

Health Services Regulation 2008

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New South Wales

Status Information

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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**
Public Sector Employment and Management Amendment (Ethics and Public Service Commissioner) Act 2011 No 48 (not commenced)
- **See also**
Statute Law (Miscellaneous Provisions) Bill (No 2) 2011

Authorisation

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New South Wales

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Health Services Regulation 2008



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Health Services Regulation 2008*.

2 Commencement

This Regulation commences on 1 September 2008.

Note—

This Regulation replaces the *Health Services Regulation 2003* which is repealed on 1 September 2008 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Interpretation

(1) In this Regulation:

the Act means the *Health Services Act 1997*.

(2) Notes in this Regulation do not form part of this Regulation.

Part 2 Visiting practitioners

4 Definitions

In this Part:

clinical privileges has the same meaning as it has in section 105 (2) of the Act.

medical and dental appointments advisory committee or **advisory committee**, in relation to a public health organisation, means a committee:

- (a) established by the public health organisation, and
- (b) having the function of advising the public health organisation in relation to the appointment of persons as visiting practitioners to the public health organisation and the clinical privileges that should be granted to those persons.

5 Advertising of available appointments as visiting practitioners

- (1) A public health organisation that decides to make available an appointment as a visiting practitioner must advertise the availability of the appointment in at least one newspaper circulating generally in New South Wales. The public health organisation may, in addition, advertise the availability in other ways.
- (2) An application for appointment as a visiting practitioner is to be made in writing to the public health organisation concerned and is to include:
 - (a) a statement setting out, in a manner that satisfies the public health organisation, the clinical privileges sought by the applicant, and
 - (b) an authority for the medical and dental appointments advisory committee of the public health organisation to obtain information as to the applicant's past performance as a medical practitioner or dentist, as the case may be.
- (3) On receipt of the application, the public health organisation is to refer the application to the advisory committee for advice.
- (4) Subclauses (1)–(3) do not apply:
 - (a) to an appointment as a visiting practitioner that is to be held as part of the duties of a person who is to be or has been appointed to a teaching position at a tertiary institution, or
 - (b) to an appointment as a visiting practitioner that is to be held by a person for a period of not more than 6 months, or
 - (c) to any appointment as a visiting practitioner, to the extent that the Director-General determines that the provisions of those subclauses are not to apply.
- (5) A determination under subclause (4) (c):
 - (a) may be made in respect of a particular appointment or in respect of appointments of any specified kind or description, and
 - (b) must be made in writing.

6 Appointment and conditions to be in written agreement

- (1) A person is to be appointed as a visiting practitioner to a public health organisation by written agreement between the person and the public health organisation.
- (2) The written agreement must specify the conditions to which the appointment is subject, including the clinical privileges of the visiting practitioner.
- (3) However, subclause (2) does not require conditions prescribed by or under the Act to be included in the written agreement.

7 Term of appointment

- (1) The period for which a person may be appointed as a visiting practitioner is such period (not exceeding 5 years) as the public health organisation determines.
- (2) A person is, if otherwise qualified, eligible for re-appointment from time to time.
- (3) Despite subclause (1), a person may be appointed as a visiting practitioner for the duration of the person's appointment to a teaching position at a tertiary institution (or for such lesser period as the public health organisation may determine) if the public health organisation has first obtained the advice of the medical and dental appointments advisory committee about the length of the appointment.
- (4) Despite subclause (1), a person may be appointed as a visiting practitioner for a period exceeding 5 years, but not exceeding 10 years, if the Director-General, in the particular circumstances of the case, approves the additional period of appointment.

8 Resignation

- (1) A person may resign an appointment as a visiting practitioner by giving 3 months' written notice of resignation to the public health organisation concerned.
- (2) However, a public health organisation may waive that requirement for notice or accept a lesser period of time for the giving of such notice if, in the opinion of the public health organisation, it is reasonable to do so.

Part 3 Transfer of accrued leave entitlements

9 Definitions

In this Part:

accrued leave means leave of any description that is owing to a person (but not taken), and includes any leave to which a person would have been entitled in the event of illness.

non-declared AHO means an affiliated health organisation that is not a declared affiliated health organisation within the meaning of section 62A of the Act.

10 Transfer of accrued leave—moving from non-declared AHO to NSW Health Service

- (1) **Period between employment must be continuous** This clause applies in relation to a person only if the person's employment in the NSW Health Service immediately follows the person's employment with a non-declared AHO. However, this clause does apply in relation to a person's accrued long service leave entitlement if the break in employment is no longer than 2 months.
- (2) **Transfer of existing leave balance** If a person:
 - (a) ceases to be employed by a non-declared AHO, and

- (b) commences employment in the NSW Health Service in connection with a public health organisation,

the person is taken to have the amount of any accrued leave to which the person was entitled immediately before ceasing to be employed by the non-declared AHO.

