

# Health Services Act 1997 No 154

[1997-154]



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**
  - [Health Services Amendment \(Paramedics\) Act 2015 No 21](#) (not commenced — to commence on 1.2.2016)
  - [Health Services Amendment \(Ambulance Services\) Act 2015 No 22](#) (not commenced)

### Authorisation

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# Health Services Act 1997 No 154



New South Wales

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# Health Services Act 1997 No 154



New South Wales

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

## Chapter 1 Preliminary

### Introduction—

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

### 1 Name of Act

This Act is the *Health Services Act 1997*.

### 2 Commencement

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

### 3 Definitions

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

#### Note—

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

### 4 Objects of Act

The objects of this Act are:

- (a) to establish a system of local health districts for the whole of the State to deliver health services and to enable their recognition as health networks for the purposes of the National Health Reform Agreement, and
- (b) to constitute statutory health corporations to deliver health services and health support services other than on the basis of a specified area, and
- (c) to recognise as affiliated health organisations certain non-government institutions and

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

- (c1) to enable the recognition of some statutory health corporations and affiliated health organisations as health networks for the purposes of the National Health Reform Agreement, and
- (d) to re-affirm the adoption of the Medicare Principles and Commitments as guidelines for the delivery of public hospital services (within the meaning of section 23E of the [Health Insurance Act 1973](#) of the Commonwealth) and to facilitate the collection of fees from patients of public health organisations in respect of services received by them that are not required to be provided free of charge under the Medicare Agreement, and
- (e) to regulate the conditions of contracts of visiting medical officers appointed by public health organisations, and
- (f) to facilitate transfers of staff within the public health system and to avoid unnecessary staff redundancies, and
- (g) to require visiting practitioners and staff in the public health system to disclose any charge or conviction for a serious sex or violence offence or of a misconduct finding (such as findings of professional misconduct or unsatisfactory professional conduct), and
- (h) to specify the action that may be taken in relation to convictions for serious sex or violence offences committed by visiting practitioners or staff in the public health system, and
- (i) to make provision for the funding of public health organisations, and
- (j) to facilitate the efficient and effective administration of the public health system generally by providing mechanisms for such matters as inquiries, inspections and transfers of resources.

## 5 Notes

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

## Chapter 2 Structure of the public health system

### 6 What is the public health system?

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

- (a) all the local health districts, and

- (b) all the statutory health corporations, and
- (c) all the affiliated health organisations in respect of their recognised establishments and recognised services, and
- (d) the Health Secretary in respect of the provision of ambulance services under Chapter 5A and the provision of services under Part 1A of Chapter 10.

#### **7 What is a public health organisation?**

A **public health organisation** is:

- (a) a local health district, or
- (b) a statutory health corporation, or
- (c) an affiliated health organisation in respect of its recognised establishments and recognised services.

#### **8 What is a local health district?**

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

#### **9 Primary purposes of local health districts** (cf AHS Act s 19)

The primary purposes of a local health district in its area are as follows:

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

#### **10 Functions of local health districts** (cf AHS Act ss 19 and 20)

The functions of a local health district are as follows:

- (a) generally to promote, protect and maintain the health of the residents of its area,
- (b) to conduct and manage public hospitals, health institutions, health services and health support services under its control,
- (c) to give residents outside its area access to such of the health services it provides as may be necessary or desirable,
- (d) to achieve and maintain adequate standards of patient care and services,



- (e) to ensure the efficient and economic operation of its health services and health support services and use of its resources,
- (f) generally to consult and co-operate (as it considers appropriate) with any one or more of the following:
  - (i) the Health Care Complaints Commission constituted under the *Health Care Complaints Act 1993*,
  - (ii) health professionals practising in its area,
  - (iii) other individuals and organisations (including voluntary agencies, private agencies and public or local authorities) concerned with the promotion, protection and maintenance of health,
- (f1) to co-operate with other local health districts and the Health Secretary in relation to the provision of services involving more than one public health organisation or on a State-wide basis,
- (g) to investigate and assess health needs in its area,
- (h) to plan future development of health services in its area, and, towards that end:
  - (i) to consult and plan jointly with the Ministry of Health and such other organisations as it considers appropriate, and
  - (ii) to support, encourage and facilitate the organisation of community involvement in the planning of those services, and
  - (iii) to develop strategies to facilitate community involvement in the planning of those services and to report on the implementation of those strategies in annual reports and to the Minister,
- (i) to establish and maintain an appropriate balance in the provision and use of resources for health protection, health promotion, health education and treatment services,
- (j) to provide services to persons with whom it has contracted or entered into an agreement under section 37 (2),
- (k) to administer funding for recognised establishments and recognised services of affiliated health organisations where that function has been delegated to it by the Minister under section 129,
- (l) to provide training and education relevant to the provision of health services,
- (m) to undertake research and development relevant to the provision of health services,
- (n) to make available to the public information and advice concerning public health and the health services available within its area,

- (o) to carry out such other functions as are conferred or imposed on it by or under this or any other Act or as may be prescribed by the regulations.

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

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

#### **Note—**

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

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

A statutory health corporation has the following functions:

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

### **13 What is an affiliated health organisation?**

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

#### **Note—**

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

defines a **recognised service** of an affiliated health organisation to mean a health service or health support service of the organisation that is listed in column 2 of Schedule 3 next to its name.

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

**Note—**

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

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

The functions of an affiliated health organisation are as follows:

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

**15 What is a public hospital?**

A **public hospital** is:

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

**Note—**

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

**16 (Repealed)**

**Chapter 3 Local health districts**

## **Part 1 Constitution of local health districts**

### **17 Constitution of local health districts**

- (1) There are constituted by this section such local health districts as are specified from time to time in column 1 of Schedule 1.
- (2) A local health district is a body corporate with the corporate name specified in column 1 of Schedule 1.

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

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

### **19 Amendment of Schedule 1 (Names and areas of local health districts)** (cf AHS Act ss 6 and 8)

- (1) The Governor may, by order published on the NSW legislation website:
  - (a) amend column 1 of Schedule 1 by inserting, altering or omitting the name of a local health district, or
  - (b) amend column 2 or 3 (or both) of Schedule 1 by inserting, altering or omitting a description of the area in respect of which a local health district is (or was) constituted, or
  - (c) omit Schedule 1 and insert instead a Schedule containing the names of local health districts and descriptions of the areas in respect of which the local health districts are constituted.
- (2) If an area in respect of which a local health district is constituted:

(a) is described by reference to a local government area that is constituted as a city, and

(b) the name of the city (but not the boundaries) is changed,

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

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

**20 Dissolution, amalgamation or change of name of local health districts** (cf AHS Act s 9)

(1) The Governor may, by order published on the NSW legislation website:

(a) dissolve a local health district, or

(b) amalgamate 2 or more local health districts, or

(c) change the name of a local health district,

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

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

(3) An order is not to be made under this section unless the Minister is of the opinion that the order is in the public interest and has recommended to the Governor that the order be made.

(4) A dissolution, amalgamation or change of name under this section may be effected without holding an inquiry.

**Note—**

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

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

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

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

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

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

**Note—**

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

- (2) However, a local health district cannot employ any staff.

**Note—**

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

## **Part 2 Control and management of local health districts**

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

**23 Appointment of chief executive**

- (1) A chief executive is to be appointed for each local health district.
- (2) The employment of the chief executive is subject to Part 3 of Chapter 9.

**Note—**

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

- (3) (Repealed)

## **24 Chief executive to manage and control affairs of local health district**

- (1) The affairs of a local health district are to be managed and controlled by the chief executive of the district.
- (2) Any act, matter or thing done in the name of, or on behalf of, a local health district by its chief executive is taken to have been done by the district.

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

The chief executive of a local health district:

- (a) has, and may exercise, such functions as are conferred or imposed on the chief executive by or under this or any other Act, and
- (b) is, in the exercise of his or her functions, accountable to the local health district board constituted for the district.

## **Division 2 Local health district boards**

### **26 Constitution of local health district boards**

- (1) A local health district board is to be established for each local health district.
- (2) A local health district board is to consist of 6 to 13 persons appointed by the Minister, selected in accordance with subsections (3) and (4).
- (3) The Minister is to select the membership of a local health district board so that the membership of the board has an appropriate mix of skills and expertise required to oversee and provide guidance to the district, including members who:
  - (a) have expertise and experience in health management, business management and financial management, and
  - (b) have expertise and experience in the provision of clinical and other health services, and
  - (c) where appropriate, are representatives of universities, clinical schools or research centres, and
  - (d) have knowledge and understanding of the community served by the district, and
  - (e) have other backgrounds, skills, expertise, knowledge or experience appropriate for the district.
- (4) A local health district board is to have at least one member (who may also be one of the kinds of members referred to in subsection (3) (a)-(e)) who has expertise, knowledge or experience in relation to Aboriginal health.
- (5) A member of a local health district board holds office for such period (not exceeding 4

years) as may be specified in the member's instrument of appointment.

- (6) A member whose term of office expires is eligible (if otherwise qualified) for re-appointment, but may not be appointed so as to hold office for more than 8 years in total (whether or not the appointments are consecutive).
- (7) One of the members of a local health district board is, by the relevant instrument of appointment or by a further instrument signed by the Minister, to be appointed as the chairperson of the board.
- (8) A member of a local health district board is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.
- (9) Subject to this section, the constitution and procedure of a local health district board are to be as prescribed by the regulations.

## **27 (Repealed)**

## **28 Functions of local health district boards**

The local health district board for a local health district has the following functions:

- (a) to ensure effective clinical and corporate governance frameworks are established to support the maintenance and improvement of standards of patient care and services by the local health district and to approve those frameworks,
- (b) to approve systems:
  - (i) to support the efficient and economic operation of the local health district, and
  - (ii) to ensure the district manages its budget to ensure performance targets are met, and
  - (iii) to ensure that district resources are applied equitably to meet the needs of the community served by the district,
- (c) to ensure strategic plans to guide the delivery of services are developed for the local health district and to approve those plans,
- (d) to provide strategic oversight of and monitor the local health district's financial and operational performance in accordance with the State-wide performance framework against the performance measures in the performance agreement for the district,
- (e) to make recommendations for the appointment of the chief executive of the local health district and, where it considers it appropriate to do so, to make recommendations concerning the removal of the chief executive,
- (f) to confer with the chief executive of the local health district in connection with the



operational performance targets and performance measures to be negotiated in the service agreement for the district under the National Health Reform Agreement,

- (g) to approve the service agreement for the local health district under the National Health Reform Agreement,
- (h) to seek the views of providers and consumers of health services, and of other members of the community served by the local health district, as to the district's policies, plans and initiatives for the provision of health services, and to confer with the chief executive of the district on how to support, encourage and facilitate community and clinician involvement in the planning of district services,
- (i) to advise providers and consumers of health services, and other members of the community served by the local health district, as to the district's policies, plans and initiatives for the provision of health services,
- (j) to endorse the local health district's annual report,
- (k) to liaise with the boards of other local health districts and specialty network governed health corporations in relation to both local and State-wide initiatives for the provision of health services,
- (l) such other functions as are conferred or imposed on it by the regulations.

## **29 Removal of members of local health district board and appointment of administrator**

- (1) The Minister may at any time, for any reason or no reason and without notice, by order published in the Gazette:
  - (a) remove any member or all members of a local health district board from office, or
  - (b) remove all members of a local health district board from office and appoint, as administrator of the local health district concerned, the chief executive of the district or any other person specified in the order for such period as may be specified in the order.
- (2) If the Minister appoints an administrator of a local health district under this section, the Minister is (as soon as is reasonably practicable after the appointment is made) to make a statement in Parliament concerning the basis for the appointment of the administrator.
- (3) An administrator of a local health district has and may exercise, subject to any conditions that may be specified in the order by which the administrator is appointed, all the functions of the chief executive and board for that district.
- (4) An administrator of a local health district is entitled to be paid from the funds of that district such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the administrator.

- (5) The regulations may make provision with respect to administrators of local health districts.

## **29A (Repealed)**

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

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

The chief executive may establish such committees and councils as he or she considers appropriate to assist the local health district in the exercise of its functions.

## **Part 3 Functions of local health districts**

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

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

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

- (1) A local health district may, subject to any direction under this Act, at any time

establish such hospitals, health institutions, health services or health support services as it thinks necessary for the exercise of its functions.

- (2) A local health district may, subject to any direction under this Act, at any time:
  - (a) close any public hospital or health institution, or cease to provide any health service or health support service, under its control, or
  - (b) restrict the range of health care or treatment provided by any public hospital, health institution, health service or health support service under its control.
- (3) A local health district must, before implementing any decision to exercise its functions under subsection (1) or (2):
  - (a) notify the Health Secretary of the decision, and
  - (b) ensure that the decision is appropriate having regard to the functions of the local health district.
- (4) (Repealed)

### **32 Determination of role, functions and activities of local health districts**

- (1) The Health Secretary may, from time to time, determine the role, functions and activities of any public hospital, health institution, health service or health support service under the control of a local health district and, for that purpose, give any necessary directions to the local health district.
- (2) The Minister may direct a local health district to do any of the following if the Minister is satisfied that it is in the public interest to do so:
  - (a) establish any hospital, health institution, health service or health support service,
  - (b) close any public hospital or health institution, or cease to provide any health service or health support service, under its control,
  - (c) restrict the range of health care or treatment provided by any public hospital, health institution or health service under its control.

### **33 (Repealed)**

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

- (1) A local health district may do all or any of the following:
  - (a) acquire land (including an interest in land), for the purpose of the exercise of its functions, by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) and acquire any other property (whether or not the land or other property is required for the purposes of any public hospital, health institution, health service or health support service under

the control of the local health district),

(b) sell, lease, mortgage or otherwise dispose of land or any other property,

(c) dedicate land as a public road under the *Roads Act 1993*.

(2) A local health district must not, without the approval of the Minister, do any of the following:

(a) acquire land by any means,

(b) dispose of land by sale, lease, mortgage or otherwise,

(c) dedicate land as a public road.

(3) A local health district may request the Minister to give approval to (and the Minister may approve) a disposition or dedication of land or a use of land, being a disposition, dedication or use:

(a) that is contrary to a provision of, or a trust arising under, the Crown grant of that land, or

(b) that, if this section had not been enacted, may make the land liable to be forfeited to the Crown.

(4) If the Minister has given an approval under this section to a disposition or dedication of land, or to a use of land, neither the disposition or dedication of the land (or its subsequent use) nor the use of the land:

(a) is to be regarded as a breach of any provision of, or any trust arising under, the Crown grant of that land, or

(b) is to make the land liable to be forfeited to the Crown.

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

(1) For the purposes of the *Public Works Act 1912*, any acquisition of land under section 34 (1) (a) is taken to be for an authorised work and the local health district concerned is, in relation to that authorised work, taken to be the Constructing Authority.

(2) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply in respect of works constructed under this Act.

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

(1) A local health district may acquire any property by gift, devise or bequest and may agree to and carry out the conditions of any such gift, devise or bequest, but only if the carrying out of any such conditions is not inconsistent with the purposes and functions of the district.

(2) The rule of law against remoteness of vesting does not apply to any such condition to which a local health district has agreed.

(3) A local health district may act as trustee of money or other property vested in the local health district on trust.

**37 Contracts of local health district** (cf AHS Act s 30)

(1) A local health district may make and enter into contracts or agreements with any person for the performance of services, or for the supply of goods, plant, machinery or material, by that person with respect to the exercise by the local health district of its functions conferred or imposed by or under this or any other Act.

(2) A local health district may also, with the approval of the Health Secretary, make and enter into contracts or agreements with any person for the provision of any service by the local health district to that person. Any such contract or agreement may extend to the provision of the service outside the area of the local health district.

(3) Any contract or agreement under this section is taken, for the purposes of the [Constitution Act 1902](#), to be a contract or agreement for or on account of the Public Service of New South Wales.

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

(1) A local health district may invest money held by it:

(a) in such manner as may be authorised by the [Public Authorities \(Financial Arrangements\) Act 1987](#), or

(b) if that Act does not confer power to invest money so held, in any manner authorised for the time being for the investment of trust funds and in any other manner approved by the Minister with the concurrence of the Treasurer.

(2) A local health district may at any time dispose of any of its investments and apply the proceeds for the purpose of exercising its functions.

(3) This section is, in relation to the investment of any funds, subject to the terms of any trust applying to those funds.

