term not exceeding 6 months.



### 23 Specially privileged information

- (1) The Minister may, by order published in the Gazette, authorise any specified person or body, including a council, committee or advisory body appointed under section 20 (1) or (4), to conduct research or conduct investigations into morbidity or mortality occurring within New South Wales.
- (2) An authorisation under this section may be of general application or be limited by reference to specified factors or exceptions.
- (3) If a person discloses any information obtained in connection with the conduct of research or investigations in accordance with an authorisation under this section (whether or not the authorisation is still in force at the time of the disclosure) and the disclosure is not made:
  - (a) with the consent of the person from whom the information was obtained, or
  - (b) with the approval of the Minister,that person is guilty of an offence against this Act and, on conviction by a court of summary jurisdiction, liable to a penalty not exceeding 10 penalty units or to imprisonment for a term not exceeding 6 months.
- (4) Notwithstanding anything in subsection (3), a person who has obtained any information in connection with the conduct of research or investigations in accordance with an authorisation under this section is neither competent nor compellable in any proceedings to answer any question, or to produce any documents, relating to any such information (whether or not the authorisation is still in force at the time of the proceedings), except with the approval of the Governor.
- (5) Notwithstanding anything in subsection (3), a direction under section 53 (1) of the [Coroners Act 2009](#), in relation to a person who died or may have died as referred to in paragraph (e) of the definition of **reportable death** in section 6 (1) of that Act, does not require the production of a document or writing containing information obtained in connection with the conduct of research or investigations in accordance with an authorisation under this section (whether or not the authorisation is still in force at the time the order is served), where the information was obtained from a person who administered or was involved in the administration of the anaesthetic concerned.
- (6) Without limiting the operation of this section, this section has effect notwithstanding anything in the [Coroners Act 2009](#).
- (7) An authorisation may be given under this section so as to operate retrospectively, but not so as thereby to affect a disclosure already made.

### 24 Proceedings for offences

Proceedings for an offence against this Act may be taken only before the Local Court.

## **25 Protection from liability**

No matter or thing done in good faith for the purposes of executing this Act or any other Act conferring or imposing functions on the Minister, Department, Director-General, Corporation or Foundation shall subject any person personally to any action, liability, claim or demand.

## **26 Service of documents**

Any notice, summons, writ or other proceeding required to be served on the Director-General, Corporation or Foundation may be served by being left at an office of the Department, or, in the case of a notice, by posting it addressed to the Director-General, Corporation or Foundation, as the case may be, at an office of the Department.

## **27 Authentication of certain documents**

Every summons, process, demand, order, notice, statement, direction or document requiring authentication by the Corporation or Foundation may be sufficiently authenticated without the seal of the Corporation or Foundation if signed by a person authorised to do so by the Corporation or Foundation.

## **28 Annual report**

- (1) As soon as practicable after 30 June, but not later than 31 December, in each year, the Director-General shall prepare and furnish to the Minister a report of the work and activities of the Department, Corporation and Foundation for the year ending on 30 June in that year.
- (2) The Minister shall lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after the receipt by the Minister of the report.
- (3) A report under subsection (1) may include any report required to be made annually in respect of the Department, Corporation or Foundation under any other Act.
- (4) In so far as a report under subsection (1) includes any matter that relates to a period in respect of which a report is so required to be made under any other Act, the provision of that other Act which requires the report to be made in respect of that period has no operation.

## **29 Statute law revision (sec 6)**

- (1) On a day to be appointed by the Governor for the purposes of this section and notified by proclamation published in the Gazette, section 6 is repealed.
- (2) A day shall not be appointed for the purposes of subsection (1) that is earlier than a day on which the Department established by section 6 is abolished, or its name is changed, under section 49 of the [Constitution Act 1902](#).

(3) The repeal of section 6 by subsection (1) does not itself affect the existence of the Department established by section 6, but nothing in this subsection affects the powers conferred by section 49 of the *Constitution Act 1902*.

### 30 Repeal of *Health Commission Act 1972*, and amendments

Each Act specified in Column 1 of Schedule 1 is, to the extent specified opposite that Act in Column 2 of that Schedule, repealed.

### 31 Abolition of Commission

The Commission is abolished.

### 32 Savings, transitional and other provisions

Schedule 2 has effect.