- (3) **Election to cash-out accrued annual or long service leave** In the case of any such accrued leave that comprises annual leave or long service leave, the person may, instead of retaining the entitlement to that accrued leave, elect to be paid the money value of that accrued leave.
- (4) **Limit on how much accrued annual leave can be retained** The amount of any accrued annual leave that a person may retain under this clause cannot, except with the approval of the Director-General, exceed the amount of annual leave that the person was entitled to over a 2-year period as an employee of the non-declared AHO.
- (5) **Liability for cost of existing annual or long service leave** The non-declared AHO is liable for the cost of any annual or long service leave entitlements in respect of the person concerned that have accrued up until the date on which the person ceases to be employed by the non-declared AHO.
- (6) **Orders under section 64 of the Act** This clause does not apply in relation to a person who ceases to be employed by a non-declared AHO by the operation of an order under section 64 of the Act.

11 Transfer of accrued leave—moving from NSW Health Service to non-declared AHO

- (1) **Period between employment must be continuous** This clause applies in relation to a person only if the person's employment with a non-declared AHO immediately follows the person's employment in the NSW Health Service. However, this clause does apply in relation to a person's accrued long service leave entitlement if the break in employment is no longer than 2 months.
- (2) **Transfer of existing leave balance** If a person:
 - (a) ceases to be employed in the NSW Health Service in connection with a public health organisation, and
 - (b) commences employment with a non-declared AHO,the person is taken to have the amount of any accrued leave to which the person was entitled immediately before ceasing to be employed in the NSW Health Service.
- (3) **Election to cash-out accrued annual or long service leave** In the case of any such accrued leave that comprises annual leave or long service leave, the person may, instead of retaining the entitlement to that accrued leave, elect to be paid the money value of that accrued leave.

- (4) **Limit on how much accrued annual leave can be retained** The amount of any accrued annual leave that a person may retain under this clause cannot, except with the approval of the non-declared AHO, exceed the amount of annual leave that the person was entitled to over a 2-year period as a member of the NSW Health Service.
- (5) **Liability for cost of existing annual or long service leave** The Government of New South Wales is liable for the cost of any annual or extended leave entitlements in respect of the person concerned that have accrued up until the date on which the person ceases to be employed in the NSW Health Service.

Part 3A Ambulance Service

Division 1 Preliminary

Note—

This Part replaces the *Ambulance Services Regulation 2005*, which is repealed on 1 September 2011 by section 10 (2) of the *Subordinate Legislation Act 1989*.

11A Part applies to staff of Ambulance Service

This Part applies to those staff of the NSW Health Service who are employed primarily in connection with the provision of ambulance services under Chapter 5A of the Act but (unless otherwise expressly provided) does not apply to the chief executive.

11B Objects of Part

The objects of this Part are as follows:

- (a) to protect the health and safety of the public by providing mechanisms to maintain appropriate standards of conduct in the Ambulance Service,
- (b) to ensure that the public interest is protected.

11C Definitions

- (1) In this Part:

Ambulance Service means the Ambulance Service of NSW within the meaning of section 67A of the Act.

chief executive means the person appointed as chief executive of the Ambulance Service of NSW under section 67A (2) of the Act or, if at any time there is no person appointed to that position, the Director-General.

disciplinary action, in relation to a member of staff, means any one or more of the following:

- (a) dismissal,

- (b) a formal warning,
- (c) if the member of staff is on probation—annulment of the member of staff's appointment,
- (d) reduction of the employee's classification or position (but not in the case of a member of staff who is employed under a fixed term contract, the conditions of which are fixed by the Health Administration Corporation).

member of staff means a member of staff of the Ambulance Service, being a member of staff of the NSW Health Service who is employed primarily in connection with the provision of ambulance services under Chapter 5A of the Act, other than the chief executive.

misconduct, in relation to a person who is a member of staff, includes, but is not limited to, any of the following:

- (a) the person contravening the Act or this Regulation,
- (b) the person performing duties in a manner that justifies the taking of disciplinary action,
- (c) the person taking any detrimental action (within the meaning of the [Public Interest Disclosures Act 1994](#)) against another person that is substantially in reprisal for the other person making a protected disclosure within the meaning of that Act,
- (d) the person taking any action against another person that is substantially in reprisal for a disclosure made by that other person regarding alleged misconduct,
- (e) the person failing, without reasonable excuse, to comply with a direction by the chief executive to provide information with respect to a complaint under this Part against the person,
- (f) any other improper or unethical conduct by the person.

serious offence means an offence (whether or not committed in New South Wales) which, if committed in New South Wales, would have a maximum penalty of imprisonment for 12 months or more (whether or not in addition to a fine) in New South Wales.

supervisor means a person under whose control or supervision a member of staff is placed.

traffic offence means an offence under any of the following provisions:

- (a) section 25A of the [Road Transport \(Driver Licensing\) Act 1998](#) (relating to driving while disqualified or unlicensed),

(b) section 171 (2) of the *Road Transport (General) Act 2005*,

(c) section 9, 11B, 12, 42, 43 or 70 of the *Road Transport (Safety and Traffic Management) Act 1999*.

(2) In this Part, a reference to an allegation that a member of staff may have engaged in misconduct includes a reference to the chief executive being made aware, or becoming aware, by any means that the member of staff may have engaged in misconduct.

(3) For the purposes of this Part, the subject-matter of an allegation of misconduct may relate to an incident or conduct that happened:

(a) while the member of staff concerned was not on duty, or

(b) before the member of staff was appointed to his or her position.