**39 Local health district may make by-laws** (cf AHS Act s 32)

(1) **Power to make by-laws** A local health district may, with the approval of the Health Secretary, make by-laws, not inconsistent with this Act or the regulations, for or with respect to the following:

(a) the management of any public hospital, health institution, health service or health support service under its control,

(b) the provision of hospital services and other health services to patients of any

public hospital or health institution under its control and to other persons,

- (c) the appointment, control and governance of visiting practitioners in connection with public hospitals, health institutions and health services under its control, including the conditions subject to which visiting practitioners may perform work at or in relation to any such hospital, institution or service,
- (d) regulating or prohibiting smoking at any public hospital, health institution or health service under its control, including by designating an area as a smoke-free area for the purposes of section 6A (Smoke-free areas—outdoor public places) of the *Smoke-free Environment Act 2000*,
- (e) the custody and use of the seal of the local health district,
- (f) the keeping of records concerning its acts and decisions,
- (g) the appointment and functions of its councils and committees.
- (h) (Repealed)

- (2) **Publication of model by-laws** The Health Secretary may publish an order in the Gazette setting out the terms of model by-laws.
- (3) **Preconditions for making of by-laws** A by-law may not be made by a local health district for or with respect to any matter referred to in subsection (1) (c) unless:
  - (a) it is in substance the same as a model by-law under an order for the time being in force under subsection (2) and the Health Secretary has received advice from the Medical Services Committee in relation to the substance of the model by-law, or
  - (b) the Health Secretary has received advice from the Medical Services Committee in relation to the substance of the by-law proposed to be made by the local health district.
- (4) **Exception to preconditions** Subsection (3) does not apply to a by-law if the Medical Services Committee does not furnish advice to the Health Secretary in relation to the relevant model by-law or the by-law:
  - (a) within 30 days after a notice from the Health Secretary requesting such advice has been served on the Committee, or
  - (b) within such further period as the Health Secretary may specify in the notice or in another notice served on the Committee.
- (5) **What by-laws may provide for** A provision of a by-law may do any one or any combination of the following:
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors,

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

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

**40 Delegations by local health district** (cf AHS Act s 34)

- (1) A local health district may delegate any of its functions (other than a function set out in subsection (1A)) to:
- (a) any member of the NSW Health Service, or
  - (b) a visiting practitioner, council or committee appointed by the local health district, or
  - (c) a body appointed by the Minister or Health Secretary under this or any other Act, or
  - (d) a person or body of a class prescribed by the regulations.

**Note—**

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

- (1A) A local health district cannot delegate:
- (a) its power of delegation under this section, or
  - (b) its functions under section 31 (2), or
  - (c) the power to make by-laws.
- (2) The Health Secretary may give any direction to a local health district concerning delegations under this section that the Health Secretary thinks fit.
- (3) Nothing in this section authorises a local health district to delegate the whole of its functions to another person.
- (4) (Repealed)

## **Chapter 4 Statutory health corporations**

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

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

- (1) There are constituted by this section such statutory health corporations as are specified from time to time in Schedule 2.
- (2) A statutory health corporation is a body corporate with the corporate name specified in Schedule 2.
- (3) A statutory health corporation is to be a chief executive governed health corporation, a board governed health corporation or a specialty network governed health corporation, as specified from time to time in Schedule 2.

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

The Governor may, by order published on the NSW legislation website:

- (a) amend Schedule 2 by inserting, altering or omitting the name of a statutory health corporation, or
  - (a1) amend Schedule 2 by changing its governance from:
    - (i) chief executive governance to board governance or specialty network governance, or
    - (ii) board governance to chief executive governance or specialty network governance, or
    - (iii) specialty network governance to chief executive governance or board governance, or
- (b) omit Schedule 2 and insert instead a Schedule containing the names of statutory health corporations and the nature of their governance.

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

- (1) The Governor may, by order published on the NSW legislation website:
  - (a) dissolve a statutory health corporation, or
  - (b) transfer a statutory health corporation to a local health district, or
  - (c) amalgamate 2 or more statutory health corporations, or
  - (d) change the name or nature of governance of a statutory health corporation, and may, in the order, amend Schedules 1 and 2 accordingly.



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

**Note—**

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

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

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

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

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

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

**Note—**

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

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

**Note—**

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

## **Part 2 Control and management of statutory health corporations**

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

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

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

#### **47 Health corporation board to control affairs of board governed health corporation** (cf AHS Act s 13, PH Act s 22 (1))

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

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

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

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

- (1) A health corporation board is to consist of the following persons:
  - (a) the chief executive of the board governed health corporation (who holds office as an ex-officio member),
  - (b) persons (not being less than 5 or more than 11) appointed by the Minister.
- (2) One of the persons appointed by the Minister is to be a member of the NSW Health Service who is employed in connection with the board governed health corporation concerned.
- (3) Subsection (2) does not apply to a health corporation board if less than 50 members of the NSW Health Service are employed to enable the board governed health corporation concerned to exercise its functions.

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

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

**51 Appointment of chief executive**

- (1) There is to be a chief executive for each board governed health corporation.
- (2) If the position of chief executive is an executive position within the meaning of Part 3 of Chapter 9, the appointment and employment of the chief executive is subject to that Part.
- (3) If the position of chief executive is not an executive position within the meaning of Part 3 of Chapter 9:
  - (a) the chief executive is to be appointed by the Minister, and
  - (b) the chief executive is, while holding that office, to be employed under Part 1 of Chapter 9 in the NSW Health Service.
- (4), (5) (Repealed)
- (6) The affairs of a board governed health corporation are to be managed by the chief executive of the corporation.
- (7) The chief executive of a board governed health corporation:
  - (a) has, and may exercise, such functions as are conferred or imposed on the chief executive by or under this or any other Act, and
  - (b) is, in the exercise of his or her functions, subject to the control and direction of the health corporation board for the corporation.

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

- (1) The Governor may at any time, for any reason or no reason and without notice, by order published in the Gazette:
  - (a) remove any member (including the chief executive) or all members of a health corporation board from office, or
  - (b) remove all members of a health corporation board from office and appoint, as administrator of the board governed health corporation concerned, a person specified in the order for such period as may be specified in the order, or
  - (c) remove all members of a health corporation board (other than the chief executive) from office and appoint, as administrator of the board governed health corporation concerned, the chief executive for such period as may be specified in the order.

- (2) The chief executive of a board governed health corporation ceases to hold office as chief executive if removed from office as a member of the health corporation board of the corporation.
- (3) An administrator of a board governed health corporation has and may exercise, subject to any conditions that may be specified in the order by which the administrator was appointed, all the functions of the health corporation board for that corporation.
- (4) An administrator of a board governed health corporation is entitled to be paid from the funds of that corporation such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the administrator.
- (5) The regulations may make provision with respect to administrators of board governed health corporations.
- (6) If the position of chief executive is an executive position within the meaning of Part 3 of Chapter 9:
  - (a) the chief executive may not be removed from office under section 121N, and
  - (b) section 121N applies:
    - (i) to and in respect of a chief executive who is removed from office under this section, and
    - (ii) to and in respect of the executive position of a chief executive who is so removed,

in the same way as it applies to and in respect of a health executive who is removed from office under section 121N and to and in respect of the executive position of a health executive who is so removed.
- (7) (Repealed)

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

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

- (1) The Health Secretary may appoint a chief executive for each chief executive governed health corporation.
- (2) If the position of chief executive is an executive position within the meaning of Part 3 of Chapter 9, the employment of the chief executive is subject to that Part.
- (3) If the position of chief executive is not an executive position within the meaning of Part 3 of Chapter 9, the chief executive:

(a) is, while holding that office, taken to be employed under Part 1 of Chapter 9 in the NSW Health Service, and

(b) may at any time, for any reason or no reason and without notice, be removed from office by the Health Secretary.

(4) (Repealed)

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

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

(2) Any act, matter or thing done in the name of, or on behalf of, a chief executive governed health corporation by its chief executive is taken to have been done by the corporation.

**52C Functions of chief executive generally**

The chief executive of a chief executive governed health corporation has, and may exercise, such functions as are conferred or imposed on the chief executive by or under this or any other Act.

**52D Advisory councils**

(1) The Minister may establish an advisory council for each chief executive governed health corporation.

(2) The constitution, procedure and functions of an advisory council are to be as determined by the Minister.

**52E Other committees and councils**

The chief executive may establish such committees and councils as he or she considers appropriate to assist the chief executive governed health corporation in the exercise of its functions.

**Division 3 Specialty network governed health corporations**

**52F Boards of specialty network governed health corporations**

(1) A board is to be established for each specialty network governed health corporation.

(2) The provisions of Division 2 of Part 2 of Chapter 3 (except section 26 (1)) apply in relation to a board of a specialty network governed health corporation in the same way as they apply to a local health district board, subject to the following modifications:

- (a) a reference in those provisions (however expressed) to a local health district board is to be read as if it were a reference to the board for a specialty network governed health corporation,
- (b) a reference in those provisions (however expressed) to a local health district is to be read as if it were a reference to a specialty network governed health corporation,
- (c) a reference in those provisions (however expressed) to the chief executive of a local health district is to be read as if it were a reference to the chief executive of a specialty network governed health corporation,
- (d) such other modifications as may be prescribed by the regulations.

### **52G Chief executives of specialty network governed health corporations**

- (1) A chief executive is to be appointed for each specialty network governed health corporation.
- (2) The provisions of Division 1 of Part 2 of Chapter 3 (except section 23 (1)) apply in relation to a chief executive of a specialty network governed health corporation in the same way as they apply to a chief executive of a local health district, subject to the following modifications:
  - (a) a reference in those provisions (however expressed) to the chief executive of a local health district is to be read as if it were a reference to the chief executive of a specialty network governed health corporation,
  - (b) a reference in those provisions (however expressed) to a local health district is to be read as if it were a reference to a specialty network governed health corporation,
  - (c) a reference in those provisions (however expressed) to a local health district board is to be read as if it were a reference to the board of a specialty network governed health corporation,
  - (d) such other modifications as may be prescribed by the regulations.

## **Part 3 Functions of statutory health corporations**

### **53A Combined management or assistance in management of public hospitals, health institutions, health services or health support services**

- (1) Any two or more statutory health corporations may, by agreement, jointly control and manage any public hospital, health institution, health service or health support service.
- (2) A statutory health corporation may, by agreement, manage any public hospital,

health institution, health service or health support service under the control of another statutory health corporation, or assist in that management, for and on behalf of that other statutory health corporation.

- (3) A statutory health corporation must not enter into an agreement under this section without the approval of the Minister.
- (4) A public hospital, health institution, health service or health support service is not, for the purposes of this or any other Act, to be regarded as being under the control of a statutory health corporation because the statutory health corporation manages, or assists in the management of, the public hospital, health institution, health service or health support service for and on behalf of another statutory health corporation.

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

(4))

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

**54 (Repealed)**

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

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

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

- (1) For the purposes of the *Public Works Act 1912*, any acquisition of land under section 55 (1) (a) of this Act is taken to be for an authorised work and the statutory health corporation concerned is, in relation to that authorised work, taken to be the Constructing Authority.



- (2) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply in respect of works constructed under this Act.

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

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

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

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

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

- (1) A statutory health corporation may invest money held by it:
- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
  - (b) if that Act does not confer power to invest money so held, in any manner authorised for the time being for the investment of trust funds and in any other manner approved by the Minister with the concurrence of the Treasurer.

- (2) A statutory health corporation may at any time dispose of any of its investments and apply the proceeds for the purpose of exercising its functions.
- (3) This section is, in relation to the investment of any funds, subject to the terms of any trust applying to those funds.

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

- (1) **Power to make by-laws** A statutory health corporation may, with the approval of the relevant authority, make by-laws, not inconsistent with this Act or the regulations, for or with respect to the following:
  - (a) the management of any public hospital, health institution, health service or health support service under its control,
  - (b) the provision of health services to patients of any public hospital or health institution under its control and to other persons,
  - (c) the appointment, control and governance of visiting practitioners in connection with public hospitals, health institutions and health services under its control, including the conditions subject to which visiting practitioners may perform work at or in relation to any such hospital, institution or service,
  - (d) regulating or prohibiting smoking at any public hospital, health institution or health service under its control, including by designating an area as a smoke-free area for the purposes of section 6A (Smoke-free areas—outdoor public places) of the *Smoke-free Environment Act 2000*,
  - (e) the custody and use of the seal of the statutory health corporation,
  - (f) the keeping of records concerning its acts and decisions,
  - (g) in the case of a board governed health corporation:
    - (i) the keeping of records concerning the acts and decisions of the board, and
    - (ii) the procedure for the calling of meetings of the board and for the conduct of business at those meetings,
  - (h) the appointment and functions of its councils and committees.
- (2) **Publication of model by-laws** The relevant authority may publish an order in the Gazette setting out the terms of model by-laws.
- (3) **Precondition for making of by-laws** A by-law may not be made by a statutory health corporation for or with respect to any matter referred to in subsection (1) (c) unless:
  - (a) it is in substance the same as a model by-law under an order for the time being in force under subsection (2) and the relevant authority has received advice from the

Medical Services Committee in relation to the substance of the model by-law, or

(b) the relevant authority has received advice from the Medical Services Committee in relation to the substance of the by-law proposed to be made by the statutory health corporation.

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

(a) within 30 days after a notice from the relevant authority requesting such advice has been served on the Committee, or

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

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

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

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

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

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

(7) In this section, **relevant authority** means:

(a) in relation to a board governed health corporation, the Minister, and

(b) in relation to a chief executive governed health corporation or specialty network governed health corporation, the Health Secretary.

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

(1) A statutory health corporation may delegate to any member of the NSW Health Service the exercise of any of its functions, other than:

(a) this power of delegation, or

(b) the power to make by-laws.

**Note—**

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

- (2) The relevant authority may give any direction to a statutory health corporation concerning delegations under this section that the relevant authority thinks fit.
- (3) Nothing in this section authorises a statutory health corporation to delegate the whole of its functions to another person.
- (4) For the purposes of this section, the functions of a board governed health corporation include the functions of its health corporation board.
- (5) In this section, **relevant authority** means:
  - (a) in relation to a board governed health corporation, the Minister, and
  - (b) in relation to a chief executive governed health corporation or specialty network governed health corporation, the Health Secretary.

## **Chapter 5 Affiliated health organisations**

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

- (1) An organisation or institution whose name is included in column 1 of Schedule 3 is an affiliated health organisation in respect of any of its recognised establishments and recognised services.
- (2) The Governor may, by order published on the NSW legislation website:
  - (a) amend column 1 of Schedule 3 by inserting the name of any organisation or institution (other than a local health district or statutory health corporation) that controls any hospital, health institution, health service or health support service, or
  - (b) amend column 2 of Schedule 3 by inserting a description of any hospital, health institution, health service or health support service under the control of the organisation or institution, or
  - (c) amend Schedule 3 by omitting or altering any such name or description, or
  - (d) omit Schedule 3 and insert instead a Schedule containing the names of any organisations or institutions (other than local health districts or statutory health corporations) and descriptions of any hospital, health institution, health service or health support service under their control.
- (3) An order made under subsection (2) may amend column 2 of Schedule 3 to describe an organisation or institution by reference to some or all of the hospitals, health institutions, health services or health support services it controls.

- (4) An order cannot be made under this section:
- (a) inserting or altering the name of an organisation or institution in column 1 of Schedule 3 unless the organisation or institution (or its governing body) consents to it, or
  - (b) inserting or altering a description of any hospital, health institution, health service or health support service under the control of an organisation or institution in column 2 of Schedule 3 unless the organisation or institution (or its governing body) consents to it.
- (5) In this section, ***governing body*** of an organisation or institution means the person or the board or other body that is responsible for the management of the organisation or institution.

#### **62A Declared affiliated health organisations**

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

#### **Note—**

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

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

#### **62B Recognition of networked affiliated health organisations**

- (1) The Minister may, by order published in the Gazette, declare that one or more affiliated health organisations are to be treated as a network for the purposes of the National Health Reform Agreement in respect of some or all of their recognised establishments or recognised services.
- (2) Such an order may be made:

- (a) on the application of one or more affiliated health organisations, or
  - (b) on the Minister's own initiative.
- (3) The Minister may make an order pursuant to the application of one or more affiliated health organisations only if the Minister is satisfied that:
- (a) in the case of an application by one affiliated health organisation:
    - (i) the affiliated health organisation has more than one recognised establishment or service, or
    - (ii) the affiliated health organisation provides State wide services or services of State significance, or
  - (b) in the case of an application by two or more affiliated health organisations, the affiliated health organisations have agreed to form a health network.
- (4) An order under this section may specify a name for the network.
- (5) An order cannot be made under this section in relation to an affiliated health organisation except with the concurrence of the organisation (or its governing body).

**Editorial note—**

For orders under this section, see Gazette No 9 of 28.1.2011, p 300.

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

- (1) **Power to make by-laws** An affiliated health organisation may, with the approval of the Minister, make by-laws, not inconsistent with this Act or the regulations, for or with respect to the following:
- (a) the management of any of its recognised establishments and recognised services,
  - (b) the provision of health services to patients of any hospitals or health institutions that are its recognised establishments,
  - (c) the provision to other persons of health services that are its recognised services,
  - (d) the appointment, control and governance of visiting practitioners in connection with hospitals, health institutions and health services that are its recognised establishments or recognised services (including the conditions subject to which visiting practitioners may perform work at or in relation to any such hospital, institution or service),
  - (e) the appointment, control and governance of persons employed by it in respect of its recognised establishments and recognised services and any other matter or thing necessary or convenient to ensure the maintenance of discipline and efficiency in the service of the affiliated health organisation of any such employees

or group or class of employees,

- (f) the keeping of records concerning the acts, decisions and proceedings of its governing body in respect of its recognised establishments and recognised services,
- (g) the procedure for the calling of meetings of its governing body and for the conduct of business at those meetings in respect of its recognised establishments and recognised services,
- (h) the appointment and functions of committees of the governing body in respect of its recognised establishments and recognised services.