### 33 Transfer of health employees

Schedule 3 has effect.

### 34 Regulations

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.

## Part 4

### 35 (Repealed)

## Schedule 1 Repeals

(Section 30)

Column 1		Column 2
Year and number of Act	Short title of Act	Extent of repeal
1972 No 63	<i>Health Commission Act 1972</i>	The whole Act.
1975 No 8	<i>Health Commission and Other Acts (Amendment) Act 1975</i>	Section 3.
1976 No 4	<i>Statutory and Other Offices Remuneration Act 1975</i>	So much of Schedule 5 as amends Act No 63, 1972.
1976 No 63	<i>Statute Law Revision Act 1976</i>	So much of Schedule 1 as amends Act No 63, 1972.
1976 No 78	<i>Health Commission (Amendment) Act 1976</i>	The whole Act.

1976 No 95	<a href="#">Public Hospitals (Amendment) Act 1976</a>	So much of Schedule 5 as amends Act No 63, 1972.
1977 No 19	<a href="#">Notice of Action and Other Privileges Abolition Act 1977</a>	So much of Schedule 1 as amends Act No 63, 1972.
1977 No 131	<a href="#">Health Commission (Amendment) Act 1977</a>	The whole Act.
1978 No 54	<a href="#">Meat Industry Act 1978</a>	So much of Schedule 1 as amends Act No 63, 1972.
1978 No 110	<a href="#">Health Commission (Amendment) Act 1978</a>	The whole Act.
1979 No 208	<a href="#">Dairy Industry Marketing Authority Act 1979</a>	So much of Schedule 4 as amends Act No 63, 1972.
1980 No 132	<a href="#">Health Commission (Amendment) Act 1980</a>	The whole Act.
1980 No 187	<a href="#">Miscellaneous Acts (Retirement of Statutory Officers) Amendment Act 1980</a>	So much of Schedule 1 as amends Act No 63, 1972.
1981 No 83	<a href="#">Miscellaneous Acts (Financial Accommodation) Amendment Act 1981</a>	So much of Schedule 1 as amends Act No 63, 1972.

## Schedule 2 Savings, transitional and other provisions

(Section 32)

### Part 1 Provisions consequent on enactment of this Act

#### 1 Definitions

In this Schedule:

**appointed day** means the day appointed and notified under section 2 (2).

**cognate Acts** means this Act, the [Public Service \(Department of Health\) Amendment Act 1982](#), the [Statutory and Other Offices Remuneration \(Department of Health\) Amendment Act 1982](#) and the [Miscellaneous Acts \(Health Administration\) Amendment Act 1982](#).

#### 2 Members of Commission

- (1) A person holding office as a member of the Commission immediately before the appointed day shall cease to hold office as such on the appointed day.
- (2) A member of the Commission who ceases to hold office as such by reason of the operation of subclause (1) is not entitled to be paid any remuneration or compensation by reason of the member's ceasing to hold that office, but nothing in this subclause prevents the payment to that person of such compensation (if any) as the Minister determines out of money provided by Parliament.
- (3) A member of the Commission who was, immediately before the member's appointment as a member, an officer of the Public Service and who ceases to hold

office as such a member by reason of the operation of subclause (1) is, if the member is under the age of 60 years, entitled to be appointed to some position in the Public Service not lower in classification and salary than that which the member held immediately before the member's appointment as a member.

### **3 Servants of Commission**

- (1) The persons who, immediately before the appointed day, were servants of the Commission appointed or employed under section 14A of the *Health Commission Act 1972* shall, on that day, become employees of the Corporation, and shall be deemed to have been appointed and employed under section 14 of this Act.
- (2) For the purposes of any law, any period of service with the Commission by a person referred to in subclause (1) shall be deemed to be a period of service with the Corporation.

### **4 Other staff of Commission**

- (1) The persons who, immediately before the appointed day, were officers and temporary employees of the Administrative Office attached to the Commission shall, on that day, become officers and temporary employees (respectively) of the Department.
- (2) Expressions used in this clause shall, unless the contrary intention appears, have the same meanings respectively as they have in the *Public Service Act 1979*.