Division 2 Criminal conduct, traffic offences and misconduct

11D Offences to be reported

- (1) A member of staff who is charged with having committed, or is convicted of, a serious offence must immediately report that fact in writing to the chief executive.
- (2) A member of staff who is required to drive a motor vehicle as part of his or her duties and who is charged with having committed, or is convicted of, a traffic offence must immediately report that fact in writing to the chief executive.
- (3) The supervisor of a member of staff who has reason to believe that the member of staff has been charged with having committed, or has been convicted of, a serious offence or traffic offence but has not reported that fact in accordance with subclause (1) or (2) must immediately report that fact to the chief executive.

11E Driving disqualification to be reported

A member of staff who is required to drive a motor vehicle as part of his or her duties and who is disqualified from holding a driver licence or whose licence is cancelled or suspended must immediately report the disqualification, cancellation or suspension to the chief executive.

11F Disciplinary action

- (1) The chief executive may decide to take disciplinary action or remedial action (or both), with respect to a member of staff if:
 - (a) the member of staff is convicted of a serious offence, or
 - (b) the member of staff is required to drive a motor vehicle as part of his or her duties and the member of staff is convicted of a traffic offence, or

(c) the member of staff has engaged in misconduct.

(2) A reference in this clause to the conviction of a member of staff for a serious offence or a traffic offence includes a reference to the member of staff having been found guilty by a court of such an offence but where no conviction is recorded.

(3) In this clause:

remedial action, in relation to a member of staff, means any one or more of the following:

(a) counselling,

(b) training and development,

(c) monitoring the member of staff's conduct or performance,

(d) implementing a performance improvement plan,

(e) transferring the member of staff to another position in the NSW Health Service that does not involve a reduction of the member of staff's classification or position,

(f) any other action of a similar nature.

11G Issuing of guidelines dealing with misconduct

(1) The chief executive may, from time to time, issue guidelines for the purposes dealing with misconduct by members of staff.

(2) The chief executive may from time to time amend, revoke or replace the guidelines.

(3) The guidelines as in force from time to time must be made publicly available in such manner as the chief executive thinks appropriate.

11H Suspension pending certain decisions

(1) The chief executive may suspend a member of staff from duty if:

(a) an allegation that the member of staff has engaged in misconduct is being dealt with as a disciplinary matter in accordance with the guidelines, or

(b) the member of staff is charged with having committed a serious offence,

(2) The chief executive may suspend the member of staff from duty until the allegation of misconduct or the criminal charge has been dealt with.

(3) The chief executive may at any time remove a suspension under this clause.

(4) In this clause:

guidelines means the guidelines in force from time to time under clause 11G.

11I Retiring or resigning before disciplinary action taken

- (1) An allegation that a member of staff has engaged in misconduct may be dealt with under this Part, and disciplinary action may be taken with respect to the member of staff, even though the member of staff has retired or resigned.
- (2) The taking of disciplinary action with respect to the former member of staff does not affect the former member of staff's retirement or resignation or the benefits, rights and liabilities arising from the retirement or resignation.
- (3) Nothing in this clause affects any power under this Regulation to refuse to accept the resignation of a member of staff.

11J Appointment after reduction of classification or position

Any appointment required as the result of the taking of disciplinary action comprising reduction of a member of staff's classification or position is to be made by the chief executive.

Division 3 Miscellaneous provisions

11K Lawful instructions to be obeyed

- (1) A member of staff must obey promptly a lawful instruction that is:
 - (a) consistent with such protocols and procedures as may be issued by the chief executive from time to time, and
 - (b) given to the member of staff by the member of staff's supervisor.
- (2) A member of staff may appeal in writing to the chief executive against an instruction given to the member of staff. The appeal must be made through the supervisor who gave the instruction. However, the member of staff must, pending the determination of the appeal, comply with subclause (1) in relation to the instruction.

11L Other employment

- (1) A member of staff must not, except with the written permission of the chief executive, engage in any employment (whether or not for remuneration) otherwise than in connection with his or her employment as a member of staff of the Ambulance Service.
- (2) If a member of staff is the holder of any office or is engaged in any employment otherwise than in connection with his or her employment as a member of staff of the Ambulance Service, the member of staff must at once notify the chief executive of that fact.
- (3) The chief executive may require that member of staff to resign that office or abstain from engaging in that employment.

- (4) Permission given for the purposes of subclause (1) may be withdrawn by the chief executive at any time. The withdrawal must be in writing given or sent to the member of staff.

11M Medical examination

- (1) The chief executive may direct that a member of staff undergo such medical examination as the chief executive considers necessary for the purpose of ascertaining the member of staff's fitness to perform his or her duties if the chief executive has reason to believe that the health of the member of staff:
 - (a) may mean that the member of staff is a danger to other members of staff or to the public, or
 - (b) is likely to be seriously affected by the member of staff remaining on, or resuming, duty.
- (2) The chief executive must inform the member of staff that any such direction is being given under this clause.
- (3) A member of staff given such a direction must submit himself or herself to examination by a medical practitioner approved by the chief executive.
- (4) A member of staff who has been given a direction must cease any duty immediately and must not resume duty until the chief executive has reviewed the results of the medical examination and is satisfied that the member of staff is fit to perform his or her duties.