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

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

(3) **Precondition for making of by-laws** A by-law may not be made by an affiliated health organisation for or with respect to any matter referred to in subsection (1) (d) unless:

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

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

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

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

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

regulated by any specified person or body.

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

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

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

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

- (1) The Governor may, by order published on the NSW legislation website, transfer to any local health district or statutory health corporation:
- (a) any public hospital or health institution of an affiliated health organisation that is a recognised establishment of the organisation, or
  - (b) any health service or health support service of an affiliated health organisation that is a recognised service of the organisation, or
  - (c) any of the assets, rights or liabilities of an affiliated health organisation relating to a recognised establishment or recognised service of the organisation,
- and may amend Schedules 1, 2 and 3 accordingly.
- (2) However, such an order cannot be made unless the affiliated health organisation consents to the transfer.
- (3) An order under this section is to specify the date (being a date that is on or after the date it is published on the NSW legislation website) on which it takes effect. However, if no date is specified in the order, the order is taken to have specified the date on which it is published on the NSW legislation website as the date on which it takes effect.
- (4) Schedule 4 has effect with respect to orders made under this section.



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

**Note—**

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

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

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

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

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

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

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

- (1) A person cannot be appointed as the chief executive of a public hospital that is a recognised establishment, or health service that is a recognised service, of an affiliated health organisation unless the Health Secretary consents to the appointment.

(2) In this section:

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

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

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

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

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

## **Chapter 5A Ambulance services**

### **Part 1 Preliminary**

#### **67AA Definitions**

In this Chapter:

**ambulance fee** means a fee for ambulance services charged by the Health Secretary under this Chapter.

**appointed body** means a committee, board or other body appointed by the Health Secretary under section 67AB.

**child** means a person under 16 years of age.

**Commissioner** means the Commissioner of Fines Administration.

**debt notice** means a debt notice issued by the Health Secretary under section 67Q.

**fee invoice** means a fee invoice issued by the Health Secretary under section 67P.

**fee recovery order** has the meaning given by Schedule 9.

**fee review** means a review of a decision to charge an ambulance fee conducted under Part 6.

**payment rules** means the payment rules made by the Health Secretary under section 67O.

**scale of fees** means the scale of fees for the provision of ambulance services fixed by the Minister under section 67L.

## **Part 2 Provision of ambulance services**

### **67AB Appointed body**

- (1) The Health Secretary may appoint a committee, board or other body as an appointed body for the purposes of this Chapter.
- (2) An appointed body is to consist of such members appointed by the Health Secretary as the Health Secretary thinks fit.
- (3) The procedure of an appointed body is to be determined by the Health Secretary or (subject to any determination of the Health Secretary) by the appointed body.
- (4) A member of an appointed body holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (5) The Health Secretary may terminate the appointment of a member of an appointed body at any time for any or no reason by notice in writing to the member.
- (6) A member of an appointed body is entitled to such fees and allowances as the Health Secretary may determine from time to time.
- (7) A member of an appointed body is not personally liable for any act or omission done or omitted to be done in good faith for the purposes of this Chapter.
- (8) If subsection (7) prevents liability attaching to a member of an appointed body, the liability attaches instead to the Health Secretary.

### **67A Ambulance Service of NSW**

- (1) The Ambulance Service of NSW comprises those staff of the NSW Health Service who are employed primarily in connection with the provision of ambulance services under this Chapter.
- (2) The Health Secretary may appoint a chief executive of the Ambulance Service of NSW.
- (3) The employment of the chief executive is subject to Part 3 of Chapter 9.

### **67B Provision etc of ambulance services**

- (1) The Health Secretary has, on behalf of the Crown, the following functions:

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

#### **67C Ambulance Services Advisory Council**

- (1) There is established by this Act an Ambulance Services Advisory Council.
- (2) The members of the Advisory Council are as follows:
  - (a) the chief executive of the Ambulance Service of NSW,

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

**67D (Repealed)**

**67E Unauthorised provision of ambulance transport**

- (1) A person must not:
  - (a) directly or indirectly provide or take part in the provision of transport for sick or injured persons for fee or reward, or
  - (b) conduct for fee or reward any operations similar to the operations carried on by the Health Secretary under this Chapter,  
  
without the consent of the Health Secretary and except in accordance with such conditions (if any) as the Health Secretary may from time to time impose.  
  
Maximum penalty: 50 penalty units.
- (2) The Health Secretary may revoke any consent given, or revoke or vary any condition imposed, under this section.
- (3) This section does not apply to:
  - (a) the St John Ambulance Australia (NSW) in respect of operations similar to the operations lawfully carried on by that body immediately before the day on which this section commences, or
  - (b) the Royal Flying Doctor Service of Australia (NSW Section), or
  - (c) the mines rescue company, within the meaning of the *Coal Industry Act 2001*, (or a member, director or employee of that company) in the exercise of mines rescue functions under Division 3 of Part 3, or Part 4, of that Act, or

- (d) a member of the New South Wales Mines Rescue Brigade established under the *Coal Industry Act 2001*, or
- (e) any person (or class of persons) prescribed by the regulations.

#### **67F Unauthorised collections**

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

Maximum penalty: 50 penalty units.

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

#### **67G False calls for provision of ambulance services**

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

Maximum penalty: 50 penalty units.

#### **67H Honorary ambulance officers**

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

**Note—**

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

- (2) Honorary ambulance officers:

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

### **67I Exculpation from personal liability**

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

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

### **67J Obstruction of and violence against ambulance officers**

- (1) A person must not intentionally obstruct or hinder an ambulance officer when the ambulance officer is providing or attempting to provide ambulance services to another person or persons.

Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.

- (2) A person must not, by an act of violence against an ambulance officer, intentionally obstruct or hinder the ambulance officer when the ambulance officer is providing or attempting to provide ambulance services to another person or persons.

Maximum penalty: Imprisonment for 5 years.

- (3) If on the trial of a person charged with an offence against subsection (2) the trier of fact is not satisfied that the offence is proven but is satisfied that the person has committed an offence against subsection (1), the trier of fact may acquit the person of the offence charged and find the person guilty of an offence against subsection (1). The person is liable to punishment accordingly.

- (4) In this section:

***ambulance officer*** means a member of staff of the Ambulance Service of NSW.

***ambulance services*** means the work of rendering first aid to, or transporting, sick and injured persons.

## **Part 3 Fees for ambulance services**

### **67K Health Secretary may charge fee for ambulance services**

- (1) The Health Secretary may charge a fee for ambulance services provided by or on behalf of the Health Secretary.

- (2) An ambulance fee may be charged to any person liable for payment of the ambulance fee.
- (3) An ambulance fee is not to exceed the fee fixed for the relevant service by the scale of fees in force at the time that the fee is charged.

#### **67L Scale of fees**

The Minister may, by order published in the Gazette:

- (a) fix a scale of fees in respect of ambulance services provided by the Health Secretary, and
- (b) amend or revoke any scale of fees so fixed.

#### **67M Who is liable for payment of ambulance fee**

- (1) A person is liable for payment of an ambulance fee for ambulance services provided to the person.
- (2) A person is not liable for payment of an ambulance fee if the person is a child.
- (3) However, if ambulance services are provided to a child, each parent or guardian of the child is jointly and severally liable for payment of an ambulance fee for the provision of those ambulance services.
- (4) A parent or guardian of a child who pays an ambulance fee for the provision of ambulance services to that child is entitled to recover a contribution from any other parent or guardian who is also liable for payment of that fee.
- (5) The contribution payable:
  - (a) is to be determined as if each parent or guardian of the child were liable for an equal share of the ambulance fee, and
  - (b) is recoverable as a debt in a court of competent jurisdiction.
- (6) A court may reduce a person's contribution, or exempt a person from making a contribution, if the court considers it just and equitable in the circumstances.

#### **67N Exemptions**

A person is exempt from the requirement to pay an ambulance fee if:

- (a) a fee is not payable for ambulance services provided to the person under section 17 of the [Health Insurance Levies Act 1982](#), or
- (b) the person is the holder of a concession card of a kind prescribed by the regulations, or



- (c) the person is otherwise exempt from payment under the regulations or the payment rules.

**Note—**

Under section 17 of the *Health Insurance Levies Act 1982*, a fee is not payable if the person was, at the time the service was provided:

- (a) a contributor to a health benefits fund conducted by an organisation to which section 10 of that Act applies, or
- (b) a contributor to the State Ambulance Insurance Plan.

**670 Payment rules**

- (1) The Health Secretary may, by order published in the Gazette, make rules about the payment of ambulance fees (**payment rules**).
- (2) The payment rules may provide for the following:
  - (a) exemptions from the payment of ambulance fees,
  - (b) waiver or reduction of ambulance fees,
  - (c) extension of time to pay,
  - (d) payment by instalments,
  - (e) fee reviews,
  - (f) any other matters permitted by this Act.
- (3) The payment rules must not be inconsistent with this Act or the regulations.

**Part 4 How ambulance fees are charged**

**67P How fee is charged—fee invoices**

- (1) The Health Secretary charges an ambulance fee by:
  - (a) issuing an invoice (a **fee invoice**) for the ambulance fee, and
  - (b) serving the fee invoice on a person liable for payment of the fee.
- (2) The fee invoice must:
  - (a) specify the amount of the ambulance fee and the ambulance services for which the fee is payable (including the date on which the services were provided), and
  - (b) specify a due date for payment of the ambulance fee, and
  - (c) include the required information about fee reviews, and

(d) include any other information that the regulations require to be included in the fee invoice.

(3) The regulations may prescribe a form in which a fee invoice is to be given.

(4) Information required to be included in a fee invoice may be incorporated in the fee invoice or accompany the fee invoice.

**67Q Debt notice may be issued if fee not paid**

(1) If an ambulance fee specified in a fee invoice served on a person is not paid in full by the date that is 7 days after the due date for payment specified in the fee invoice, the Health Secretary may:

(a) issue a notice (a **debt notice**) for the outstanding amount, and

(b) serve the debt notice on the person.

(2) The debt notice must:

(a) specify the amount of the ambulance fee that is unpaid and the ambulance services for which the fee is payable (including the date on which the services were provided), and

(b) specify a due date for payment of the ambulance fee, and

(c) include advice to the effect that, if the ambulance fee is not paid in full by the due date:

(i) the Health Secretary can refer the fee to the Commissioner for the taking of fee recovery action under Schedule 9, and

(ii) fee recovery costs may be payable by the person if fee recovery action is taken under that Schedule, and

(d) include the required information about fee reviews, and

(e) include advice to the effect that the Health Secretary is not required to conduct a fee review if the application for review is received after the date for payment of the ambulance fee specified in the debt notice, and

(f) include any other information that the regulations require to be included in the debt notice.

(3) The date specified in a debt notice as the due date for payment of the ambulance fee has effect as the due date for payment of the ambulance fee instead of the date specified as the due date in the relevant fee invoice.

(4) The regulations may prescribe a form in which a debt notice is to be given.

- (5) Information required to be included in a debt notice may be incorporated in the debt notice or accompany the debt notice.

#### **67R Required information about fee reviews**

For the purposes of a fee invoice or debt notice, the **required information** about fee reviews is the following information:

- (a) advice to the effect that the person served with the fee invoice or debt notice can apply for a review by the Health Secretary of the decision to charge the ambulance fee, in accordance with the payment rules, if the person seeks an exemption, waiver or reduction of the fee, extension of time to pay or to pay by instalments,
- (b) the process for applying for such a review,
- (c) the circumstances in which a person is exempt from payment of an ambulance fee under this Act or the regulations or the payment rules,
- (d) advice to the effect that any decision to waive or reduce the fee, extend the time to pay or permit payment by instalments will be made in accordance with the payment rules,
- (e) information on how a copy of the payment rules can be obtained.

#### **67S Due date for payment of ambulance fee**

- (1) The due date for payment of an ambulance fee specified in a fee invoice or debt notice must be at least 21 days after it is served on the person.
- (2) A fee invoice or debt notice served by post is not invalid merely because it specifies as the due date a date that is less than 21 days after it was served on the person.
- (3) In such a case however, the due date is extended to a date that is 21 days after the fee invoice or debt notice was served and the fee invoice or debt notice is taken to specify that date as the due date.

#### **67T Change of payment arrangements**

- (1) The Health Secretary may, in accordance with the payment rules, change the payment arrangements for an ambulance fee charged to a person by:
  - (a) reducing the amount payable, or
  - (b) extending the time to pay, or
  - (c) permitting the fee to be paid by instalments or reducing instalments.
- (2) The Health Secretary changes the payment arrangements for an ambulance fee by serving notice in writing of the change on the person who has been charged the fee.

- (3) Any fee invoice or debt notice served on the person before notice of the change is taken to be amended in accordance with the changed payment arrangements.
- (4) If the Health Secretary permits payment of an ambulance fee by instalment and an instalment of the ambulance fee is not paid by a due date for payment of an instalment, the remaining instalments immediately become payable.
- (5) The Health Secretary must not change payment arrangements for an ambulance fee after the ambulance fee has been referred to the Commissioner for the making of a fee recovery order, unless the referral is revoked.

**Note—**

The Commissioner must withdraw a fee recovery order made in relation to an ambulance fee if the referral is revoked.

## **Part 5 Recovery of ambulance fees**

### **67U Ambulance fee is debt payable to Health Secretary**

- (1) An ambulance fee specified in a debt notice served on a person is recoverable by the Health Secretary as a debt in a court of competent jurisdiction.
- (2) However, the Health Secretary cannot take proceedings to recover the debt if the fee is referred to the Commissioner for the making of a fee recovery order, unless the referral is revoked.

### **67V Referral of fee to Commissioner for fee recovery action**

- (1) The Health Secretary may, by notice in writing to the Commissioner, refer an ambulance fee to the Commissioner for the making of a fee recovery order if:
  - (a) a debt notice for the ambulance fee has been served on the person charged with the fee, and
  - (b) the fee has not been paid in full by the date that is 7 days after the due date for payment specified in the debt notice.

**Note—**

After making a fee recovery order, the Commissioner can take fee recovery action to recover the ambulance fee, and fee recovery costs, under Schedule 9.

- (2) The Health Secretary may at any time, by notice in writing to the Commissioner, revoke the referral of an ambulance fee to the Commissioner.

**Note—**

The Commissioner must withdraw a fee recovery order made in relation to an ambulance fee if the referral is revoked.

**67W Provision of information to Commissioner**

- (1) The Health Secretary may, for the purpose of enabling the recovery of ambulance fees under Schedule 9, provide the following information to the Commissioner:
  - (a) identifying information about a person provided with ambulance services and, if that person was a child, about any parent or guardian of the child,
  - (b) the date the service was provided,
  - (c) the time the service was provided,
  - (d) the location or pick up address at which services were provided,
  - (e) the destination to which the person was taken after pick up,
  - (f) the distance travelled as part of the service,
  - (g) the unique identifying number allocated to the service by the Health Secretary,
  - (h) any other information of a kind prescribed by the regulations.
- (2) The following information is **identifying information** about a person:
  - (a) name,
  - (b) date of birth,
  - (c) gender,
  - (d) address,
  - (e) contact telephone details,
  - (f) driver licence number,
  - (g) information declared to be identifying information by the regulations.
- (3) A regulation under this section is to be made only with the concurrence of the Attorney General.
- (4) The Minister administering this Act is not to recommend the making of a regulation under this section unless the Minister certifies that:
  - (a) the Attorney General has concurred in the making of the regulation, and
  - (b) the Privacy Commissioner was consulted about the proposed regulation.

**67X Suspension of fee recovery action**

The Health Secretary may, at any time, by notice in writing to the Commissioner:

- (a) request the Commissioner to suspend fee recovery action in relation to an ambulance fee that has been referred to the Commissioner, or
- (b) request the Commissioner to revoke the suspension of fee recovery action in relation to an ambulance fee referred to the Commissioner.

**Note—**

Under Schedule 9, the Commissioner is required to suspend fee recovery action if such a request is made.

## **Part 6 Fee reviews**

### **67Y Application for review of ambulance fee**

- (1) A person who is charged an ambulance fee may apply to the Health Secretary for a review of the decision to charge the ambulance fee.
- (2) An application for a review is to be made in accordance with the payment rules.
- (3) An applicant for review must provide to the Health Secretary, in support of an application, any supporting information or evidence that the payment rules require.

### **67Z Review by Health Secretary**

- (1) If an application for a fee review is duly made to the Health Secretary, the Health Secretary must, subject to this section, conduct a review of the decision to charge an ambulance fee.
- (2) The Health Secretary is not required to conduct a review:
  - (a) if a review of the decision has already been conducted under this Part, or
  - (b) if the application is received more than 7 days after the due date for payment specified in a debt notice served on the person, or
  - (c) if the applicant has failed to provide any supporting information or evidence required to be provided by the payment rules, or
  - (d) in such other circumstances as may be prescribed by the regulations.
- (3) The Health Secretary may also conduct a review of a decision to charge an ambulance fee of his or her own motion.

### **67ZA Extension of time to pay—on-time review application**

- (1) During the period in which an on-time review application is before the Health Secretary:
  - (a) the Health Secretary must not issue a debt notice for the ambulance fee (if a debt notice has not yet been issued) or refer the fee to the Commissioner for the

making of a fee recovery order, and

(b) the requirement to pay the ambulance fee is suspended.