### **5 Property, rights and liabilities of Commission**

- (1) On and from the appointed day:
  - (a) all real and personal property and all right and interest therein and all management and control thereof that, immediately before that day, was vested in or belonged to the Commission shall vest in and belong to the Corporation,
  - (b) all moneys and liquidated and unliquidated claims that, immediately before that day, were payable to or recoverable by the Commission shall be moneys and liquidated and unliquidated claims payable to or recoverable by the Corporation,
  - (c) all proceedings commenced before that day by the Commission and pending immediately before that day shall be deemed to be proceedings pending on that day by the Corporation and all proceedings so commenced by any person against the Commission and pending immediately before that day shall be deemed to be proceedings pending on that day by that person against the Corporation,
  - (d) all contracts, agreements, arrangements and undertakings entered into with, and all securities lawfully given to or by, the Commission and in force immediately before that day shall be deemed to be contracts, agreements, arrangements and undertakings entered into with and securities given to or by the Corporation,

- (e) the Corporation may, in addition to pursuing any other remedies or exercising any other powers that may be available to it, pursue the same remedies for the recovery of moneys and claims referred to in this subclause and for the prosecution of actions and proceedings so referred to as the Commission might have done but for the enactment of the cognate Acts,
  - (f) the Corporation may enforce and realise any security or charge existing immediately before that day in favour of the Commission and may exercise any powers thereby conferred on the Commission as if the security or charge were a security or charge in favour of the Corporation,
  - (g) all debts, moneys and claims, liquidated and unliquidated, that, immediately before that day, were due or payable by, or recoverable against, the Commission shall be debts due by, moneys payable by and claims recoverable against, the Corporation, and
  - (h) all liquidated and unliquidated claims for which the Commission would, but for the enactment of the cognate Acts, have been liable shall be liquidated and unliquidated claims for which the Corporation shall be liable.
- (2) On and from the appointed day, in any other Act or in any regulation, by-law or other statutory instrument or in any document, whether of the same or of a different kind, a reference, or a reference required immediately before the appointed day, to be read and construed as reference:
- (a) to the Commission shall, subject to the regulations under clause 13, be read and construed as a reference to the Minister, Department, Director-General, Corporation or Foundation, whichever is appropriate, and
  - (b) to any officer of the Commission shall be read and construed as a reference:
    - (i) if there is an office in the staff establishment of the Department that corresponds to the office held by that officer—to the person holding that office in the establishment of the Department, or
    - (ii) if there is no such corresponding office—to the person holding such office in the staff establishment of the Department as may be directed by the Director-General from time to time by order in writing.
- (3) Any act, matter or thing done or omitted to be done before the appointed day by, to or in respect of the Commission or a member, officer or servant of the Commission shall, to the extent that, but for the enactment of the cognate Acts, that act, matter or thing would on or after that day have had any force or effect or been in operation, be deemed to have been done by, to or in respect of the Minister, Department, Director-General, Corporation or Foundation or an officer of the Department or an employee of the Corporation, whichever of them is, on or after that day, appropriate in relation to

the doing of or the omission to do that act, matter or thing.

(4) No attornment to the Corporation by a lessee from the Commission shall be required.

## **6 Disposal of certain land by Corporation**

For the purposes of section 11, any land that was acquired by the Commission and that becomes land of the Corporation by virtue of this Schedule shall be deemed to have been acquired by the Corporation.

## **7 Property acquired by gift etc**

For the purposes of section 18, any property that was held by the Commission immediately before the appointed day by way of gift, devise or bequest, whether pursuant to section 19A of the *Health Commission Act 1972* or otherwise, and that becomes property of the Corporation by virtue of this Schedule shall be deemed to have been acquired by the Corporation under section 12 of this Act, and any condition subject to which it was so held by the Commission shall be deemed to be a condition to which the Corporation has agreed.

## **8 Amendments**

- (1) The repeal of the *Health Commission Act 1972* by this Act does not affect any amendments made by that Act, and any such amendment continues to have force and effect as if this Act had not been enacted.
- (2) Subclause (1) does not apply to the amendments made by the *Health Commission Act 1972* to the *Public Health (Amendment) Act 1944*.

## **9 Unexpended funds appropriated in connection with the Commission**

The sums authorised by the *Appropriation Act 1982* to be appropriated out of the Consolidated Fund and to be issued and applied for or towards expenditure under the heading "Minister for Health" in connection with the Commission shall be deemed to the extent that, at the appointed day, they have not been so issued or applied, to be sums authorised by that Act to be appropriated out of that Fund and to be issued and applied for or towards expenditure in connection with the Department, Director-General, Corporation and Foundation.