11N Delegation

The chief executive may delegate any function of the chief executive under this Part to a member of staff of the NSW Health Service.

Part 4 Miscellaneous

12 Local health district descriptions

- (1) A reference in Column 2 of Schedule 1 to the Act to Sydney (part), in relation to the Sydney Local Health District, is a reference to the following Statistical Local Areas:
 - (a) Sydney (C)-West,
 - (b) Sydney (C)-South.
- (2) A reference in Column 2 of Schedule 1 to the Act to Sydney (part), in relation to the South Eastern Sydney Local Health District, is a reference to the following Statistical Local Areas:
 - (a) Sydney (C)-Inner,

(b) Sydney (C)-East.

(2A) A reference in Column 2 of Schedule 1 to the Act to Lachlan (part), in relation to the Western NSW Local Health District, is a reference to the local government area of Lachlan except for the following 2011 Statistical Areas:

- (a) Statistical Area Level 1 (SAI) 10302106209,
- (b) Statistical Area Level 1 (SAI) 10302106210,
- (c) Statistical Area Level 1 (SAI) 10302106211,
- (d) Statistical Area Level 1 (SAI) 10302106212,
- (e) Statistical Area Level 1 (SAI) 10302106213,
- (f) Statistical Area Level 1 (SAI) 10302106215,
- (g) Statistical Area Level 1 (SAI) 10302106225.

(2B) A reference in Column 2 of Schedule 1 to the Act to Lachlan (part), in relation to the Murrumbidgee Local Health District, is a reference to the following 2011 Statistical Areas:

- (a) Statistical Area Level 1 (SAI) 10302106209,
- (b) Statistical Area Level 1 (SAI) 10302106210,
- (c) Statistical Area Level 1 (SAI) 10302106211,
- (d) Statistical Area Level 1 (SAI) 10302106212,
- (e) Statistical Area Level 1 (SAI) 10302106213,
- (f) Statistical Area Level 1 (SAI) 10302106215,
- (g) Statistical Area Level 1 (SAI) 10302106225.

(2C) A reference in Column 2 of Schedule 1 to the Act to Tenterfield (part), in relation to the Hunter New England Local Health District, is a reference to the local government area of Tenterfield except for the following 2011 Statistical Areas:

- (a) Statistical Area Level 1 (SAI) 11002119409,
- (b) Statistical Area Level 1 (SAI) 11002119410.

(2D) A reference in Column 2 of Schedule 1 to the Act to Tenterfield (part), in relation to the Northern NSW Local Health District, is a reference to the following 2011 Statistical Areas:

- (a) Statistical Area Level 1 (SAI) 11002119409,

(b) Statistical Area Level 1 (SAI) 11002119410.

(3) In this clause:

Statistical Local Area means a Statistical Local Area specified in the document entitled *Australian Standard Geographical Classification (ASGC)*, published by the Australian Bureau of Statistics in July 2010.

2011 Statistical Area means a Statistical Area specified in the *Australian Statistical Geography Standard (ASGS)*, published by the Australian Bureau of Statistics in December 2010 for use in the collection and dissemination of geographically classified statistics from 1 July 2011.

13 Provisions with respect to administrators

(1) In this clause:

administrator means an administrator of a statutory health corporation appointed under section 52 of the Act.

(2) On the expiration of a person's appointment or reappointment as administrator, the Governor may, by order published in the Gazette, reappoint the person as administrator for a further period or appoint another person as administrator.

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

(a) remove from the office of administrator any person appointed to that office, or

(b) appoint a person to fill a vacancy in the office of administrator.

(4) The Minister may appoint a person to act in the office of an administrator during the illness or absence of the administrator, and the person, while so acting, has and may exercise all the functions of the administrator and is taken to be administrator.

(5) The Minister may remove from the office of administrator any person appointed to act in that office under subclause (4).

(6) If the administrator of a statutory health corporation was, immediately before his or her appointment under section 52 (1) (c) of the Act, the chief executive of the corporation, the person is declared to be an unattached officer of the corporation.

(7) An unattached officer of a statutory health corporation continues to be employed by the corporation, in accordance with section 51 (6) of the Act, until the person ceases to be the administrator of the corporation.

14 Provision of ambulance transport

For the purposes of section 67E (3) (e) of the Act, The Sydney Children's Hospitals Network (Randwick and Westmead) (incorporating The Royal Alexandra Hospital for

Children), in respect of services provided or operations conducted by the NSW newborn & paediatric Emergency Transport Service (**NETS**), is a person to whom section 67E does not apply.

15 Appeals concerning appointment decisions

- (1) An appeal under section 106 of the Act may be withdrawn at any time before the determination of the appeal by the appellant giving written notice of the withdrawal to the Minister in the form and manner approved by the Minister from time to time.
- (2) The Committee is not required to determine an appeal that has been withdrawn.

16 Samaritan Funds

- (1) In this clause:

Samaritan Fund of a public health organisation means the Samaritan Fund of the organisation referred to in section 133 (2) of the Act.