(2) The period in which an on-time review application is before the Health Secretary is the period starting on (and including) the day on which the application is received by the Health Secretary and ending on (and including) the day on which notice of the outcome of the review application is served on the person charged the ambulance fee.

**Note—**

Notice served by post is taken to be served on the person 7 days after it is sent, unless the person establishes otherwise.

- (3) After conducting the review or deciding not to conduct the review, the Health Secretary must change the payment arrangements for the ambulance fee by extending the time for payment of the ambulance fee by at least the number of days in the period in which the application was before the Health Secretary.
- (4) Subsection (3) does not apply if the Health Secretary decides to revoke the decision to charge the ambulance fee or waive the ambulance fee.
- (5) In this section:

***on-time review application*** means an application for review of a decision to charge an ambulance fee that is duly made to the Health Secretary and received by the Health Secretary:

- (a) before the issue of a debt notice for the ambulance fee, or
- (b) no later than 7 days after the due date for payment of the ambulance fee specified in a debt notice for the ambulance fee.

**Note—**

If the Health Secretary decides to conduct a review in relation to an application that is not an on-time review application, the Health Secretary may request the Commissioner to suspend fee recovery action in relation to the ambulance fee.

**67ZB Request for additional information**

- (1) The Health Secretary may, for the purpose of conducting a fee review, request additional information from an applicant for review.
- (2) The applicant must provide the additional information to the Health Secretary within 14 days of the request or within such greater period as the Health Secretary specifies.
- (3) If the information is not provided within the time specified, the review may be conducted without that information.

**67ZC Actions to be taken after review**

- (1) After conducting a fee review, the Health Secretary may:
  - (a) revoke the decision to charge the ambulance fee, or
  - (b) waive payment of the ambulance fee, or
  - (c) confirm the decision to charge the ambulance fee with or without changing the payment arrangements for the fee.
- (2) The Health Secretary must, after conducting a fee review, revoke the decision to charge an ambulance fee:
  - (a) if the person charged the fee is exempt from payment of the ambulance fee under this Act, the regulations or the payment rules, or
  - (b) if the issue of the fee invoice or debt notice involved a mistake of identity, or
  - (c) if the amount of the fee charged is incorrect, or
  - (d) in any circumstances prescribed by the regulations.
- (3) The Health Secretary must, after conducting a fee review, change the payment arrangements for the ambulance fee if that action is required by this Act or the payment rules.
- (4) The payment rules may also make provision for circumstances in which the Health Secretary may, at his or her discretion, revoke a decision to charge an ambulance fee, waive payment of an ambulance fee or change the payment arrangements for an ambulance fee.
- (5) If the Health Secretary revokes a decision to charge a person with an ambulance fee, or waives payment of an ambulance fee, the Health Secretary must:
  - (a) withdraw the fee invoice and any debt notice issued for the fee, and
  - (b) if the matter has already been referred to the Commissioner for the making of a fee recovery order, revoke the referral.
- (6) If a decision is revoked because of a mistake of identity, the Health Secretary may issue a new fee invoice for the fee to a person who is liable for payment of the fee.
- (7) If a decision is revoked because the amount of the fee charged was incorrect, the Health Secretary may issue a new fee invoice for the correct amount.
- (8) The regulations may provide for other circumstances in which a new fee invoice can be issued.



**67ZD Notice of outcome of application**

- (1) The Health Secretary is to notify an applicant for a fee review in writing of the outcome of the application within 42 days of receipt of the application.
- (2) If the Health Secretary requests additional information from the applicant, the 42-day period is extended by the number of days specified by the Health Secretary in the request as the period in which the additional information must be provided to the Health Secretary.
- (3) A reference to the outcome of an application includes a reference to a decision not to conduct a review on an application.

**Part 7 Miscellaneous**

**67ZE Unpaid fees may be written off**

- (1) The Health Secretary may write off an unpaid ambulance fee, in whole or in part.
- (2) If the ambulance fee has already been referred to the Commissioner for the making of a fee recovery order, the Health Secretary must not write off the unpaid ambulance fee unless the referral has been revoked or fee recovery action has been suspended or cancelled.

**67ZF Service of notices**

- (1) A fee invoice, debt notice or notice of the outcome of an application for a fee review may be served on a person personally or by post.
- (2) Any other notice or other document required to be served on a person by this Chapter may be served:
  - (a) personally, or
  - (b) by post, or
  - (c) by electronic transmission.
- (3) A notice or other document may be served by electronic transmission only if the person has consented to service of notices or other documents under this Chapter by electronic transmission. If a notice or other document is served electronically, the address for service is the address provided by the person.
- (4) It is to be presumed that a notice or other document sent to a person under this Chapter by post is served on the person 7 days after it is posted, unless the person establishes that it was not served within that 7-day period.

## **67ZG Form of notices given to Commissioner**

Any notice given by the Health Secretary to the Commissioner under this Chapter may be given by post, by means of document exchange or by electronic transmission.

## **Chapter 6 Medicare Principles and Commitments**

### **Introduction—**

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

### **68 Medicare Principles and Commitments**

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

#### **MEDICARE PRINCIPLES**

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

#### **Explanatory note—**

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

#### **Choices of services**

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

#### **Explanatory note 1—**

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

#### **Explanatory note 2—**

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

#### **Universality of services**

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

#### **Explanatory note 1—**

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

- whether or not an eligible person has health insurance,
- an eligible person's financial status or place of residence,
- whether or not an eligible person intends to elect, or elects, to be treated as a public or private patient.

**Explanatory note 2—**

This principle applies equally to waiting times for elective surgery.

**Equity in service provision**

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

**Explanatory note 1—**

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

**Explanatory note 2—**

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

**COMMITMENTS**

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

**Information about service provision**

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

**Explanatory note 1—**

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

**Explanatory note 2—**

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

**Efficiency and quality of service provision**

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

**Explanatory note—**

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

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

## **Chapter 7 Charges for health services**

**Introduction—**

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

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

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

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

- (1) Any person who receives any health service (other than a non-chargeable hospital service) from a public health organisation is liable to contribute towards the funds of the organisation, according to the person's means, such sum in respect of the health service as is calculated in accordance with the scale of fees fixed under section 69.

- (2) That sum (if unpaid) may be recovered in any court of competent jurisdiction as a debt.
- (3) A written statement of the amount due, purporting to be signed by an authorised employee of the public health organisation concerned, is prima facie evidence of the amount being due.
- (4) The public health organisation may remit, postpone or write-off payment of all or any sums of money due to the organisation under this section.
- (5) In this section:

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

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

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

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

- (1) This section applies to any person (**the debtor**) who is liable to a public health organisation for the cost of any health service (other than a non-chargeable hospital service) provided by the organisation in respect of any personal injury suffered by the person or another person.
- (2) If the debtor has a right to recover damages against any other person in respect of the personal injury, the amount of the debtor's liability to the public health organisation is a charge on any money that is or may become payable in respect of such right to recover damages.
- (3) The charge is enforceable by way of an action brought by the public health organisation in the same way as if the action were an action brought by or on behalf of the debtor claiming the amount of such liability as special damages.
- (4) In any such action (or any judgment given concerning that action), the parties have, to the extent of the charge, the same rights and liabilities (and the court has the same powers) as if the action were by or on behalf of the debtor.
- (5) The action may be brought despite:
  - (a) any judgment recovered by or on behalf of the debtor, and
  - (b) any payment made to the debtor or any other person (except the public health organisation) in respect of the defendant's liability, and

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

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

(a) the person injured has ceased to receive health services in respect of the injury, and

(b) the cost of all health services provided by any public health organisation has been fully paid or satisfied.

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

(1) An order is not to be made under this Chapter by a court if it is satisfied that (having regard to the means, estate, or property of the person in respect of whom the order is sought or to the circumstances of the case) the order would be unreasonable.

(2) Nothing in this Chapter derogates from any rights that may exist for the recovery of money due.

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

(1) A medical practitioner is not entitled to charge a patient who is under treatment by the medical practitioner in any public hospital with any fees in respect of the treatment if that treatment is provided as part of the provision of a non-chargeable hospital service.

(2) Any contract between a patient and a medical practitioner for any payment made in contravention of this section is unenforceable.

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

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

## **Chapter 8 Visiting practitioners**

### **Introduction—**

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

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

public health system generally.

Part 3 requires visiting practitioners to report to the public health organisation that appointed them the fact that they have been charged with committing, or have been convicted of, a serious sex or violence offence or have had a finding of professional misconduct or unsatisfactory professional conduct made against them under the *Health Practitioner Regulation National Law (NSW)*. A public health organisation must terminate the appointment of a visiting practitioner convicted of a serious sex or violence offence if the Health Secretary so directs. A public health organisation cannot terminate the appointment of a visiting practitioner of its own motion under the Part unless the Health Secretary has confirmed the organisation's proposal to terminate the appointment. These provisions mirror those provided in Part 2 of Chapter 9 for employees in the NSW Health Service.

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

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

## Part 1 Classification of visiting practitioners

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

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

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

The kinds of visiting practitioners are:

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

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

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

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

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

#### Note—

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

remuneration.

## Part 2 Service contracts

### Division 1 Classification of service contracts

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

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

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

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

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

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

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

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

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



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

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

**Division 2 Entry into service contracts**

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

- (1) A medical practitioner who a public health organisation wishes to appoint as a visiting medical officer may elect to be appointed under a service contract entered into between the organisation and the medical practitioner's practice company.
- (2) However, no such election may be made unless the medical practitioner's practice company:
  - (a) carries public liability insurance to a level approved by the Health Secretary from time to time, and
  - (b) carries professional indemnity insurance.
- (3), (4) (Repealed)

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

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

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

- (1) The Minister may, by order in writing, approve of sets of conditions (including remuneration) recommended by the Association for inclusion in service contracts, entered into on or after the day on which the order takes effect, of a class specified in the order.
- (2) A **standard service contract**, in relation to a class of service contracts (such as fee-for-service contracts, sessional contracts or honorary contracts), is a contract that, when entered into, contains the set of conditions (if any) approved for the time being under subsection (1) for those service contracts, whether or not it contains other conditions that are not inconsistent with the approved set of conditions.

- (3) An order under this section takes effect:
  - (a) on the day the order is made, or
  - (b) on such later day as may be specified in the order.
- (4) An order under this section is to specify a period for the purposes of section 89 (3) (being a period that does not exceed 5 years).

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

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

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

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

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

**Note—**

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

- (2) An application is to be in the form approved by the relevant Minister from time to time.
- (3) An application that seeks to obtain a determination under this Part:
  - (a) in relation to a class of service contracts for which there is a standard service contract, and
  - (b) that, if made, would be at variance with a condition approved under section 87,

cannot be made before the expiry of such period as may have been specified in the order under section 87 by force of which the condition concerned was last included in the standard service contract.

**90 Appointment of arbitrator by relevant Minister**

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

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

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

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

- (1) In making a determination under this Part, the arbitrator:
  - (a) is not bound by the rules of evidence and may inform himself or herself on any matter as the arbitrator sees fit, and
  - (b) must act judicially and be governed by equity and good conscience, without regard to technicalities or legal forms.
- (2) In making a determination under this Part, the arbitrator is to give effect to the same policies on increases in remuneration as those that the Industrial Relations Commission is required to give effect to under section 146C of the *Industrial Relations Act 1996* when making or varying awards or orders relating to the conditions of employment of public sector employees.

**93 Rights of appearance, administration of oaths, legal representation** (cf PH Act s 29O)

- (1) The Minister and the Association may appear before and be heard by an arbitrator by their respective representatives in any proceedings before the arbitrator.

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

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

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

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

- (1) The arbitrator must give written notice to the Minister and the Association of the arbitrator's determination under this Part.
- (2) Except as provided by section 96, a determination made under this Part (or a purported determination):
  - (a) is final, and
  - (b) may not be appealed against, reviewed, quashed or called into question by any court or tribunal (whether on an issue of fact, law, jurisdiction or otherwise).

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

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

**Note—**

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

**97 Interpretation of a determination**

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

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

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

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

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

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

**Note—**

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

- (a) if committed in New South Wales, is punishable by imprisonment for 12 months or more, or
  - (b) if committed elsewhere than in New South Wales, would have been an offence punishable by imprisonment for 12 months or more if committed in New South Wales.
- (2) A visiting practitioner appointed by a public health organisation who has a finding of unsatisfactory professional conduct or professional misconduct made against him or her under the *Health Practitioner Regulation National Law (NSW)* must, within 7 days of receiving notice of the finding:
    - (a) report that fact to the chief executive of the organisation, and

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

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

- (1) The chief executive of a public health organisation is to report to the relevant professional council any conduct of a visiting practitioner that the chief executive suspects on reasonable grounds may constitute professional misconduct or unsatisfactory professional conduct under the *Health Practitioner Regulation National Law (NSW)*.
- (2) In this section, **relevant professional council** means:
  - (a) in relation to a visiting practitioner who is a medical practitioner, the Medical Council of New South Wales, or
  - (b) in relation to a visiting practitioner who is a dentist, the Dental Council of New South Wales.

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

- (1) **Chief executive to notify Health Secretary of certain matters** The chief executive of a public health organisation must notify the Health Secretary of the following matters:
  - (a) that a visiting practitioner of the organisation has been convicted (whether before or during the term of his or her appointment as a visiting practitioner) of a serious sex or violence offence,
  - (b) whether or not the public health organisation proposes to terminate the appointment of the visiting practitioner and the reasons why it intends to terminate or not to terminate the appointment,
  - (c) any written submissions made to the chief executive under subsection (3) concerning the conviction.
- (2) **When chief executive to notify** The chief executive is to notify the Health Secretary under subsection (1) within 30 days (or such further period as may be agreed to by the Health Secretary) of becoming aware of the visiting practitioner's conviction.
- (3) **Chief executive to afford practitioner opportunity to make submissions** Before notifying the Health Secretary under subsection (1), the chief executive is to afford the visiting practitioner concerned a reasonable opportunity to make written submissions concerning any matter relevant to the conviction that the visiting practitioner wishes to have considered in determining whether or not to terminate the practitioner's appointment.
- (4) **Powers of Health Secretary on being notified** On being notified of the matters referred to in subsection (1), the Health Secretary may:

- (a) confirm the proposed termination or retention of the visiting practitioner, or
  - (b) refuse to confirm the proposed termination or proposed retention of the visiting practitioner and direct the public health organisation not to terminate or to terminate the appointment (as the case may be).
- (5) **When public health organisation may terminate appointment on its own initiative** A public health organisation may terminate the appointment of a visiting practitioner who has been convicted (whether before or during the term of his or her appointment as a visiting practitioner) of a serious sex or violence offence, but only if:
- (a) the chief executive has notified the Health Secretary under subsection (1) of the proposal to terminate the appointment and of the matters referred to in that subsection, and
  - (b) the Health Secretary has notified the organisation that he or she has confirmed the organisation's proposal to terminate the appointment.
- (6) **Public health organisation must terminate appointment if Health Secretary directs** A public health organisation must terminate the appointment of a visiting practitioner under this Part who has been convicted (whether before or during the appointment) of a serious sex or violence offence if the Health Secretary has directed the public health organisation to do so under subsection (4) (b).
- (7) **Section does not apply to previously disclosed convictions** This section does not apply to a conviction that occurred before a person was appointed as a visiting practitioner if before that appointment:
- (a) the person notified the chief executive of the public health organisation in writing of the fact of the conviction, and
  - (b) the chief executive of the organisation reported the conviction to the Health Secretary, and
  - (c) the Health Secretary notified the public health organisation in writing that he or she consented to the person being appointed as a visiting practitioner.
- (8) **Functions of chief executive may be carried out by authorised person** The functions of a chief executive of a public health organisation under this section may be carried out by a person who is authorised by the chief executive to do so.
- (9) **Application of section** This section extends to a conviction that occurred before the commencement of this section.

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

The protection of a public health organisation's patients and clients and of children for which it is responsible is to be the paramount consideration in relation to determining

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

### **102 No compensation for termination of appointment**

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

### **103 Appeal rights**

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

#### **Note—**

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

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

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

#### **Note—**



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

## Part 4 Appeals concerning appointment decisions

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

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

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

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

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

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

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

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

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

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

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

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

The Chairperson of the Committee:

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

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

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

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

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

**112 Determination of appeal** (cf PH Act s 330)

- (1) Subject to this Part and the regulations, a Committee must determine the appeal and may make such orders with respect to the matter being appealed as the Committee considers proper.
- (1A) Following its determination of an appeal, if a Committee considers on reasonable grounds that:
  - (a) serious concerns exist in relation to the performance or competence of the appellant, or
  - (b) the appellant has engaged in conduct that may constitute professional misconduct or unsatisfactory professional conduct under the *Health Practitioner Regulation National Law (NSW)*, or
  - (c) the appellant may have an impairment under the *Health Practitioner Regulation National Law (NSW)*,
  - (d) (Repealed)

the Chairperson of the Committee may refer the matter to the Medical Council of New South Wales (in the case of a medical practitioner) or the Dental Council of New South Wales (in the case of a dentist) to be dealt with as a complaint under Part 8 of the *Health Practitioner Regulation National Law (NSW)*.