## **10 Other bodies**

- (1) The continuity of any body, constituted by or under any Act is not prejudiced or affected by any amendment made by the *Miscellaneous Acts (Health Administration) Amendment Act 1982*.
- (2) A person who, immediately before the appointed day, held office as a member of a body constituted by or under any Act and who so held that office:

- (a) in the person's capacity as, or by virtue of the person's being, a member, officer or employee of the Commission,
- (b) by virtue of the person's being nominated or appointed thereto by the Commission, or
- (c) by virtue of the person's being appointed thereto on the nomination of the Commission,

shall cease to hold office as such on the appointed day, and the provisions of clause 2 (2) apply to and in relation to such a person in the same way as they apply to and in relation to a person referred to in clause 2 (1).

- (3) Notwithstanding subclause (2), if the person holding office as the member of the New South Wales Medical Board referred to in section 5 (3) (a) of the *Medical Practitioners Act 1938* immediately before the appointed day is not an officer of the Department on the appointed day, the person shall be deemed:
  - (a) to be, until 4 July 1983 (inclusive), an officer of the Department for the purposes of section 5 (3) (a) of that Act, as amended by the *Miscellaneous Acts (Health Administration) Amendment Act 1982*, and
  - (b) to have been appointed to that office on the appointed day by order under that paragraph.
- (4) This clause has effect notwithstanding anything in clause 5 (3).

#### **11 Ambulance contribution scheme**

Without affecting the generality of clause 5:

- (a) a contribution scheme conducted and operated under the *Ambulance Services Act 1976* immediately before the appointed day shall be deemed to have been established under that Act as amended by the *Miscellaneous Acts (Health Administration) Amendment Act 1982*, and
- (b) any resolution in force under the *Ambulance Services Act 1976* in relation to such a scheme immediately before the appointed day shall be deemed to be a determination in force under section 7 of that Act as so amended.

#### **12 (Repealed)**

#### **13 Regulations**

- (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of:
  - the cognate Acts (other than Schedule 3 to this Act)



*Health Legislation Amendment Act 2009* (but only to the extent that it amends this Act)

- (2) A provision made under subclause (1) may take effect as from the appointed day 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 or an authority of the State), the rights of that person existing before the date of its publication therein, 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 therein.
- (4) A provision made under subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding the clauses of this Schedule (clauses 2, 3 and 4 excepted).
- (5) A reference in any provision of this Act (this clause and clause 5 (2) (a) excepted) to regulations does not include a reference to regulations made under this clause.

## **Part 2 Provisions consequent on enactment of *Health Legislation Amendment Act 2009***

### **14 Terms of office**

- (1) This clause applies to a person who, immediately before the commencement of this clause, held office as a member of the Medical Services Committee.
- (2) The person's appointment to the office is taken to be for a period of 4 years, starting from the date on which the person was appointed under the instrument, as if the appointment had been made after the commencement.
- (3) Despite clause 4 (2) of Schedule 4, if the person has held the office for more than 3 consecutive terms the person may continue to hold the office until the end of the period specified in subclause (2).
- (4) Subclauses (2) and (3) do not prevent the member otherwise vacating office under clause 8 of Schedule 4.

## **Schedule 2A Health professional councils**

(Section 13A)

Chiropractic Council of New South Wales established under the *Health Practitioner Regulation National*

*Law (NSW)*

Dental Council of New South Wales established under the *Health Practitioner Regulation National Law (NSW)*

Medical Council of New South Wales established under the *Health Practitioner Regulation National Law (NSW)*

Nursing and Midwifery Council of New South Wales established under the *Health Practitioner Regulation National Law (NSW)*

Optometry Council of New South Wales established under the *Health Practitioner Regulation National Law (NSW)*

Osteopathy Council of New South Wales established under the *Health Practitioner Regulation National Law (NSW)*

Pharmacy Council of New South Wales established under the *Health Practitioner Regulation National Law (NSW)*

Physiotherapy Council of New South Wales established under the *Health Practitioner Regulation National Law (NSW)*

Podiatry Council of New South Wales established under the *Health Practitioner Regulation National Law (NSW)*

Psychology Council of New South Wales established under the *Health Practitioner Regulation National Law (NSW)*

## **Schedule 3 Transfer of health employees**

(Section 33)

### **1 Definitions**

(1) In this Schedule:

**appointed day** means the day appointed and notified under section 2 (2).

**designated person** means any statutory health corporation or affiliated health organisation within the meaning of the *Health Services Act 1997*.