Special Purposes and Trust Fund, in relation to a public health organisation, means the fund of that name established by the public health organisation.

- (2) The Samaritan Fund of a public health organisation is to be kept as a separate account in its Special Purposes and Trust Fund.
- (3) The Minister may determine the manner in which the accounts for a Samaritan Fund are to be kept and the circumstances in which those accounts are to be audited.
- (4) Money is not to be withdrawn from the Samaritan Fund of a public health organisation except by, or with the written approval of, the chief executive (or person authorised in writing by the chief executive) of the public health organisation.
- (5) Money is not to be withdrawn from the Samaritan Fund of a public health organisation except for payment to, or for the purchase of items for, a necessitous patient or necessitous outgoing patient. The payment or purchase may be made only if it is essential to the well-being of the patient.

17 Savings

- (1) Any act, matter or thing that, immediately before the repeal of the [Health Services Regulation 2003](#), had effect under that Regulation continues to have effect under this Regulation.
- (2) Any act, matter or thing that, immediately before the repeal of the [Ambulance Services Regulation 2005](#), had effect under that Regulation continues to have effect under this Regulation.

18 Construction of references to HealthQuest

- (1) Except as provided by subclauses (2)–(5), a reference in any document to HealthQuest is to be construed as (or until 1 July 2009 as including) a reference to:
 - (a) in the case of a reference that relates to the carrying out of a medical assessment—a person or body nominated, or a person who is a member of a class of persons nominated, by the Director of Public Employment, or
 - (b) in any other case—the Crown.
- (2) **Marine Pilotage Licensing Regulations** A reference in clause 25 (2) (a) or (3) (a) of the *Marine Pilotage Licensing Regulations* to HealthQuest is to be construed as (or until 1 July 2009 as including) a reference to a person or body nominated, or a person who is a member of a class of persons nominated, by the Chief Executive of the Maritime Authority of NSW.
- (3) **Police Act 1990** The reference in section 216AA (1) (b) of the *Police Act 1990* to HealthQuest is to be construed as (or until 1 July 2009 as including) a reference to a person or body nominated, or a person who is a member of a class of persons nominated, by the Commissioner of Police.
- (4) **Public Sector Employment and Management (General) Regulation 1996** A reference in clause 17, 86 or 87 of the *Public Sector Employment and Management (General) Regulation 1996* to HealthQuest is to be construed as (or until 1 July 2009 as including) a reference to a person or body nominated, or a person who is a member of a class of persons nominated, by the Director of Public Employment.
- (5) **Superannuation Act 1916** A reference in section 50 of or Schedule 17 to the *Superannuation Act 1916* to HealthQuest is to be construed as (or until 1 July 2009 as including) a reference to a person or body nominated, or a person who is a member of a class of persons nominated, by the SAS Trustee Corporation.
- (6) This clause has effect despite any provision of Part 2 of Schedule 4 to the Act.
- (7) In this clause:

Director of Public Employment has the same meaning as in the *Public Sector Employment and Management Act 2002*.

document means any Act or statutory instrument, or any other instrument, or any contract or agreement.

Note—

HealthQuest is dissolved as a statutory health corporation by the *Health Services Amendment (Dissolution of HealthQuest) Order 2009*.

19 Transitional provision relating to appointment of first board of SCHN

- (1) The Minister may appoint more than 13 members (but no more than 20 members) to the first board of the SCHN.

Note—

Section 52F of the Act (which applies Division 2 of Part 2 of Chapter 3 of the Act to the boards of specialty network governed health corporations) operates to provide for the boards of such corporations to be constituted by no more than 13 members. However, clause 91 of Schedule 7 to the Act enables the regulations to make different transitional provision for the board of the SCHN (including in relation to the maximum number of members of its board).

- (2) If more than 13 members are appointed to the first board of the SCHN, each additional member appointed must be an existing council member of the SCHN.
- (3) Nothing in this clause prevents existing council members of the SCHN being appointed to any or all of the other positions on the first board of the SCHN.
- (4) In this clause, **existing council member** of the SCHN and **SCHN** have the same meanings as they have in clause 91 of Schedule 7 to the Act.

Schedule 1 Constitution and procedure of local health district boards

Part 1 Preliminary

1 Definitions

In this Schedule:

Board means the local health district board for a local health district.

Chairperson means the Chairperson of a Board.

Note—

Section 26 (6) of the Act provides for the appointment of a Chairperson by the Minister.

Chief Executive means the chief executive of a local health district.

Deputy Chairperson means the Deputy Chairperson of a Board.

Note—

Clause 2 provides for the appointment of a Deputy Chairperson by the Minister.

medical staff council means the medical staff council of a local health district appointed under the district's by-laws.

medical staff executive council means the medical staff executive council of a local health district appointed under the district's by-laws.

member means a member of a Board.

Part 2 Constitution

2 Deputy Chairperson

- (1) The Minister may appoint a member (other than the Chairperson), by the instrument of appointment of the member or a subsequent instrument signed by the Minister, as the Deputy Chairperson of a Board.
- (2) The Deputy Chairperson may act in the office of Chairperson during the illness or absence of the Chairperson, and while so acting has and may exercise all the functions of the Chairperson and is taken to be the Chairperson.
- (3) For the purposes of this clause, a vacancy in the office of the Chairperson is taken to be an absence from office of the Chairperson.