- (2) If a public health organisation refused to re-appoint the appellant because it had appointed persons to all its available relevant positions that it considered to be better applicants, the Committee cannot order the re-appointment of the appellant unless it specifies in the order which one of those other practitioners' appointments is to be made available to the appellant.
- (3) The Chairperson of the Committee is to notify the Minister in writing of any order of the Committee made under this section.
- (4) In this section:

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

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

- (1) An order of a Committee under section 112:
  - (a) has force and effect from the date it is made, and
  - (b) is taken to be the final decision of the public health organisation concerned and must be given effect to accordingly.

- (2) If a Committee makes an order for re-appointment referred to in section 112 (2):
  - (a) the appointment of any visiting practitioner specified in the order (along with any related service contract) is terminated, and
  - (b) no compensation is payable to the visiting practitioner (or to any party to a related service contract) as a consequence of the termination of the appointment or contract or of a public health organisation giving effect to the order.

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

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

- (1) This section applies to any agreement between a public health organisation and a visiting practitioner relating to the performance of work by the visiting practitioner for the organisation, regardless of whether or not the agreement also relates to other matters.
- (2) A provision of this Act (other than Parts 2, 3 and 4 of this Chapter) or a regulation or by-law made under this Act that is inconsistent with any of the rights and obligations under any agreement to which this section applies has (to the extent of the inconsistency) no force or effect in relation to the visiting practitioner concerned.
- (3) In this section, a reference to an agreement includes a reference to a service contract.

## **Chapter 9 The NSW Health Service**

### **Part 1 Employment of staff in the NSW Health Service**

#### **115 The NSW Health Service**

- (1) The NSW Health Service consists of those persons who are employed under this Part by the Government of New South Wales in the service of the Crown.
- (2) This Part does not affect any other means (statutory or otherwise) by which persons may be employed in the service of the Crown.

**Note—**

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

#### **116 Employment of staff generally**

- (1) The Government of New South Wales may employ staff under this Part:
  - (a) to enable local health districts and statutory health corporations, and the public hospitals that they control, to exercise their functions, and
  - (b) to enable declared affiliated health organisations to exercise their functions in

relation to their recognised establishments and recognised services, and

- (c) to enable the Health Secretary to exercise his or her functions under Chapter 5A in relation to ambulance services, and
  - (d) to enable the Health Secretary to exercise his or her functions under Part 1A of Chapter 10 in relation to the provision of services to public health organisations and the public hospitals that they control, and
  - (e) to enable the Health Administration Corporation to exercise its functions under this or any other Act, and
  - (f) to enable the Cancer Institute (NSW) to exercise its functions under this or any other Act.
- (2) The employment of staff in the NSW Health Service, including the exercise of employer functions in relation to that staff, is subject to the requirements of this or any other Act relating to that staff.
- (3) The Health Secretary may, subject to subsection (2), exercise on behalf of the Government of New South Wales, the employer functions of the Government in relation to the staff employed in the NSW Health Service.

**Note—**

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

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

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

- (1) The Health Secretary may fix the salary, wages and conditions of employment of staff employed under this Part in so far as they are not fixed by or under any other law.
- (2) The Health Secretary may give directions to a public health organisation requiring the payment by the organisation, on behalf of the Government of New South Wales, of the salary, wages and other employment-related costs (such as superannuation, workers compensation, public liability insurance and vicarious tortious liability) of those members of the NSW Health Service who are employed under this Part to enable the public health organisation to exercise its functions.
- (3) The Health Secretary may enter into an agreement with any association or organisation representing a group or class of members of the NSW Health Service with respect to the conditions of employment (including salaries, wages or remuneration)

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

- (4) An agreement under subsection (3) binds all members of staff in the group or class affected by the agreement, and no such member, whether a member of the association or organisation with which the agreement was entered into or not, has any right of appeal against the terms of the agreement.
- (5) This section does not apply in relation to any conditions of employment determined under Part 3 of this Chapter of any member of staff of the NSW Health Service whose employment is subject to that Part.

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

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

#### **116C Transfer of staff within the NSW Health Service**

- (1) The Health Secretary may, on the ground of redundancy, direct the transfer of a member of the NSW Health Service (***the staff member***) from one position in the NSW Health Service to another position in the Service at a salary in accordance with any general determination under section 116A (1), but only if:
  - (a) the Health Secretary is satisfied that:
    - (i) the number of persons who are employed in or in connection with the public health organisation concerned exceeds the number that appears to be necessary for the effective, efficient and economical management of the functions and activities of the organisation, either generally or at a particular location, or
    - (ii) the mix of skills or other expertise of the persons who are employed in or in connection with the public health organisation concerned appears to be unsuitable for the effective, efficient and economical management of the functions and activities of the organisation, either generally or at a particular location, and
  - (b) the Health Secretary is satisfied that the staff member possesses the essential

qualifications specified for the other position and the work assigned to the other position is appropriate to the skills and qualifications of the staff member, and

(c) if the staff member is to be transferred to a position in connection with a declared affiliated health organisation—the affiliated health organisation has been consulted by the Health Secretary as to the suitability of the staff member to carry out duties in connection with the organisation having regard to the health care philosophy of the organisation.

(2) If a staff member refuses a transfer from one position to another under this section, the Health Secretary may, if satisfied that the staff member has no valid reason for so refusing, dismiss the member from the NSW Health Service.

(3) No compensation is payable in respect of the dismissal.

(4) Nothing in this section affects the operation of Part 6 (Unfair dismissals) of Chapter 2 of the *Industrial Relations Act 1996* or any other statutory right that a member of staff may have in relation to his or her dismissal from the NSW Health Service under this section.

(5) Nothing in this section prevents the transfer, under any other law, of members of staff of the NSW Health Service.

#### **116D Health Secretary may arrange for use of services or facilities outside of NSW Health Service**

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

#### **116E Obligations of declared affiliated health organisations under certain legislation**

(1) For the purposes of the *Work Health and Safety Act 2011*, a declared affiliated health organisation has, in respect of the staff employed in the NSW Health Service to enable the organisation to exercise its functions, the functions and liabilities of the person conducting the business or undertaking conducted by a recognised establishment or recognised service of the organisation.

(2) A reference in the *Anti-Discrimination Act 1977* to an employer in relation to employment in the NSW Health Service in connection with a declared affiliated health organisation and its recognised establishments and recognised services is taken to be a reference to the declared affiliated health organisation.

#### **116F Operation of privacy legislation**

If any staff are employed under this Part in the NSW Health Service to enable a public health organisation to exercise its functions, the staff are (however described) taken, for



the purposes of the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*, to be part of the public health organisation.

**116G Miscellaneous provisions relating to civil liability**

- (1) A reference in this section to a public health organisation does not include a reference to an affiliated health organisation unless it is a declared affiliated health organisation.
- (2) Part 5 of the *Workers Compensation Act 1987* applies to work injury damages recoverable from the Government of New South Wales, and to work injury damages recoverable from a public health organisation, by or in respect of a person employed in the NSW Health Service to enable the public health organisation to exercise its functions. That Part so applies as if the public health organisation:
  - (a) were an employer of the person in addition to the Government, and
  - (b) were an employer liable to pay compensation under that Act.
- (3) A policy of insurance may be issued to the Government of New South Wales under the *Workers Compensation Act 1987* that is limited to workers employed in connection with a particular public health organisation.
- (4) If:
  - (a) a person is employed in the NSW Health Service to enable a public health organisation to exercise its functions, and
  - (b) the Government of New South Wales is, as the person's employer, proceeded against for any negligence or other tort of the person (whether the damages are recoverable in an action for tort or breach of contract or in any other action), and
  - (c) the public health organisation is entitled under a policy of insurance or indemnity to be indemnified in respect of liability that the organisation may incur in respect of that negligence or other tort,the Government is subrogated to the rights of the public health organisation under that policy in respect of the liability incurred by the Government arising from that negligence or other tort.
- (5) For the purposes of Division 2 of Part 9 of Chapter 2 of the *Industrial Relations Act 1996*:
  - (a) if a person who is member of the NSW Health Service is appointed (otherwise than on an acting basis) to another position in the NSW Health Service in connection with a different public health organisation or a different division of that Service, the person is taken to have entered into a new contract of employment in respect of that other position, and

- (b) the cessation of a person's appointment (whether by way of dismissal, resignation, transfer or otherwise) to a position in the NSW Health Service is taken to terminate the person's contract of employment in respect of that position.
- (6) However, a person who holds an appointment to a position that is abolished does not, for the purposes of subsection (5) (b), cease to be appointed to that position until:
  - (a) such time as the person is appointed to another position in the NSW Health Service, or
  - (b) such time as the person's employment in the NSW Health Service is terminated, whichever occurs first.
- (7) In this section:

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

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

### 117AA Definitions

In this Part:

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

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

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

**Note—**

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

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

imprisonment for 12 months or more if committed in New South Wales.

- (2) A member of staff who has a misconduct finding made against him or her under the *Health Practitioner Regulation National Law (NSW)* must, within 7 days of receiving notice of the finding:
- (a) report that fact to the chief executive of the relevant organisation, and
  - (b) provide the chief executive with a copy of that finding.

- (3) In this section:

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

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

**Note—**

Section 142 of the Health Practitioner Regulation National Law imposes obligations on employers to notify the Australian Health Practitioner Regulation Agency of misconduct by health practitioners.

**117A Duty of chief executive to report certain conduct**

- (1) The chief executive of a public health organisation is to report to the relevant professional council any conduct of a member of staff that the chief executive suspects on reasonable grounds may constitute professional misconduct or unsatisfactory professional conduct under the *Health Practitioner Regulation National Law (NSW)*.
- (2) In this section, **relevant professional council** means:
- (a) in relation to a chiropractor, the Chiropractic Council of New South Wales, or
  - (b) in relation to a dentist, dental hygienist, dental prosthetist, dental therapist or an oral health therapist, the Dental Council of New South Wales, or
  - (c) in relation to a medical practitioner, the Medical Council of New South Wales, or
  - (d) in relation to a nurse or midwife, the Nursing and Midwifery Council of New South Wales, or
  - (e) in relation to an optometrist, the Optometry Council of New South Wales, or
  - (f) in relation to an osteopath, the Osteopathy Council of New South Wales, or
  - (g) in relation to a pharmacist, the Pharmacy Council of New South Wales, or
  - (h) in relation to a physiotherapist, the Physiotherapy Council of New South Wales, or

- (i) in relation to a podiatrist, the Podiatry Council of New South Wales, or
- (j) in relation to a psychologist, the Psychology Council of New South Wales.

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

- (1) The chief executive of a public health organisation is, within 30 days (or such further period as may be agreed to by the Health Secretary) of becoming aware that a member of staff has been convicted (whether before or during his or her employment) of a serious sex or violence offence, to notify the Health Secretary of the staff member's conviction.
- (2) On being notified under subsection (1), the Health Secretary is to afford the member of staff concerned a reasonable opportunity to make written submissions concerning any matter relevant to the conviction that the staff member wishes to have considered in determining what (if any) disciplinary action should be taken in relation to the staff member.
- (3) The Health Secretary may take such disciplinary action as the Health Secretary considers appropriate (having regard to section 119) against a member of staff who has been convicted (whether before or during his or her employment) of a serious sex or violence offence.
- (4) This section does not apply to a conviction that occurred before a person was employed if, before that employment, the person notified the Health Secretary in writing of the fact of the conviction.
- (5) This section extends to a conviction that occurred before the commencement of this section (as substituted by the [Public Sector Employment Legislation Amendment Act 2006](#)).
- (6) In this section:

***disciplinary action*** means:

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

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

The protection of a public health organisation's patients and clients and of children for which it is responsible is to be the paramount consideration in relation to determining whether to take disciplinary action against a member of staff under this Part.

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

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

### **120A Suspension of members of staff from duty pending decision in relation to misconduct or serious criminal charge**

(1) If:

- (a) the registration of a member of staff as a registered health practitioner is suspended under section 150 of the *Health Practitioner Regulation National Law (NSW)*, or
- (b) conditions are imposed on the registration of a member of staff as a registered health practitioner under section 150 (1) (b) of that Law that, in the opinion of the Health Secretary, are inconsistent with any of the inherent requirements of the terms of employment of the staff member, or
- (c) an interim prohibition order is made in respect of a member of staff under section 41AA of the *Health Care Complaints Act 1993* that prohibits the staff member from providing health services or specified health services, or
- (d) an interim prohibition order is made in respect of a member of staff under section 41AA of that Act that places conditions on the provision of health services or specified health services by the staff member that, in the opinion of the Health Secretary, are inconsistent with any of the inherent requirements of the terms of employment of the staff member, or
- (e) a member of staff is charged with having committed a serious criminal offence,

the Health Secretary may suspend the member of staff from duty until the suspension, interim prohibition order or conditions have been removed or expire or the criminal charge has been dealt with.

#### **Note—**

Under section 3J of the *Public Sector Employment and Management Act 2002* the Public Service Commissioner may, for the purposes of exercising his or her functions, give a direction in writing to the head of a public sector agency in relation to the staff of that agency. The head of a public sector agency to whom such a direction is given must comply with the direction.

(2) Any salary payable to a person as a member of staff while the person is suspended from duty under this section is (if the Health Secretary so directs) to be withheld.

(3) If:

- (a) the registration of the member of staff as a registered health practitioner is cancelled or suspended under section 149C of the *Health Practitioner Regulation National Law (NSW)*, or

- (b) conditions are imposed on the registration of the member of staff as a registered health practitioner under section 149A (1) (b) of that Law that, in the opinion of the Health Secretary, are inconsistent with any of the inherent requirements of the terms of employment of the staff member, or
- (c) a prohibition order is made in respect of the member of staff under section 41A of the *Health Care Complaints Act 1993* that prohibits the staff member from providing health services or specified health services, or
- (d) a prohibition order is made in respect of the member of staff under section 41A of that Act that places conditions on the provision of health services or specified health services by the staff member that, in the opinion of the Health Secretary, are inconsistent with any of the inherent requirements of the terms of employment of the staff member, or
- (e) the person is convicted of the offence concerned,

the salary withheld under subsection (2) is forfeited to the State unless the Health Secretary otherwise directs or that salary was due to the person in respect of a period before the suspension was imposed.

- (4) If, at the time that the relevant suspension, interim prohibition order or conditions referred to in subsection (1) (a)-(d) are removed or expire, action referred to in subsection (3) (a)-(d) is not taken in relation to the member of staff, the salary withheld under subsection (2) is to be paid to that member of staff unless the Health Secretary directs that the salary is to be forfeited to the State (other than any salary that was due to the person in respect of a period before the suspension was imposed).
- (5) If the Health Secretary has suspended a member of staff from duty under this section, the Health Secretary may at any time remove the suspension.
- (6) Nothing in this section prevents the Health Secretary from suspending a member of staff under any other provision of this Act or any other law (with or without pay) or from taking any other action against a member of staff under this Part.
- (7) In this section:

**salary** does not include any payment in connection with sick leave, recreation leave or any other leave.

**serious criminal offence** means an offence committed in New South Wales that is punishable by imprisonment for 5 years or more or an offence committed elsewhere that, if it had been committed in New South Wales, would be an offence so punishable.

## 121 Effect of Part

- (1) (Repealed)

- (2) Nothing in this Part affects the operation of Part 6 (Unfair dismissals) of Chapter 2 of the *Industrial Relations Act 1996* or any other statutory right that a member of staff may have in relation to the termination of his or her employment under this Part. However, in exercising its functions under that Part, the Industrial Relations Commission is to have regard to section 119 of this Act.

**Note—**

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

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

**Note—**

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

## Part 3 The Health Executive Service

### Division 1 Preliminary

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

- (1) In this Part:

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

**executive position** means:

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

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

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

- (2) In this Part, a reference to the remuneration package for a health executive is, if a range of amounts has been determined by the Health Secretary, a reference to:
- (a) the amount within that range nominated in the executive's contract of employment, or
  - (b) in any other case, the minimum amount within that range.

### Division 2 Composition of Health Executive Service

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

- (1) The Health Executive Service comprises:
  - (a) the chief executives of the local health districts, and
  - (a1) the chief executive of the Ambulance Service of NSW, and
  - (b) the persons holding:
    - (i) such positions in the NSW Health Service (including the Ambulance Service of NSW), and
    - (ii) such positions as chief executive of a health corporation board, and
    - (iii) such positions in the Health Professional Registration Boards Division of the Government Service,as are for the time being determined by the Health Secretary to be executive positions.
- (2) A list of the positions determined for the time being under subsection (1) (b) is to be made publicly available on the website of the Department of Health.

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

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

- (1) Appointments to vacant executive positions are to be made by the Health Secretary.
- (2) The Health Secretary may appoint any person employed in the NSW Health Service to act in an executive position while the position is vacant or its holder is suspended, sick or absent.
- (3) While acting in an executive position, a person has all the functions of the holder of the position, but does not thereby become a health executive.
- (4) The Health Secretary may, at any time, terminate the appointment of a person to act in an executive position.
- (5) This section does not prevent the payment of an allowance to a person employed in the NSW Health Service for exercising all or any of the functions of an executive position while the position is vacant or its holder is suspended, sick or absent.