**designated position** means a position transferred pursuant to clause 2.

**Instrumentality** means:

- (a) the Commission,
- (b) the Department,
- (c) the Administrative Office attached to the Commission, or
- (d) the Corporation.

**superannuation scheme** means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

**transfer date**, in relation to a designated position, means the date upon which the transfer of the position pursuant to clause 2 takes effect.

**transferred employee** means a person who, on the transfer date, was employed in a designated position and who, in accordance with clause 3, becomes employed in that position as an employee of the person to whom the position is transferred.

**transition period** means:

- (a) in relation to a person who is a transferred employee during the whole of the period of 3 years immediately following the transfer of the designated position in which the person was employed on the transfer date—that period of 3 years, or
- (b) in relation to a person who ceases to be a transferred employee during the period referred to in paragraph (a)—that part of the period during which the person was a transferred employee.

(2) A reference (however expressed) in this Schedule to:

(a) employment or service is a reference to employment or service under:

- (i) the *Public Service Act 1979*,
- (ii) section 14A of the *Health Commission Act 1972*, or
- (iii) section 14 of this Act, and

(b) employment in an Instrumentality includes a reference to employment by an Instrumentality.

(3) Where a person:

- (a) became a transferred employee pursuant to the transfer of a designated position in which the person was employed on the transfer date, and
- (b) ceases to be an employee of the person by whom, by virtue of clause 3, the person was employed,

the person shall, on ceasing to be an employee of the person by whom, by virtue of clause 3, the person was employed, cease to be a transferred employee.

(4) Where, by this Schedule, any rights of a person are to be determined as if the person had continued to be employed in the relevant Instrumentality or are to be determined by reference to a person's service with the relevant Instrumentality, such a reference to the relevant Instrumentality is:

- (a) where the transfer date is on or after the appointed day—a reference to the Department, or the Corporation, as the case may require, or
  - (b) where the transfer date is before the appointed day—a reference to:
    - (i) the Administrative Office attached to the Commission, or the Commission, as the case may require, before the appointed day, and
    - (ii) if the person continues to be employed by a designated employer on or after the appointed day—the Department, or the Corporation, respectively, on or after the appointed day.
- (5) This Schedule shall be construed before the appointed day as if section 4 had commenced on the date of assent to this Act.
- (6) The Governor may, by proclamation published in the Gazette, declare a person specified in the proclamation to be a designated person for the purposes of this Schedule.

## **2 Governor may transfer certain positions**

- (1) The Governor, may, on the recommendation of the Minister, by order published in the Gazette, transfer from an Instrumentality to a specified person positions in or in the service of the Instrumentality.
- (2) An order under subclause (1) in relation to the transfer of positions in or in the service of an Instrumentality shall specify:
- (a) the person to whom the positions are transferred,
  - (b) the positions which are transferred, and
  - (c) the date on which the transfer takes effect.
- (3) A position specified in an order under subclause (1) may be specified:
- (a) by reference to:
    - (i) the functions or activities which a person employed in that position performs,  
or
    - (ii) the location at which those functions or activities are performed,  
or both, or
  - (b) in any other manner.
- (4) An order for the transfer of a position under subclause (1) has no effect if published after 1 July 1997.

### **3 Transferred staff**

- (1) A person who, immediately before the transfer date in relation to a designated position, was employed in an Instrumentality in the designated position and who:
  - (a) presents himself or herself for work, on the transfer date, in that position, or
  - (b) has, in the opinion of the Minister, a reasonable excuse for not presenting himself or herself for work, on the transfer date, in that position but presents himself or herself for work in that position as soon as practicable after that date,shall, upon presenting himself or herself for work:
  - (c) under paragraph (a), become, on the transfer date, an employee of the person to whom the position is transferred, or
  - (d) under paragraph (b), be deemed to have become, on the transfer date, an employee of the person to whom the position is transferred.
- (2) A person who, immediately before the transfer date in relation to a designated position, is employed in an Instrumentality in the designated position ceases, on that date, to be employed under the *Public Service Act 1979* or otherwise in an Instrumentality.
- (3) This clause has effect notwithstanding anything in Schedule 2.