3 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 a member to act in the office of Chairperson during the illness or absence of both the Chairperson and Deputy Chairperson, and the 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) A person who is acting as a 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 person.
- (5) For the purposes of this clause, a vacancy in the office of a member or the Chairperson or Deputy Chairperson is taken to be an absence from office of the member, Chairperson or Deputy Chairperson (as the case may be).

4 Filling of vacancy in office of member

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

5 Vacancy in office of Chairperson or Deputy Chairperson

- (1) The office of Chairperson or Deputy Chairperson becomes vacant if the person holding that office:
 - (a) ceases to be a member, or

(b) is removed from office under subclause (2).

(2) The Minister may remove the Chairperson or Deputy Chairperson from office as such.

6 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) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the 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) is removed from office by the Minister under section 29 of the Act.

7 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 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 member does not have a pecuniary interest for the purposes of this clause in relation to a matter merely because the member is employed or otherwise holds an appointment at a hospital or health service that is or may be affected by the matter.
- (7) A contravention of this clause does not invalidate any decision of the Board.
- (8) The provisions of this clause extend to meetings of a committee of the Board.

Part 3 Procedure

8 General procedure

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

9 Quorum

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

10 Presiding member

- (1) The presiding member for a meeting of a Board is:

- (a) the Chairperson, or
 - (b) in the absence of the Chairperson, the Deputy Chairperson, or
 - (c) in the absence of both the Chairperson and Deputy Chairperson, another member elected to preside at the meeting.
- (2) The Chief Executive is to conduct any election under subclause (1) (c) for a presiding member.
- (3) The presiding member is to preside at a meeting of the Board.
- (4) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

11 Voting

- (1) Only a member of the Board may vote at a meeting of the Board.
- (2) Subject to clause 20, any matter put to the vote at any meeting of the Board is to be decided by a show of hands or by secret ballot if requested by a member attending the meeting.
- (3) 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.

12 First meeting of Board

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

13 Ordinary meetings of Board

- (1) A Board is to hold ordinary meetings at such times and places as may be determined by the Board.
- (2) At least 6 ordinary meetings are to be held in any 12-month period with such meetings being held at regular intervals.
- (3) Written notice of an ordinary meeting (whether delivered by ordinary post or electronic means) is to be given by the Chief Executive, or by another person authorised by the Board to give notice, to each member and each person invited by the Board to attend the meeting, at least 7 days before the meeting.
- (4) The written notice of the meeting given to a member is to be accompanied by the following:
- (a) a copy of the agenda for the meeting,
 - (b) except in the case of the first meeting of the Board—a copy of the minutes of the

previous meeting of the Board,

(c) a copy of the minutes of any special meeting of the Board held since the last ordinary meeting,

(d) a copy of the minutes of any meeting of a committee held since the Board's last ordinary meeting.

(5) A person invited to the meeting by the Board may be provided with such of the information listed in subclause (4) as the Chairperson considers appropriate.

14 Special meetings of Board

(1) A special meeting of the Board is to be called by the Chief Executive:

(a) at the direction of the Chairperson, or

(b) within 48 hours of receipt by the Chief Executive of a written request for a special meeting signed by at least 3 members of the Board.

(2) A special meeting is to be held not later than 7 days after receipt by the Chief Executive of a request referred to in subclause (1) (b).

(3) The Chief Executive is to give at least 24 hours' written notice, and such of the material referred to in clause 13 (4) as the Chief Executive considers appropriate, to each member and to each person invited to attend the meeting by the Board.

(4) Notice of a special meeting is to specify the business to be considered at that meeting.

(5) Only business specified in the notice of a special meeting is to be considered at the special meeting.

15 Attendance at Board meetings

(1) The Board is to invite the following people to attend its meetings:

(a) the Chief Executive or his or her nominee,

(b) the Chair of the medical staff executive council for the local health district or, if there is only one medical staff council for the district, the Chair of that medical staff council,

(c) at least one representative of the executive staff (being the persons appointed by the local health district to its management structure and any persons appointed to act for the time being in those positions).

(2) A medical staff executive council or medical staff council (as the case requires) may nominate an alternate to attend meetings of the Board in the event that the Chair of

the medical staff executive council or medical staff council is unable to attend a meeting. Any such alternate may attend a meeting to which the Chair is invited in the event that the Chair is unable to attend.

- (3) If a local health district has more than one medical staff council, the Board may invite a representative for such of the councils as the Board considers appropriate.
- (4) The Board may invite any other person to attend any meeting of the Board (including both ordinary and special meetings).
- (5) The Board may exclude any person (other than a member or the Chief Executive or his or her nominee) from attending any meeting or part of a meeting.
- (6) The Board may exclude the Chief Executive, or his or her nominee, from attending any ordinary or special meeting, or part of a meeting, where the business under consideration relates to the conduct or performance of the Chief Executive.