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

- (1) Subject to this Act, a health executive holds office for such period (not exceeding 5 years) as is specified in the executive's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.



- (2) A health executive may be re-appointed with effect before the expiry of the executive's term of office. In that case, the executive's existing term of office expires.

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

- (1) The employment of a health executive is to be governed by a contract of employment between the executive and the Health Secretary.
- (2) A contract of employment may be made before or after the appointment of the health executive concerned.
- (3) A health executive is not appointed by, nor is a health executive's term of office fixed by, the contract of employment.
- (4) However, a contract of employment may constitute the instrument of appointment if the person authorised to make the appointment is also the person who signs the contract with the health executive concerned.
- (5) A contract of employment may be varied at any time by a further contract between the parties.
- (6) A contract of employment may not vary or exclude a provision of this Act or the regulations.

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

- (1) The matters to be dealt with in a contract of employment between a health executive and the Health Secretary include the following:
  - (a) the duties of the executive's position (including performance criteria for the purpose of reviews of the executive's performance),
  - (b) the monetary remuneration and employment benefits for the executive as referred to in Division 4 (including the nomination of the amount of the remuneration package if a range of amounts has been determined for the remuneration package).
- (2) A contract of employment may provide for any matter to be determined:
  - (a) by further agreement between the parties, or
  - (b) by further agreement between the health executive concerned and some other person specified in the contract, or
  - (c) by the Health Secretary or by some other person or body specified in the contract.

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

- (1) A health executive's performance must be reviewed, at least annually, by such person as may be nominated by the Health Secretary.
- (2) Any such review is to have regard to the agreed performance criteria for the position and any other relevant matter.

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

- (1) In this section, a reference to the employment of a health executive is a reference to:
  - (a) the appointment of, or failure to appoint, a person to a vacant executive position, or
  - (b) the removal, retirement, termination of employment or other cessation of office of a health executive, or
  - (c) any disciplinary proceedings or disciplinary action taken against a health executive, or
  - (d) the remuneration or conditions of employment of a health executive.
- (2) The employment of a health executive, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the *Industrial Relations Act 1996*.
- (3) Subsection (2) applies whether or not any person has been appointed to a vacant executive position.
- (4) Part 6 (Unfair dismissals) and Part 9 (Unfair contracts) of Chapter 2 of the *Industrial Relations Act 1996* do not apply to or in respect of the employment of a health executive.
- (5) Any State industrial instrument (whether made before or after the commencement of this section) does not have effect in so far as it relates to the employment of health executives.
- (6) Subsection (5) does not prevent the regulations from applying the provisions of an award or industrial agreement to the employment of a health executive.
- (7) An appeal does not lie to the Industrial Relations Commission in relation to the employment of a health executive.
- (8) No proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of the appointment of or failure to appoint a person to an executive position, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.

(9) In this section, **industrial agreement** includes any determination under section 115.

## Division 4 Remuneration of health executives

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

In this Division:

**approved** means approved for the time being, in writing, by the Health Secretary, either generally or in relation to any health executive or class of health executives.

**employment benefit** means:

- (a) contributions payable to a superannuation scheme by the Health Secretary in respect of a health executive, including any liability of the Health Secretary to make any such contributions or to pay approved costs associated with that scheme, or
- (b) the provision by the Health Secretary of a motor vehicle for private use by a health executive, or
- (c) any other approved benefit provided to a health executive at the cost of the Health Secretary (being a benefit of a private nature).

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

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

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

### 121J Determination of remuneration packages

- (1) The Health Secretary may from time to time determine the remuneration packages for health executives.
- (2) The amount of the remuneration package for a health executive is to be no less than the minimum amount that may be determined by the Statutory and Other Offices Remuneration Tribunal under Part 3A of the [Statutory and Other Offices Remuneration Act 1975](#) with respect to the remuneration package for an executive officer within the meaning of Part 3.1 of the [Public Sector Employment and Management Act 2002](#).
- (3) In making a determination of the remuneration packages for health executives, the Health Secretary is to give effect to the same policies on increases in remuneration as those that the Industrial Relations Commission is required to give effect to under

section 146C of the *Industrial Relations Act 1996* when making or varying awards or orders relating to the conditions of employment of public sector employees.

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

- (1) Health executives are entitled to monetary remuneration at such rate, and employment benefits of such kinds, as are provided in their contract of employment.
- (2) Contributions payable to a superannuation scheme by the Health Secretary in respect of a health executive that are required to be made by the Health Secretary under a law of the State relating to superannuation are, until provided for by the executive's contract of employment, taken to be an employment benefit provided in the contract.
- (3) The total amount of:
  - (a) the annual rate of monetary remuneration for a health executive, and
  - (b) the annual cost of employment benefits provided for a health executive under the relevant contract of employment,is to be equal to the amount of the remuneration package for the executive.
- (4) The cost of an employment benefit is the approved amount or an amount calculated in the approved manner.
- (5) This section does not affect:
  - (a) any approved performance-related incentive payments made to a health executive, or
  - (b) any remuneration or benefits to which a health executive is otherwise entitled by law (such as statutory or agreed fees for attendance at meetings or the like).
- (6) A contract of employment may provide for the payment of part of the monetary remuneration under the contract to be made in the form of a periodic leave loading.
- (7) A health executive is entitled to be paid an amount equivalent to the approved cost of a part of any entitlement to take annual or extended leave with pay if the executive forgoes (with the approval of the Health Secretary) the right to take that part of that leave. This subsection has effect despite anything to the contrary in the *Annual Holidays Act 1944* or any other Act.
- (8) During any period when the monetary remuneration and employment benefits for a health executive cannot be determined under subsection (1), the executive is entitled to monetary remuneration at the rate of the amount of the remuneration package for the executive, subject to any subsequent adjustment of payments in accordance with the executive's contract of employment.

- (9) If the remuneration package for a health executive is varied, the executive is entitled to monetary remuneration and employment benefits in accordance with the executive's contract of employment pending any necessary variation of the contract and adjustment of payments to comply with this section with effect from the date of the variation.

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

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

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

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

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

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

- (1) The Health Secretary may remove a health executive from an executive position at any time for any or no reason and without notice.

(2) The Health Secretary:

- (a) may declare a health executive who is removed from an executive position by the Health Secretary under subsection (1) to be an unattached officer, and
- (b) may revoke any such declaration.

(3) While a declaration under subsection (2) remains in force, the person to whom the declaration relates:

- (a) is to be regarded as a health executive, although not holding an executive position, and
- (b) is entitled to monetary remuneration and employment benefits as if the person had not been removed from his or her position.

(4) If:

- (a) a health executive is removed from an executive position under subsection (1) and a declaration is not made in relation to the executive under subsection (2), or
- (b) a declaration under subsection (2) made in relation to a health executive is revoked,

the executive ceases to be a health executive, unless appointed to some other executive position.

(5) A person who ceases to be a health executive because of subsection (4) ceases to be a member of staff of the NSW Health Service unless appointed to some other position in the NSW Health Service.

(6) The making of a declaration under subsection (2) in relation to a health executive does not prevent the executive from ceasing to be a health executive because of the completion of the executive's term of office.

(7) Clause 11 of Schedule 4 to the *Public Sector Employment and Management Act 2002* applies to and in respect of a person:

- (a) who ceases to be a health executive pursuant to this section, and
- (b) who, immediately before he or she became a health executive, was an executive officer to whom that clause applied,

as it would have applied to the person had he or she ceased to be an executive officer, as referred to in clause 11 (7) of that Schedule, when he or she ceased to be a health executive.

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

(1) This section applies to the following persons:

- (a) a health executive who is removed from office under section 121N (1) and ceases to be a health executive because of section 121N (4),
- (b) a health executive who is otherwise removed from office (except for misbehaviour after due inquiry),
- (c) a health executive who was employed in the NSW Health Service when first appointed as a health executive, whose term of office as a health executive expires and who is not re-appointed.

However, this section does not apply to or in respect of a health executive who consents to a transfer at a lower level of remuneration.

(2) A person to whom this section applies is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

(3) The Statutory and Other Offices Remuneration Tribunal:

- (a) may determine that compensation is payable for the failure to re-appoint a health executive only if the Tribunal is satisfied that the person had a reasonable expectation of being re-appointed, and
- (b) must have regard to any general directions given to the Tribunal by the Minister as to the matters to be taken into consideration when it makes determinations under this section.

(4) The maximum compensation payable is an amount equal to the person's remuneration package for the period of 38 weeks.

(5) The person is not entitled to any other compensation for the removal or retirement from office or for the failure to re-appoint the person or to any remuneration in respect of the office for any period afterwards (except remuneration in respect of a subsequent re-appointment to the office).

(6) A health executive who is removed from office or not re-appointed is not entitled to compensation under this section if:

- (a) the person is appointed on that removal or expiry of term of office:
  - (i) to another executive position within the meaning of this Part, or
  - (ii) to an executive position within the meaning of the *Public Sector Employment and Management Act 2002*, and
- (b) the remuneration package for the holder of that position is not less than the

remuneration package for the holder of the former position.

- (7) If the Statutory and Other Offices Remuneration Tribunal determines that compensation is payable under this section, it must, in its determination, specify the period to which the compensation relates.
- (8) During the period so specified, the person:
- (a) may not be employed in a public sector service within the meaning of the *Public Sector Employment and Management Act 2002*, and
  - (b) may not be employed in the service of a State owned corporation or a subsidiary of a State owned corporation, and
  - (c) may not be appointed to any statutory office,
- unless arrangements are made for a refund of the proportionate amount of the compensation.

## Division 6 General

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

- (1) A person who:
- (a) was a chief executive of a statutory health corporation, or was employed in the public sector, when appointed to an executive position, and
  - (b) had a right to accrued extended or annual leave with pay immediately before that appointment, and
  - (c) has not taken that leave before taking up duties in the executive position,
- is entitled, on taking up those duties, to be paid instead of that leave (or any part of that leave) the money value of that leave (or part) as a gratuity if the person so elects.
- (2) An election under this section is to be made within the time and in the manner determined by the Health Secretary.
- (3) The money value of leave is to be calculated at the rate of pay of the person immediately before appointment to the executive position.
- (4) A person who was a chief executive of a statutory health corporation, or was employed in the public sector, when appointed to an executive position retains any right to extended, annual, sick or other leave accrued or accruing to the person immediately before the appointment (except any accrued leave which is paid out by a gratuity under subsection (1)).



- (5) In this section, a reference to employment in the public sector is a reference to:
- (a) employment in the NSW Health Service, the Government Service or the Teaching Service, or
  - (b) employment as a member of the NSW Police Force, or
  - (c) employment as an officer in the service of a public authority within the meaning of Part 3.1 of the *Public Sector Employment and Management Act 2002*, or
  - (d) appointment to a statutory office.

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

- (1) If a position ceases to be designated as an executive position by a determination under section 121B (1) (b):
- (a) the position is abolished, and
  - (b) any person holding the position ceases to be a member of staff of the NSW Health Service (or of the Government Service in the case of a person holding a position referred to in section 121B (1) (b) (iii)) unless appointed to some other position in the NSW Health Service (or in the Government Service in the case of a person holding a position referred to in section 121B (1) (b) (iii)) or unless declared to be an unattached officer under section 121N (2).
- (2) A person referred to in subsection (1) (b) has the same rights and obligations as if the person had ceased to be a health executive because of section 121N (4).
- (3) A determination under section 121B (1) (b) that omits or adds an executive position may contain other provisions of a savings or transitional nature consequent on a position becoming or ceasing to be an executive position or becoming a different kind of executive position.

**121R Change in title of positions** (cf PSE&M Act s 82)

A position referred to in a determination under section 121B (1) (b) does not cease to be an executive position merely because of a change in the title of the position.

**121S Approval to undertake other paid work** (cf PSE&M Act s 83)

A health executive is not to undertake any paid work outside the duties of the executive position without the consent of the Health Secretary.

**121T Operation of Part** (cf PSE&M Act s 84)

This Part prevails over any inconsistent provision of any other Act or law or of the terms of appointment of or contract with a person.

## Chapter 10 Administration of the public health system

### Note—

This Chapter also applies to the Cancer Institute (NSW) as if that body were a statutory health corporation—see section 21A of the *Cancer Institute (NSW) Act 2003*.

### Part 1 Administration

#### 122 Functions of the Health Secretary (cf PH Act s 11 (1) and (2))

The Health Secretary has the following functions under this Act:

- (a) to facilitate the achievement and maintenance of adequate standards of patient care within public hospitals and in relation to other services provided by the public health system,
- (b) to facilitate the efficient and economic operation of the public health system consistent with the standards referred to in paragraph (a),
- (c) to inquire into the administration, management and services of any public health organisation,
- (c1) to provide governance, oversight and control of the public health system and the statutory health organisations within it,
- (d) to cause public health organisations (including public hospitals controlled by them) to be inspected from time to time,
- (e) to recommend to the Minister what sums of money (if any) should be paid from money appropriated from the Consolidated Fund in any financial year to any public health organisation,
- (f) to enter into performance agreements with public health organisations, to review the results of organisations under such agreements and to report those results (and make recommendations about the results) to the Minister,
- (f1) to give directions to statutory health organisations,
- (g) such other functions as may be conferred or imposed by or under this Act.

#### 123 Inquiries by Health Secretary (cf PH Act s 11A)

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

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

**Note—**

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

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

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

- (1) **Appointment of authorised officers** The Health Secretary may appoint any person, or class of persons, as an authorised officer or authorised officers to exercise the functions conferred by section 125.
- (2) **Issue of certificates of authority** The Health Secretary is to provide an authorised officer with a certificate of authority that:
- (a) states that it is issued under this Act, and
  - (b) gives the name of the person to whom it is issued, and
  - (c) describes the nature of the functions conferred and the source of those functions, and
  - (d) states the date (if any) on which it expires, and
  - (e) describes the kind of premises to which the functions extend, and
  - (f) bears the signature of the Health Secretary or an officer approved by the Health Secretary for the purposes of this paragraph.
- (3) **Precondition for exercise of functions generally** An authorised officer must not exercise the functions conferred by section 125 unless the officer is in possession of a certificate of authority issued by the Health Secretary.
- (4) **Preconditions for exercise of functions in relation to certain non-government health organisations** In addition to the requirement in subsection (3), an authorised officer must not exercise the functions conferred by section 125 in relation to the premises of an organisation or institution referred to in section 123 (1) unless the officer:
- (a) gives reasonable notice to the occupier or owner of the premises of the intention to exercise the function, unless the giving of notice would defeat the purpose for which it is intended to exercise the function, and
  - (b) exercises the function at a reasonable hour of the day, except where it is being exercised in an emergency, and
  - (c) uses no more force than is reasonably necessary, and

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

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

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

- (1) **Power of entry** An authorised officer may enter premises of any public health organisation (including any public hospital controlled by that organisation) or of an organisation or institution referred to in section 123 (1) for the purpose of exercising any function conferred or imposed on the Health Secretary by this Act.
- (2) **Powers following entry** An authorised officer who has entered any premises under this section may do any one or more of the following:
- (a) inspect those premises,
  - (b) make such examination and inquiry as the officer thinks necessary to assist the Health Secretary in the performance of the Health Secretary's functions under this Act,
  - (c) make copies of, or take extracts or notes from, any accounts, records (including clinical records), books, documents or other things, of a public health organisation or organisation or institution referred to in section 123 (1),
  - (d) for the purpose of further examination, take possession of, and remove, any of those accounts, records, books, documents or other things,
  - (e) require the owner or occupier of the premises to provide the officer with such assistance and facilities as is or are reasonably necessary to enable the officer to exercise functions under this section,
  - (f) require any person in or about the premises to answer questions or otherwise furnish information,
  - (g) require any person to produce any accounts, records (including clinical records), books, documents or other things in the possession or under the control of the person that relate to, or that the officer believes on reasonable grounds relate to, the operation or administration of a public health organisation.
- (3) **Liability for damage to premises of certain organisations and institutions** If damage is caused by the exercise of functions conferred by this section to premises of an organisation or institution referred to in section 123 (1), the Minister is to pay reasonable compensation for the damage unless the exercise of the functions was obstructed by the occupier of the premises.

**126 Health Secretary may enter into performance agreement with a public health organisation**

- (1) The Health Secretary may enter into a performance agreement with any public health organisation.
- (2) A performance agreement may:
  - (a) include the provisions of a service agreement (within the meaning of the National Health Reform Agreement) for the organisation, and
  - (b) set operational performance targets for the organisation in the exercise of specified functions during a specified period, and
  - (c) provide for the evaluation and review of results in relation to those targets, and
  - (d) provide for the provision of such data or other information by a public health organisation concerning the exercise of its functions that the State determines is required to comply with the State's performance reporting obligations under the National Health Reform Agreement.
- (3) The public health organisation must, as far as practicable, exercise its functions in accordance with the performance agreement.
- (4) The public health organisation is to report the results of the organisation's performance under a performance agreement during a financial year to the Health Secretary within 3 months of the end of that year.
- (5) The Health Secretary:
  - (a) is to evaluate and review the results of the organisation's performance for each financial year under the performance agreement and to report those results to the Minister, and
  - (b) may make such recommendations to the Minister concerning those results as the Health Secretary thinks fit.