### **4 Salary and wages**

- (1) A transferred employee shall, in respect of service with the person by whom, by virtue of clause 3, the transferred employee is employed, be paid salary or wages, and allowances, at a rate not less than that at which the transferred employee would be paid salary or wages, and allowances, if the designated position in which the transferred employee was employed on the transfer date had not been transferred and the transferred employee had continued to be employed in the relevant Instrumentality.
- (2) Subclause (1) ceases to apply to or in respect of a transferred employee on the expiration of the transition period if the rate of salary or wages payable to the transferred employee on the transfer date exceeds the maximum rate payable at that date under the relevant award for Grade 10, Administrative and Clerical Division, of the Public Service.
- (3) Subclause (1) does not apply to or in respect of a transferred employee who has applied for, and been appointed to, another position in the service of the person by whom, by virtue of clause 3, the transferred employee is employed.

## 5 Superannuation

- (1) Subject to subclause (2), where a transferred employee was, immediately before the transfer of the designated position in which the transferred employee was employed on the transfer date, a contributor to a superannuation scheme, the transferred employee:
  - (a) shall retain any rights accrued or accruing to the transferred employee as such a contributor, and
  - (b) may continue to contribute to any superannuation scheme to which the transferred employee was a contributor immediately before the transfer date, as if the transferred employee had continued to be employed in the relevant Instrumentality during the transferred employee's service with the person by whom, by virtue of clause 3, the transferred employee is employed, and:
  - (c) the transferred employee's service in the employment of that person shall be deemed to be service with the Instrumentality for the purposes of any law under which those rights accrued or were accruing or under which the transferred employee continues to contribute, and
  - (d) the transferred employee shall be deemed to be employed in the Instrumentality for the purposes of any superannuation scheme to which, by the operation of this subclause, the transferred employee is entitled to contribute.
- (2) A person who, but for this subclause, would be entitled under subclause (1) to contribute to a superannuation scheme shall not be so entitled upon the person's becoming a contributor to any other superannuation scheme, and the provisions of subclause (1) (d) cease to apply to or in respect of the person in any case where the person becomes a contributor to another superannuation scheme.
- (3) Subclause (2) does not prevent the payment to a transferred employee, upon the transferred employee's ceasing to be a contributor to a superannuation scheme, of such amount as would have been payable to the transferred employee if the transferred employee had ceased, by reason of resignation, to be a contributor.
- (4) Where, pursuant to subclause (1) (b), a transferred employee continues to contribute to a superannuation scheme, the person by whom, by virtue of clause 3, the transferred employee is employed shall contribute to that superannuation scheme the same amount as would have been payable by the transferred employee's employer if the transferred employee had continued to be employed in the relevant Instrumentality and been paid salary or wages at the rate paid to the transferred employee by the person by whom the transferred employee is, by virtue of clause 3, employed.
- (5) Notwithstanding anything in this Schedule, if a person ceases to be a transferred

employee by virtue of the person's ceasing to be an employee of a designated person, but becomes an employee of another designated person, this clause (with any necessary adaptations) applies, as from the date the person becomes an employee of that other person, to and in relation to the person and that other person in the same way as if the person were employed by that other designated person by virtue of clause 3.

- (6) Except in circumstances and to the extent prescribed by the regulations, and subject to such conditions as may be prescribed by the regulations, subclause (5) does not apply if there is any period between service with designated persons that exceeds 3 days.