16 Annual public meeting

- (1) An annual public meeting of the Board is to be held between 1 July and 31 December each calendar year.
- (2) The Board is to prepare and present at each annual public meeting a report on the affairs of the local health district since the last annual public meeting, including audited financial statements for the local health district.
- (3) The presiding member is to determine the procedure for the conduct of business at the annual public meeting. The procedure adopted is to be consistent with the requirements of the Act and this Schedule.
- (4) Any person is entitled to attend the annual public meeting and seek leave to address the meeting.
- (5) The holding of the annual public meeting is to be advertised in at least one newspaper circulating generally in the area of the local health district and by such other means (including on the Internet) as the Board determines.
- (6) The provisions of this Schedule relating to the calling and conduct of ordinary and special meetings of the Board do not apply to the calling and conduct of the annual public meeting.

17 Minutes

- (1) The Chief Executive is to ensure that minutes are kept of all meetings of the Board.
- (2) A motion for the confirmation of minutes of a meeting is to be put to the next ordinary meeting.

- (3) No business is to be transacted until the minutes of the previous meeting have been confirmed or otherwise disposed of.

18 Decisions of the Board to be made available

- (1) The Board is to make available to staff of the local health district information concerning its decisions except where the Board determines that it is inappropriate to disclose that information.
- (2) The Board may make available to the public information concerning its decisions.

19 Rescission

- (1) The Board may at any ordinary or special meeting vary or rescind any resolution carried at any previous meeting of the Board, but only if the motion to vary or rescind the resolution has been included in or with the notice of the meeting.
- (2) If a motion to vary or rescind a resolution is considered at a meeting of the Board and is not carried, the motion is not to be reconsidered by the Board during the period of 3 months from the date of that meeting.

20 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 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.

Schedule 2 Savings and transitional provisions consequent on

enactment of **Health Services Amendment (Local Health Networks) Act 2010**

1 Updating of references to particular area health services

Each reference (the **current reference**) specified in Column 2 of the Table to this clause located in the provision of the Act or statutory rule referred to in Column 1 (the **provision concerned**) for that reference is to be read on and from 1 January 2011 as a being the reference or references specified in Column 3 (the **updated reference**) next to the current reference.

Column 1	Column 2	Column 3
Provision concerned	Current reference	Updated reference
<i>Centenary Institute of Cancer Medicine and Cell Biology Act 1985</i> No 192—section 7 (3) (c)	Central Sydney Area Health Service	Sydney Local Health Network
<i>Crimes (Forensic Procedures) Regulation 2008</i> —clause 6	Sydney West Area Health Service	Health Reform Transitional Organisation Western
<i>Drug Court Regulation 2010</i> —clause 10 (1) (a)	Sydney South West or Sydney West Area Health Services	Nepean Blue Mountains Local Health Network, South Western Sydney Local Health Network, Western Sydney Local Health Network or Health Reform Transitional Organisation Western
<i>Drug Court Regulation 2010</i> —clause 10 (1) (b)	Northern Sydney and Central Coast Area Health Service	Health Reform Transitional Organisation Northern
<i>Passenger Transport (Drug and Alcohol Testing) Regulation 2010</i> —clause 3 (1) (definition of approved laboratory)	Sydney West Area Health Service	Health Reform Transitional Organisation Western
<i>Public Authorities (Financial Arrangements) Regulation 2005</i> —Schedule 2	Northern Sydney and Central Coast Area Health Service	Northern Sydney Local Health Network and Central Coast Local Health Network
<i>Public Authorities (Financial Arrangements) Regulation 2005</i> —Schedule 2	Sydney South West Area Health Service	Sydney Local Health Network and South Western Sydney Local Health Network
<i>Public Authorities (Financial Arrangements) Regulation 2005</i> —Schedule 2	Sydney West Area Health Service	Western Sydney Local Health Network and Nepean Blue Mountains Local Health Network

Rail Safety (Drug and Alcohol Testing) Regulation 2008—clause 3 (1) (definition of **approved laboratory**)

Western Sydney Area Health Service

Health Reform Transitional Organisation Western

Road Transport (Safety and Traffic Management) Regulation 1999—clause 129

Western Sydney Area Health Service

Health Reform Transitional Organisation Western

Road Transport (Safety and Traffic Management) Regulation 1999—Schedule 3 (Column 1)

Hunter New England Area Health Service

Hunter New England Local Health Network

Road Transport (Safety and Traffic Management) Regulation 1999—Schedule 3 (Column 1)

Western Sydney Area Health Service

Western Sydney Local Health Network

Walker Trusts Act 1938 No 31—sections 9A (3), 19B (1) and (5) and 19C (1)

Central Sydney Area Health Service

Sydney Local Health Network

2 Continuation of existing approved quality assurance committees

- (1) Each of the approved quality assurance committees approved under section 20E of the *Health Administration Act 1982* in relation to an area health service that is referred to in Column 1 of the Table to this subclause (the **current committee name**) is taken on and from 1 January 2011 to be an approved quality assurance committee with the name specified in Column 2 (the **new committee**) next to the current committee.