**Part 1A Provision of services**

**126A (Repealed)**

**126B Health Secretary to provide certain services**

- (1) The Health Secretary may provide services for any or both of the following purposes:
  - (a) to support the public health system and public health organisations and the public hospitals they control,
  - (b) to enable the co-ordinated provision of health services involving more than one

public health organisation or on a State-wide basis.

- (2) The Health Secretary may also, with the approval of the Minister, make and enter into contracts or agreements with any person other than a public health organisation for the provision of health support services or corporate or other services to that person.
- (3) The Health Secretary may determine the fees and charges payable for any service provided by or on behalf of the Health Secretary under this section.
- (4) The Health Secretary may delegate his or her functions under this section to a person or appointed body.
- (5) A delegate may subdelegate to any person or appointed body some or all of any function delegated under this section if the delegate is authorised in writing to do so by the delegator.
- (6) Section 21 of the *Health Administration Act 1982* does not apply in relation to the functions under this section.
- (7) Nothing in this section limits the Health Secretary's functions under this or any other Act or law.
- (8) In this section:

**appointed body** means a committee, board or other body appointed under section 126C by the Health Secretary.

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

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

or omitted to be done in good faith for the purposes of this Part.

- (8) If subsection (7) prevents liability attaching to a member of an appointed body, the liability attaches instead to the Health Secretary.

**126D-126F (Repealed)**

**126G Directions by Minister in relation to acquisition of services**

- (1) The Minister may, by order in writing, from time to time:
- (a) require a public health organisation to acquire specified services from the Health Secretary or some other specified person if and when such services are required, and
  - (b) give a public health organisation any necessary directions for the purposes of paragraph (a).
- (2) The following conduct is specifically authorised by this Act for the purposes of the *Competition and Consumer Act 2010* of the Commonwealth and the *Competition Code of New South Wales*:
- (a) a requirement or direction of the Minister given under subsection (1),
  - (b) the entering or making of a contract, agreement, arrangement or understanding as the result of such a requirement or direction,
  - (c) conduct authorised or required by or under the terms or conditions of any such contract, agreement, arrangement or understanding,
  - (d) any conduct of the Health Secretary in carrying out the Health Secretary's functions or exercising the Health Secretary's powers under this Part,
  - (e) any conduct of a public health organisation, its agents, a person concerned in the management of the organisation or a person who is engaged or employed by the organisation:
    - (i) in relation to obtaining services in accordance with this Part, or
    - (ii) in complying with a requirement or direction of the Minister given under subsection (1).
- (3) Conduct authorised by subsection (2) is authorised only to the extent (if any) that it would otherwise contravene Part IV of the *Competition and Consumer Act 2010* of the Commonwealth and the *Competition Code of New South Wales*.

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

- (1) (Repealed)

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

## **Part 2 Finance**

### **126I Health funding arrangements under the National Health Reform Agreement**

Schedule 6A contains provisions relating to health funding arrangements under the National Health Reform Agreement.

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

- (1) In determining what amount of money (if any) is to be paid to each local health district out of money appropriated from the Consolidated Fund, the Minister is to have regard to the following matters:
- (a) the size and health needs of the population resident within the area of the local health district concerned,
  - (b) the health services provided to patients from outside the area of the local health district concerned,
  - (c) the net receipts and expenditures of the local health district for the financial year,
  - (d) probable requirements for capital maintenance and expenditure of the local health district for the financial year,
  - (e) such other matters as are prescribed by the regulations or as the Minister thinks fit.
- (2) In determining what amount of money (if any) is to be paid to each statutory health corporation and affiliated health organisation out of money appropriated from the Consolidated Fund, the Minister may have regard to such matters as the Minister thinks fit.
- (2A) In making a determination under this section, the Minister is also to have regard to the National Health Reform Agreement.
- (3) The Minister may, after considering any recommendation made under section 122 (e) for the purpose, determine what amounts of money (if any) should be paid out of money appropriated from the Consolidated Fund in any financial year to any such local health district, statutory health corporation or affiliated health organisation. Any such amount is payable in accordance with that determination.
- (3A) The Minister may vary a determination under subsection (3) in such circumstances as the Minister considers appropriate.



- (4) The Minister may attach to the payment of any subsidy (or part of any subsidy) such conditions as the Minister determines from time to time.
- (5) If any such condition is breached, the Health Secretary may make such recommendations to the Minister as the Health Secretary thinks fit concerning any action to be taken against the public health organisation concerned or any officer or employee of the organisation.
- (6) This section does not affect the operation of the provisions relating to health funding arrangements under the National Health Reform Agreement set out in Schedule 6A.

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

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

#### **127B Loans to public health organisations**

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

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

- (1) Before paying any sum to an affiliated health organisation out of money appropriated from the Consolidated Fund, the Minister may require:
  - (a) the affiliated health organisation, or
  - (b) if the property of the affiliated health organisation is not vested in the affiliated health organisation:
    - (i) the persons in whom the property is vested, or
    - (ii) those persons and the affiliated health organisation,to enter into an agreement with the Minister under this section.
- (2) An agreement entered into under this section must make provision for or with respect

to requiring:

- (a) the repayment to the Minister, in the circumstances specified in, or to be determined in accordance with, the agreement of the sum referred to in subsection (1), or
  - (b) the payment to the Minister, in the circumstances specified in, or to be determined in accordance with, the agreement of such other sum (whether lesser or greater than the sum referred to in subsection (1)) as is specified in, or is to be determined in accordance with, the agreement.
- (3) A breach of trust does not occur only because the trustees of an affiliated health organisation have:
- (a) entered into an agreement under this section, or
  - (b) repaid or paid to the Minister any sum in accordance with the agreement, or
  - (c) done or performed any act or thing necessary or convenient to be done or performed for the purpose of enabling them to enter into such an agreement or repay or pay such a sum.

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

The Minister may delegate to any local health district the function of determining:

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

**Note—**

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

### **130 Performance agreements between local health districts and affiliated health organisations they subsidise**

- (1) A local health district exercising a function delegated under section 129 in respect of an affiliated health organisation may enter into a performance agreement with the affiliated health organisation in respect of its recognised establishments and recognised services.
- (2) A performance agreement:
  - (a) may set operational performance targets for the affiliated health organisation in the exercise of specified functions in relation to the health services concerned during a specified period, and

- (b) may provide for the evaluation and review of results in relation to those targets.
- (3) The affiliated health organisation must, as far as practicable, exercise its functions in accordance with the performance agreement.
- (4) The affiliated health organisation is to report the results of the organisation's performance under a performance agreement during a financial year to the local health district within 3 months of the end of that year.
- (5) The local health district is to evaluate and review the results of the organisation's performance for each financial year under the performance agreement and to report those results to the Health Secretary.
- (6) The Health Secretary may make such recommendations to the Minister concerning the results reported to the Health Secretary under subsection (5) as the Health Secretary thinks fit.

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

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

- (1) The Governor may, by order published on the NSW legislation website, transfer to any statutory health organisation:
  - (a) any public hospital or health institution under the control of another statutory health organisation, or
  - (b) any health service or health support service under the control of another statutory health organisation, or
  - (c) any public hospital or health service controlled by the Crown (including any hospital or health service controlled by the Minister or the Health Administration Corporation), or
  - (d) any of the assets, rights or liabilities of another statutory health organisation, and may amend Schedules 1 and 2 accordingly.
- (2) An order made under this section must specify the date (being a date that is on or after the date it is published on the NSW legislation website) on which it takes effect. However, if no date is specified in the order, the order is taken to have specified the date on which it is published on the NSW legislation website as the date on which it takes effect.
- (3) An order is not to be made under this section unless the Minister is of the opinion that the order is in the public interest and has recommended to the Governor that the order be made.

(4) A transfer under this section may be effected without holding an inquiry.

(5) (Repealed)

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

(1) Schedule 4 has effect with respect to an order under this Part.

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

## Chapter 11 Miscellaneous

### Introduction—

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

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

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

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

(1) The following money and personal effects are taken to be the property of a public health organisation:

(a) all money and personal effects (being choses in possession) that are:

(i) left in its custody by any patient who dies in one of its hospitals or health institutions, and

(ii) not claimed by the person lawfully entitled to them within a period of 12 months after the patient's death, and

(b) all money and personal effects (being choses in possession) that are:

(i) left in its custody by any patient discharged from one of its hospitals or health institutions, and

(ii) not claimed by the patient or other person lawfully entitled to them within a period of 12 months after the date of discharge.

(2) All such money, and the proceeds of the realisation of any such personal effects, are to form a distinct and separate fund of the public health organisation to be called a Samaritan Fund.

(3) A Samaritan Fund is to be managed and disposed of in such manner as may be prescribed by the regulations for the benefit of patients or outgoing patients who are

needy.

- (4) A local health district or statutory health corporation may establish a separate fund for each hospital or health institution, or a single fund for all public hospitals or health institutions, under its control.
- (5) A reference in this section to a public health organisation includes a reference to the Crown in relation to any public hospital controlled by the Crown (including the Minister or the Health Administration Corporation).

### **133A Nature of staffing arrangements**

Any arrangements entered into by or on behalf of the Crown with a public health organisation in connection with the employment of staff in the NSW Health Service do not constitute an employment placement service for the purposes of Division 3 of Part 4 of the *Fair Trading Act 1987*.

### **133B Personal liability of members of boards of statutory health organisations**

A matter or thing done or omitted to be done by:

- (a) a statutory health organisation, or
- (b) the board of a statutory health organisation, or
- (c) a member of the board of a statutory health organisation, or
- (d) a person acting under the direction of such an organisation or board,

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

### **133C Sharing or exchange of information about health practitioner appointments**

- (1) A public health organisation may share or exchange appointment information about a health practitioner with a private health facility licensee if the public health organisation:
  - (a) reasonably believes that the health practitioner practises at the private health facility, and
  - (b) reasonably considers that the disclosure of that information to the licensee is necessary because it raises serious concerns about the safety of patients.
- (2) Information is **appointment information** about a health practitioner for the purposes of this section if:
  - (a) the health practitioner practises (or formerly practised) at a hospital or health institution of the public health organisation (whether under a service contract or

otherwise), and

(b) the information relates to the variation, suspension or termination by the public health organisation of clinical privileges of the health practitioner.

(3) Without limiting section 133B, the disclosure of appointment information about a health practitioner by a public health organisation (or a person acting at the direction of the organisation) to a private health facility licensee does not, if the disclosure was made in good faith, subject the organisation or person personally to any action, liability, claim or demand.

(4) Nothing in this section limits the ability of public health organisations to share or exchange appointment information about health practitioners with each other or with the Health Secretary or Minister.

(5) In this section:

***clinical privileges*** has the same meaning as it has in Part 4 of Chapter 8.

***health practitioner*** has the same meaning as in the [Health Practitioner Regulation National Law \(NSW\)](#).

***private health facility licensee*** means a licensee for a private health facility under the [Private Health Facilities Act 2007](#).

**134 Obstructing or hindering Minister, Health Secretary, authorised officer or other public official** (cf PH Act s 34)

A person must not obstruct or hinder:

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

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

Maximum penalty: 100 penalty units.

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

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

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

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

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

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

Proceedings for an offence against this Act (other than an offence under section 67J (2)) or the regulations are to be dealt with summarily before the Local Court.

**138 (Repealed)**

**139 Liability of persons conducting performance reviews etc**

- (1) This section applies with respect to the provision of expert advice or assistance by a person, for or on behalf of a public health organisation or the Health Secretary and in the person's professional capacity, in connection with:
  - (a) a review of the performance or conduct of, or
  - (b) a review to determine whether to take disciplinary action in relation to, any visiting practitioner or relevant employee.
- (2) No matter or thing done by the person in providing the advice or assistance subjects the person personally to any action, liability, claim or demand if the matter or thing was done by the person in good faith for the purposes of executing this or any other Act.
- (3) If subsection (2) prevents liability attaching to a person, the liability attaches instead to the public health organisation concerned or the Health Secretary (as the case may be).
- (4) A reference in this section to the Health Secretary is a reference to the Health Secretary in respect of the provision of ambulance services under Chapter 5A or the provision of health support services under Part 1A of Chapter 10.
- (5) In this section:

***relevant employee*** means:

- (a) a member of the NSW Health Service, or
- (b) a person who:
  - (i) is an employee of an affiliated health organisation that is not a declared affiliated health organisation, and
  - (ii) is employed in relation to a recognised establishment or recognised service of the organisation.

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

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide for the following:
  - (a) accounts to be kept by public health organisations and the auditing of those accounts,
  - (b) records to be kept by public health organisations or public hospitals,
  - (c) the furnishing of information and reports to the Minister, Health Secretary or other person by public health organisations,
  - (d) the furnishing of information to a patient in the care of a public health organisation and the inspection of records by such a patient in connection with the treatment of the patient by the organisation,
  - (e) the appointment, control and governance of visiting practitioners, including the conditions subject to which they perform work,
  - (f) in the case of public hospitals controlled by local health districts or statutory health corporations—the admission and discharge of patients and the payment and collection of fees payable by patients for health services,
  - (g) the authorisation, prohibition and control of fundraising by public appeal or otherwise for the purposes of public hospitals,
  - (h) the administration and management of any affiliated health organisation in relation to its recognised establishments and recognised services,
  - (i) the disposal of unclaimed property of patients in the care of a public health organisation,
  - (j) the control and governance of members of staff of the NSW Health Service and any other matter or thing necessary or convenient to ensure the maintenance of



discipline and efficiency of that staff,

- (k) the conditions of employment (including salaries and wages) of persons employed by affiliated health organisations (other than declared affiliated health organisations) in respect of their recognised establishments and recognised services,
  - (l) the management of, and accounting for, any funds (including the amount of any subsidy determined under section 127) paid by or on behalf of the State to a public health organisation to meet the employment-related costs and liabilities in relation to those members of the NSW Health Service who are employed in connection with the organisation,
  - (m) the recognition of prior government service or public health system service for the purposes of calculating the long service leave entitlements of employees in the public health system,
  - (n) the updating of any reference in any Act, in any instrument made under any Act or in any document of any kind to any public health organisation (or to any officer, body or function of the organisation) that is (or will become) out of date or otherwise incorrect because of the dissolution, amalgamation, change in governance or renaming of the organisation or the transfer of any of its functions, assets, rights or liabilities,
  - (o) regulating or prohibiting smoking at any public hospital controlled by the Crown (including the Minister or the Health Administration Corporation), including by designating an area as a smoke-free area for the purposes of section 6A (Smoke-free areas—outdoor public places) of the *Smoke-free Environment Act 2000*.
- (3) The regulations may make provision for or with respect to any matter for or with respect to which a by-law may be made by a public health organisation.
  - (4) A provision of a regulation prevails to the extent to which it is inconsistent with a by-law made by a public health organisation.
  - (5) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.
  - (6) A regulation made under subsection (2) (e) cannot be made unless the Minister has received advice from the Medical Services Committee in relation to the substance of the regulation.
  - (7) Subsection (6) does not apply to a regulation if the Medical Services Committee does not furnish advice in relation to the regulation to the Minister:
    - (a) within 30 days after a notice from the Minister requesting such advice has been served on the Committee, or

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

**Note—**

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

**141 Savings and transitional provisions**

Schedule 7 has effect.