## **6 Leave entitlements**

- (1) A transferred employee shall, in respect of service with the person by whom, by virtue of clause 3, the transferred employee is employed, be entitled:
- (a) to such sick leave, annual leave, long service leave and leave in the nature of long service leave as the transferred employee would be entitled to if the designated position in which the transferred employee was employed on the transfer date had not been transferred pursuant to clause 2 and the transferred employee had continued to be employed in the relevant Instrumentality, or
  - (b) on termination of the transferred employee's services, to payment by the person by whom the transferred employee is employed of such gratuity or other benefit as the transferred employee would be entitled to if the designated position in which the transferred employee was employed had not been so transferred and the transferred employee had continued to be employed in the relevant Instrumentality.
- (2) (Repealed)
- (3) For the purposes of annual leave, long service leave or leave in the nature of long service leave, service by a transferred employee with the relevant Instrumentality before the transfer of the designated position in which the transferred employee was employed on the transfer date shall be deemed to be service with the person by whom the transferred employee is, by virtue of clause 3, employed.
- (4) For the purpose of calculating the entitlement of a transferred employee to long service leave or leave in the nature of long service leave at any time, there shall be deducted from the amount of long service leave or leave in the nature of long service leave to which, but for this subclause, the transferred employee would be entitled:
- (a) any long service leave or leave in the nature of long service leave, and
  - (b) the equivalent, in long service leave or leave in the nature of long service leave, of any benefit instead of long service leave or leave in the nature of long service

leave,

taken or received by the transferred employee before that time.

- (5) For the purpose of calculating the entitlement of a transferred employee to any kind of leave as referred to in subclause (2) or (3), service by the transferred employee with the relevant Instrumentality before the transfer of the designated position in which the transferred employee was employed on the transfer date is the service to which, immediately before that transfer, regard would have been had for the purpose of calculating that entitlement.

## **7 Appointment to Public Service**

- (1) In this clause, ***special transition period*** means, in relation to a person who became a transferred employee by virtue of this Schedule, the period of 3 years immediately following the transfer of the designated position in which the transferred employee was employed on the transfer date.

- (2) A person who:

(a) became a transferred employee by virtue of this Schedule,

(b) immediately before the transfer of the designated position in which the person was employed on the transfer date, was employed in that position as an officer within the meaning of section 4 of the *Public Service Act 1979*, and

(c) during the special transition period, applies for appointment, or is appointed to a position in the Public Service,

shall, in relation to the application or appointment and any matter concerning the application or appointment, be deemed to be an officer within the meaning of that section employed in an Instrumentality.

- (3) Subclause (2) does not apply to a person who applies for appointment, or is appointed, to a position in the Public Service if the person has, on a previous occasion in the special transition period, been appointed to a position in the Public Service.

## **8 Redundancy of transferred employees**

The employment of a transferred employee may not be terminated by the person by whom, by virtue of clause 3, the transferred employee is employed on the ground of redundancy arising from the operation of this Schedule.

## **9 Savings**

Where an appeal by a transferred employee to the Government and Related Employees Appeal Tribunal or to the Public Service Board of New South Wales is pending or may be made:



- (a) immediately before the transfer of the designated position in which the transferred employee was employed on the transfer date, the appeal may be continued, or made, and heard and determined as if the designated position had not been transferred, or
- (b) immediately before the expiration of the special transition period referred to in clause 7, the appeal may be continued, or made, and heard and determined as if clause 7 continued to apply to and in respect of the transferred employee.

## **10 Miscellaneous**

- (1) A transferred employee is not entitled to claim, both under this Act and any other Act, benefits in respect of the same period of service.
- (2) Except as provided in this Schedule, nothing in this Schedule affects the operation of the *Industrial Relations Act 1996*.

## **11 Regulations**

- (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Schedule.
- (2) A provision made under subclause (1) may take effect as from the date of assent to this Act or a later date.
- (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 or an authority of the State), the rights of that person existing before the date of its publication therein, 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 therein.
- (4) A reference in any provision of this Act (this clause excepted) to regulations does not include a reference to regulations made under this clause.

## **Schedule 4 Medical Services Committee**

(Section 20B)

### **Part 1 Preliminary**

#### **1 Definitions**

In this Schedule:

**Chairperson** means the Chairperson of the Committee.

**Committee** means the Medical Services Committee established under section 20B.

**member** means the Chairperson or any other member of the Committee.

## **Part 2 Provisions relating to the members of the Committee**

### **2 Nominations**

- (1) A person nominated by a nominating body mentioned in section 20B (2) may, but need not, be a member of the nominating body or (where the nominating body is the committee or other executive body of a larger body) a member of the larger body.
- (2) Where a nomination of a person for appointment as a member is not made within the time (being not less than 21 days) or in the manner specified by the Minister by order in writing notified to the body entitled to make the nomination, the Minister may make the appointment in the absence of the nomination, and the person so appointed shall be deemed to have been duly nominated by that body.