Column 1

Current committee name

South Eastern Sydney and Illawarra Area Health Service's Southern Hospital Network Patient Safety and Quality Committee

Clinical Advisory Group—Western Cluster of the Sydney West Area Health Service

Maternal Morbidity and Mortality Committee of the John Hunter Hospital, Hunter Area Health Service

Goulburn Base Hospital Medical Review Panel of the Southern Area Health Service

Column 2

New committee name

Illawarra Shoalhaven Local Health Network Patient Safety and Quality Committee

Clinical Advisory Group—Nepean Blue Mountains Local Health Network

John Hunter Hospital Maternal Morbidity and Mortality Committee

Goulburn Base Hospital Clinical Review Panel

John Hunter Hospital Surgical Audit
Committee of Hunter Area Health Service

John Hunter Hospital, Division of Surgery,
Surgical Audit Committee

The Maitland Hospital Perinatal Review
Committee of the Hunter Area Health
Service

The Maitland Hospital Perinatal Review
Committee

Central Sydney Area Health Service
Cytology Quality Assurance Committee

Sydney Local Health Network Cytology Quality
Assurance Committee

- (2) The continuation of an approved quality assurance committee by operation of subclause (1) does not alter or otherwise affect the existing membership or functions of the committee.

3 Initial model by-laws to have effect until by-laws made by local health network

- (1) The initial model by-laws have effect for the purposes of the Act as the by-laws of a local health network until such time as by-laws made by the network under section 39 of the Act come into force.
- (2) The initial model by-laws have effect in relation to a local health network as if:
- (a) the by-laws had been made by the network, and
 - (b) references in the by-laws to a local health network were references to the network.
- (3) In this clause:

initial model by-laws means the model by-laws entitled *Local Health Network By-laws—Interim Model By-laws* made by the Director-General pursuant to sections 39 and 60 of the Act, as published in the Gazette on 3 December 2010.

Note—

Section 39 of the Act enables the Director-General to set out model by-laws for local health networks in an order published in the Gazette.

4 Continuation of committees, subcommittees and councils established under existing by-laws

- (1) A reference in this clause to an existing committee, subcommittee or council is a reference to a committee, subcommittee or council established under any existing by-laws (within the meaning of Part 7 of Schedule 7 to the Act) that is in existence immediately before 1 January 2011.
- (2) Each existing Audit and Risk Committee for an area health service referred to in Column A of Schedule 1 to the initial model by-laws continues in existence as the Audit and Risk Committee for the corresponding local health network referred to in Column B of that Schedule until such time as the local health network governing

council for the network establishes a new Committee under the network's by-laws.

- (3) Each existing Medical and Dental Appointments and Advisory Committee for an area health service referred to in Column A of Schedule 1 to the initial model by-laws continues in existence as the Medical and Dental Appointments and Advisory Committee for the corresponding local health network referred to in Column B of that Schedule until such time as the local health network governing council for the network establishes a new Committee under the network's by-laws.
- (4) Each existing Credentials (Clinical Privileges) Subcommittee for an area health service referred to in Column A of Schedule 1 to the initial model by-laws continues in existence as a Credentials (Clinical Privileges) Subcommittee for the corresponding local health network referred to in Column B of that Schedule until such time as the Medical and Dental Appointments and Advisory Committee for the network establishes a new Subcommittee under the network's by-laws.
- (5) Each of the existing Hospital Clinical Councils for an area health service referred to in Column A of Schedule 2 to the initial model by-laws continues in existence as a Hospital Clinical Council for the corresponding local health network referred to in Column B of that Schedule until such time as the local health network governing council for the network establishes a new Council under the network's by-laws.
- (6) Without limiting subclause (5), the existing South Eastern Sydney and Illawarra Area Health Service Hospital Clinical Council for the Central Network continues in existence as a Hospital Clinical Council for the South Eastern Sydney Local Health Network until such time as the local health network governing council for the network establishes a new Council under the network's by-laws.
- (7) The continuation of an existing committee, subcommittee or council by operation this clause does not alter or otherwise affect the existing membership or functions of the committee, subcommittee or council.
- (8) In this clause:

initial model by-laws has the same meaning as it has in clause 3.

5 Legal consequences of transfer of service contract to more than one local health network

- (1) This clause provides for the legal consequences of the transfer to more than one local health network by the [Health Services \(Transfer of Assets, Rights and Liabilities\) Order 2010](#) of the rights, obligations and other liabilities under an existing service contract.

Note—

The [Health Services \(Transfer of Assets, Rights and Liabilities\) Order 2010](#) was published on the NSW legislation website. See, also, clause 18 (1A) of Schedule 4 to the Act.

- (2) The rights, obligations and other liabilities under an existing service contract that are

transferred to each local health network in relation to one or more health facilities under the network's control are taken to constitute a service contract between the service provider and the network in relation to the provision of services and exercise of clinical privileges at each such facility, and may be enforced accordingly.

(3) For the purposes of subclause (2), the services to be provided, and the clinical privileges to be afforded, at each health facility are to be provided or afforded on the same terms and for the same period as are specified in the existing service contract.

(4) In this clause:

existing service contract means a service contract in force immediately before 1 January 2011 between a medical practitioner or practice company and an area health service that relates to the provision of services or exercise of clinical privileges at one or more health facilities controlled by the area health service.

health facility means a public hospital or health institution.

service provider, in relation to an existing service contract, means the medical practitioner or practice company that is a party to the contract.