### **3 Change of nominating body**

- (1) If a nominating body mentioned in section 20B (2) wishes to relinquish its power to nominate under that subsection:
  - (a) it may relinquish the power by causing an instrument in writing to that effect to be served on the Minister,
  - (b) it may, but need not, specify in that instrument one of the remaining nominating bodies as the body to be the nominating body in its place,
  - (c) if the relinquishing body does not specify a nominating body under paragraph (b), the Committee may specify a body (which may, but need not, be one of the remaining nominating bodies) as the body to be the nominating body in the place of the relinquishing body, and
  - (d) the body specified under paragraph (b) or (c) shall be deemed to be mentioned in section 20B (2) in place of the relinquishing body and to have nominated any person already nominated by the relinquishing body.
- (2) If at any time a nominating body mentioned in section 20B (2) does not exist by the name so mentioned:
  - (a) the Committee may specify a body (which may, but need not, be one of the remaining nominating bodies) as the body to be the nominating body in the place of the firstmentioned body, and
  - (b) the body specified under paragraph (a) shall be deemed to be mentioned in

section 20B (2) in place of the firstmentioned body and to have nominated any person already nominated by the firstmentioned body.

(3) In this clause, ***nominating body*** does not include the Committee.

#### **4 Terms of office**

(1) Subject to this Schedule, a member shall hold office for the period of 4 years specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

(2) A person may not be appointed as a member for more than 3 consecutive terms.

#### **5 Chairperson**

(1) If the person nominated by the Committee as Chairperson is already a member:

(a) the person shall, on being appointed as Chairperson, be deemed to have vacated the office of member to which the person was previously appointed, and

(b) the person's term as member so terminated and the person's term as Chairperson so commencing shall together, for the purposes only of clause 4 (2), be deemed to be one single term.

(2) The Chairperson is a member of the Committee.

(3) The Chairperson may be referred to as the Chairman or the Chairwoman, as the case may require.

#### **6 Substitutes**

(1) A member may appoint any medical practitioner to be a substitute to act as a member in the place of the firstmentioned member during any absence of the member from a meeting of the Committee.

(2) Subject to this Schedule, a substitute acting as a member under subclause (1) shall have and may exercise all the functions of a member and shall be deemed to be a member.

(3) A member may not appoint another member to be a substitute, and a substitute may not appoint another person to be a substitute under this clause.

(4) A substitute appointed by the Chairperson does not have, by virtue of this clause, the function of presiding at a meeting of the Committee.

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

In the event of the office of any member becoming vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

## **8 Casual vacancies**

- (1) A member shall be deemed to have vacated office if:
  - (a) the member dies,
  - (b) the member resigns the office by instrument in writing addressed to the Minister,
  - (c) the member ceases to be registered as a medical practitioner, or
  - (d) the body which nominated the member withdraws the nomination under subclause (2).
- (2) The body which nominated a member may, by instrument in writing addressed to the Minister, withdraw the nomination, whether before or after the appointment of the member.

## **9 Liability of members**

No matter or thing done by the Committee or a member shall, if the matter or thing was done in good faith for the purpose of exercising any function conferred on the Committee or member by or under this or any other Act, subject any member personally to any action, liability, claim or demand whatever.

## **Part 3 Provisions relating to the procedure of the Committee**

### **10 General procedure**

- (1) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Committee.
- (2) At any meeting of the Committee, and at meetings between the Committee and the Minister or officers of the department, the Committee may invite one or more advisers (who may, but need not, be medical practitioners) to be present, and any such adviser or advisers may be present at and participate in, but not vote at, any such meeting.

### **11 Quorum**

Six members shall form a quorum and any duly convened meeting of the Committee at which a quorum is present shall be competent to transact any business of the Committee and shall have and may exercise all the functions of the Committee.

### **12 Presiding member**

- (1) The Chairperson or, in the absence of the Chairperson, another member elected for the purpose at the meeting by the Committee shall preside at a meeting of the Committee.

- (2) The person presiding at a meeting of the Committee has neither an original nor a casting vote.

**13 Voting**

A decision supported by a majority of the members present at a meeting of the Committee at which a quorum is present shall be the decision of the Committee.

**14 (Repealed)**