**142 Review of Act**

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

**Schedule 1 Names and areas of local health districts**

(Sections 17 and 18)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Name of local health district</b>	<b>Description of local government area or city</b>	<b>Description of area other than local government area</b>
Sydney Local Health District	Ashfield, Burwood, Canada Bay, Canterbury, Leichhardt, Marrickville, Strathfield, Sydney (part)	
South Western Sydney Local Health District	Bankstown, Camden, Campbelltown, Fairfield, Liverpool, Wingecarribee, Wollondilly	
South Eastern Sydney Local Health District	Botany Bay, Hurstville, Kogarah, Randwick, Rockdale, Sutherland, Sydney (part), Waverley, Woollahra	Lord Howe Island
Illawarra Shoalhaven Local Health District	Kiama, Shellharbour, Shoalhaven, Wollongong	
Western Sydney Local Health District	Auburn, Baulkham Hills, Blacktown, Holroyd, Parramatta	

Nepean Blue Mountains Local Health District	Blue Mountains, Hawkesbury, Lithgow, Penrith	
Northern Sydney Local Health District	Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Manly, Mosman, North Sydney, Pittwater, Ryde, Warringah, Willoughby	
Central Coast Local Health District	Gosford, Wyong	
Hunter New England Local Health District	Armidale Dumaresq, Cessnock, Dungog, Glen Innes Severn, Gloucester, Great Lakes, Greater Taree, Gunnedah, Guyra, Gwydir, Inverell, Lake Macquarie, Liverpool Plains, Maitland, Moree Plains, Muswellbrook, Narrabri, Newcastle, Port Stephens, Singleton, Tamworth Regional, Tenterfield (part), Upper Hunter, Uralla, Walcha	
Murrumbidgee Local Health District	Albury, Berrigan, Bland, Boorowa, Carrathool, Conargo, Coolamon, Cootamundra, Corowa, Deniliquin, Greater Hume, Griffith, Gundagai, Harden, Hay, Jerilderie, Junee, Lachlan (part), Leeton, Lockhart, Murray, Murrumbidgee, Narrandera, Temora, Tumbarumba, Tumut, Urana, Wagga Wagga, Wakool, Young	
Southern NSW Local Health District	Bega Valley, Bombala, Cooma-Monaro, Eurobodalla, Goulburn Mulwaree, Palerang, Queanbeyan, Snowy River, Upper Lachlan, Yass Valley	
Western NSW Local Health District	Bathurst Regional, Blayney, Bogan, Bourke, Brewarrina, Cabonne, Cobar, Coonamble, Cowra, Dubbo, Forbes, Gilgandra, Lachlan (part), Mid-Western Regional, Narromine, Oberon, Orange, Parkes, Walgett, Warren, Warrumbungle, Weddin, Wellington	
Far West Local Health District	Balranald, Broken Hill, Central Darling, Wentworth	Unincorporated Far West
Mid North Coast Local Health District	Bellingen, Coffs Harbour, Hastings, Kempsey, Nambucca	

Northern NSW Local Health District

Ballina, Byron, Clarence Valley, Kyogle, Lismore, Richmond Valley, Tenterfield (part), Tweed

## Schedule 2 Statutory health corporations

(Section 41)

<b>Column 1</b>	<b>Column 2</b>
<b>Name of statutory health corporation</b>	<b>Nature of governance</b>
The Agency for Clinical Innovation	Board
Bureau of Health Information	Board
Clinical Excellence Commission	Board
Health Education and Training Institute	Chief executive
Justice Health and Forensic Mental Health Network	Specialty network
The Sydney Children's Hospitals Network (Randwick and Westmead) (incorporating The Royal Alexandra Hospital for Children)	Specialty network

## Schedule 3 Affiliated health organisations

(Section 62)

<b>Column 1</b>	<b>Column 2</b>
<b>Name of organisation</b>	<b>Recognised establishment or recognised service</b>
Benevolent Society of New South Wales	Central Sydney Scarba Services. Early Intervention Program. Eastern Sydney Scarba Services. South West Sydney Scarba Services.
Calvary Health Care (Newcastle) Limited	Calvary Mater Newcastle
Calvary Health Care Sydney Limited	Calvary Health Care Sydney.
Catholic Healthcare Limited	St Vincent's Health Service, Bathurst. Lourdes Hospital and Community Health Service (other than Holy Spirit Dubbo).
Hammondcare Health and Hospitals Limited	Braeside Hospital, Prairiewood. Greenwich Hospital, Greenwich. Neringah Hospital, Wahroonga. Northern Beaches Palliative Care Service.
Karitane	Child and Family health services at Carramar, Fairfield, Liverpool and Randwick.
Mercy Care Centre, Young	Mercy Care Centre: Young, excluding Mount St Joseph's Nursing Home.

Mercy Health Service Albury Limited	Mercy Health: Albury.
NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS)	NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS)
Royal Rehab	General rehabilitation services. Brain injury rehabilitation services. Spinal injury rehabilitation services. Extended care services.
Royal Society for the Welfare of Mothers and Babies	Tresillian Family Care Centres at Belmore, Penrith, Willoughby and Wollstonecraft.
St Vincent's Hospital Sydney Limited	Sacred Heart Health Service. St Joseph's Hospital (Auburn). St Vincent's Hospital, Darlinghurst.
Stewart House	Child health screening services at Stewart House Preventorium, Curl Curl.
The College of Nursing	Nursing Education Programs conducted under agreement with the NSW Ministry of Health.
Uniting Church in Australia	War Memorial Hospital (Waverley).

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

(Sections 21, 44, 64 and 132)

### Part 1 General

#### Division 1 Interpretation

##### 1 Definitions

In this Schedule:

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

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

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

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

## 2 Orders to which this Schedule applies

This Schedule applies to the following orders:

- (a) an order under section 20 (Dissolution, amalgamation or change of name of local health districts),
- (b) an order under section 43 (Dissolution, transfer, amalgamation, or change of name or nature of governance of statutory health corporations),
- (c) an order under section 64 (Transfer of recognised establishments and recognised services of affiliated health organisations),
- (d) an order under section 131 (Transfer of hospitals, health institutions, services and property between local health districts and statutory health corporations).

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

### 3 Orders relating to local health districts

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

be entitled under Part 3 of Chapter 9 as a consequence of ceasing to hold office.

#### 4 Orders relating to statutory health corporations

- (1) **Dissolution orders** On and from the date specified in an order made under section 43 (1) (a) dissolving a statutory health corporation:
  - (a) the statutory health corporation is dissolved, and
  - (b) in the case of a board governed health corporation or specialty network governed health corporation, the members of the board of the corporation cease to hold office, but are not entitled to be paid any compensation by reason of ceasing to hold office, and
  - (c) the assets, rights and liabilities of the statutory health corporation are transferred to the Minister (or any other person or body specified in the order), and
  - (d) Part 2 applies to that transfer.
- (2) **Transfer orders** On and from the date specified in an order made under section 43 (1) (b) transferring a statutory health corporation to a local health district:
  - (a) the statutory health corporation is dissolved, and
  - (b) in the case of a board governed health corporation or specialty network governed health corporation, the members of the board of the corporation cease to hold office, but are not entitled to be paid any compensation by reason of ceasing to hold office, and
  - (c) the assets, rights and liabilities of the statutory health corporation are transferred to the local health district, and
  - (d) Part 2 applies to that transfer.
- (3) **Amalgamation orders** On and from the date specified in an order made under section 43 (1) (c) for the amalgamation of 2 or more statutory health corporations:
  - (a) each statutory health corporation amalgamated by the order is dissolved, and
  - (b) the members of the board of a board governed health corporation or a specialty network governed health corporation involved in the amalgamation cease to hold office and:
    - (i) if the amalgamated corporation is a board governed health corporation or specialty network governed health corporation, are eligible (if otherwise qualified) to be appointed as members of the board of the amalgamated corporation, and
    - (ii) are not entitled to be paid any compensation by reason of ceasing to hold

office, and

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

(d) Part 2 applies to that transfer.

(4) **Name change orders** On and from the date specified in an order made under section 43 (1) (d) changing the name of a statutory health corporation, Part 3 applies to that change of name.

(4A) **Change of governance orders** On and from the date specified in an order made under section 43 (1) (d) changing the nature of governance of a statutory health corporation from board governance or specialty network governance to chief executive governance, the members of the board for the corporation cease to hold office, but are not entitled to be paid any compensation by reason of ceasing to hold office.

(4B) On and from the date specified in an order made under section 43 (1) (d) changing the nature of governance of a statutory health corporation from board governance to specialty network governance or from specialty network governance to board governance, the members of the existing board cease to hold office and:

(a) are eligible (if otherwise qualified) to be appointed as members of the new board of the corporation, and

(b) are not entitled to be paid any compensation by reason of ceasing to hold office.

(5) **Effect on compensation rights** Nothing in this section affects any compensation rights to which the chief executive of a dissolved or amalgamating statutory health corporation may be entitled under Part 3 of Chapter 9 of this Act or Part 4 of the [Government Sector Employment Act 2013](#) as a consequence of ceasing to hold office as such.

## 5 Orders relating to affiliated health organisations

(1) **Transfer of hospitals and health institutions** On and from the date specified in an order under section 64 (1) (a) transferring any public hospital or health institution of an affiliated health organisation that is a recognised establishment of the organisation to a local health district or statutory health corporation, Part 2 has effect to the extent of that transfer.

(2) **Transfer of health services and health support services** On and from the date specified in an order under section 64 (1) (b) transferring any health service or health support service of an affiliated health organisation that is a recognised service of the organisation to a local health district or statutory health corporation, Part 2 has effect to the extent of that transfer.

(3) **Transfer of assets, rights or liabilities** On and from the date specified in an order under



section 64 (1) (c) transferring any assets, rights or liabilities of an affiliated health organisation relating to a recognised establishment or recognised service of the organisation to a local health district or statutory health corporation, Part 2 has effect to the extent of that transfer.

- (4) **Consents to transfers of property** An order under section 64 (1) that purports to transfer any property of an affiliated health organisation operates to transfer only such property in respect of the transfer of which the organisation has consented.
- (5) **Effect on trustees of transfer order** If any such order operates to transfer all of the property of an affiliated health organisation that is held in trust for it by trustees, the trustees cease to hold office as trustees in respect of that property on and from the transfer date specified in the order.

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

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

## **Part 2 Transfers**

### **Division 1 Staff**

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

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

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

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

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

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

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

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

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

- (1) When any assets, rights or liabilities are transferred by a transfer to which this Part applies, the following provisions have effect:
  - (a) the assets of the transferor vest in the transferee by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance,
  - (b) the rights or liabilities of the transferor become by virtue of this clause the rights or liabilities of the transferee,
  - (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
  - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have

been done or omitted by, to or in respect of the transferee,

(d1) the transferee has all the entitlements and obligations of the transferor in relation to those assets, rights and liabilities that the transferor would have had but for the order, whether or not those entitlements and obligations were actual or potential at the time the transfer took effect,

(e) subject to the regulations, a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent to which it relates to those assets, rights or liabilities) taken to include a reference to the transferee.

(2) The operation of this clause is not to be regarded:

(a) as a breach of contract or confidence or otherwise as a civil wrong, or

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or

(c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or

(d) as an event of default under any contract or other instrument.

(3) No attornment to the transferee by a lessee from the transferor is required.

(4) A transfer is subject to the terms and conditions of the order by which it is effected.

(5) No compensation is payable to any person or body in connection with a transfer to which this Part applies except to the extent (if any) to which the order giving rise to the transfer so provides.

(6) Subclause (5) does not affect the rights of any member of staff who is the subject of a transfer to which this Part applies.

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

### **11 Date of vesting**

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

### **12 Consideration for vesting**

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

### **13 Stamp duty**

Stamp duty is not chargeable for or in respect of:

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

### **14 Confirmation of vesting**

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

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

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

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

- (1) Any function conferred or imposed immediately before the transfer date on a transferred public health organisation, or on the board (or managing body) of a public health organisation, in relation to the administration and operation of any of the hospitals, health institutions, health services or health support services it conducts or provides may continue to be exercised on and from the transfer date by the transferee.
- (2) Subclause (1) has effect despite any other provision of this Act.
- (3) Without limiting subclause (1), a reference in that subclause to a function includes a reference to a power of investment.

## **Part 3 Changes of name**

### **17 Name changes do not affect status of district or corporation**

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

- (a) to create a new legal entity, or
- (b) to prejudice or affect the identity of the body corporate constituted as a local health district or statutory health corporation or its continuity as a body corporate, or
- (c) to affect the property, or the rights or obligations, of the local health district or

statutory health corporation, or

- (d) to render defective any legal proceedings by or against the local health district or statutory health corporation,

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

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

### **18 Regulations**

- (1) The regulations may contain other provisions of a savings or transitional nature consequent on the making of an order to which this Schedule applies.
- (1A) Without limiting subclause (1), a provision referred to in that subclause may make provision for or with respect to the legal consequences of the differential transfer of rights, obligations or other liabilities under the same contract or other agreement to more than one transferee.
- (2) A provision referred to in subclause (1) which relates to a particular order may, if the regulations so provide, take effect as from the date of the order or a later day.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State, an authority of the State, a local health district or a statutory health corporation), the rights of that person existing before the date of its publication in the Gazette, or
  - (b) to impose liabilities on any person (other than the State, an authority of the State, a local health district or a statutory health corporation) in respect of anything done or omitted to be done before the date of its publication in the Gazette.
- (4) A provision referred to in subclause (1) has, if the regulations so provide, effect despite any other clause of this Schedule.

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

(Section 50)

## **Part 1 General**

### **1 Definitions**

In this Schedule:

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

**Board** means a health corporation board.

**member** means a member of a health corporation board.

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

## **Part 2 Constitution**

### **2 (Repealed)**

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

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

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

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

- (a) a vacancy in the office of a member or the Chairperson is taken to be an absence from office of the member or Chairperson (as the case may be), and
- (b) an appointed member is taken to be absent from office as an appointed member during any period when the member acts in the office of the chief executive pursuant to an appointment under subclause (1).

## **5 Terms of office**

(1) Subject to this Schedule, a member holds office:

- (a) in the case of an appointed member (other than the staff member)—for such period (not exceeding 4 years) as may be specified in the instrument of appointment of the member, or
- (b) in the case of the staff member—for such period (not exceeding 4 years but not less than 2 years) as may be specified in the instrument of appointment of the member.

(2) However, any member whose term of office expires is eligible (if otherwise qualified) for re-appointment.

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

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

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

The office of a member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) being an appointed member, is absent from 4 consecutive meetings of that Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by that Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by that Board for being absent from those meetings, or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (f) becomes a mentally incapacitated person, or

- (g) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (h) being the staff member, ceases to be a member of staff of the NSW Health Service, or
- (i) is removed from office by the Governor under section 52.

## **8 Disclosure of pecuniary interests**

(1) If:

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

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

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

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

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

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

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:

- (a) be present during any deliberation of the Board with respect to the matter, or
- (b) take part in any decision of the Board with respect to the matter.

(5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Board for the purpose of making the



determination, or

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

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

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

(1) (Repealed)

(2) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

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

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

## **10 Remuneration**

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

## **11 (Repealed)**

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

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

## **Part 3 Procedure**

### **13 General procedure**

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

### **14 Quorum**

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

### **15 Presiding member**

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

### **16 Voting**

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

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

- (1) A Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) A Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

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

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

## **Schedule 6 Provisions relating to members and procedure of**

## Ambulance Services Advisory Council

(Section 67C (7))

### 1 Definitions

In this Schedule:

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

**member** means any member of the Advisory Council.

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

### 2 Chairperson of Advisory Council

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

### 3 Acting members and acting Chairperson

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

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

An appointed member holds office, subject to this Schedule:

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

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

#### **5 Vacancy in office of member**

An appointed member is to be taken to have vacated office if the member:

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

#### **6 Disclosure of pecuniary interests**

(1) A member:

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

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

- (2) A disclosure by a member at a meeting of the Advisory Council that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause.
- (3) Particulars of any disclosure made under this clause are to be recorded by the members in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person on payment of the fee determined by the members.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Health Secretary or the other members otherwise determine:
- (a) be present during any deliberation of the Advisory Council with respect to the matter, or
  - (b) take part in any decision of the Council with respect to the matter.
- (5) For the purposes of the making of a determination by the members under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the other members for the purpose of making the determination, or
  - (b) take part in the making by the other members of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Advisory Council.

## **7 Effect of certain other Acts**

- (1) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

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

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

## **8 Remuneration**

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

## **9 Liability of members etc**

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

## **10 General procedure**

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

## **11 Quorum**

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

## **12 Presiding member**

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

## **13 Voting**

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

## **14 First meeting of Advisory Council**

The Health Secretary is to call the first meeting of the Advisory Council in such manner as the Health Secretary thinks fit.

## Schedule 6A National Health Funding Pool and Administration

### Part 1 Preliminary

#### 1 Interpretation

(1) In this Schedule:

**Administrator** means the Administrator of the National Health Funding Pool appointed under clause 3 and under the corresponding provision of the laws of the Commonwealth and the other States.

**COAG** means the Council of Australian Governments.

**local hospital network** means an organisation that is a local hospital network (however described) for the purposes of the National Health Reform Agreement.

**Note—**

In New South Wales, local health districts, specialty network governed health corporations and affiliated health organisations declared to be networks under section 62B of the Act are local hospital networks for the purposes of the National Health Reform Agreement.

**National Health Funding Pool** means the combined State Pool Accounts for each State.

**National Health Reform Agreement** means the National Health Reform Agreement between the Commonwealth and the States that was agreed to by COAG on 2 August 2011, as amended from time to time.

**responsible Minister** for a jurisdiction means the relevant Minister with portfolio responsibility for the administration of the provision of this Schedule in which the expression occurs (or of the corresponding provision of the laws of the Commonwealth and the other States).

**Note—**

See also clause 27.

**Standing Council on Health** means (subject to subclause (2)) the Ministerial Council by that name or, if there is no such Ministerial Council, the standing Ministerial Council established or recognised by COAG whose members include all Ministers in Australia having portfolio responsibility for health.

**State** includes the Australian Capital Territory and the Northern Territory.

**State Managed Fund** of a State means a bank account or fund established or designated by the State for the purposes of health funding under the National Health Reform Agreement that is required to be undertaken in the State through a State Managed Fund.

**State Pool Account** of a State means the bank account established by the State under Part 3 or under the corresponding provisions of the law of another State.

**Note—**

**Function** and **exercise** of a function are defined in the Dictionary to the Act.

- (2) The Standing Council on Health, when acting under this Schedule, is to be constituted only by a single Minister for the Commonwealth and a single Minister for each of the States, and any reference in this Schedule to a member of that Council is to be construed as a reference to those Ministerial members only.
- (3) If there are 2 or more Ministers for the Commonwealth or for a State who are members of the Standing Council on Health, the relevant Minister for the purposes of this Schedule is the Minister having primary portfolio responsibility for health in his or her jurisdiction.
- (4) A reference in this Schedule to the agreement of, or a request by, a member of the Standing Council on Health is a reference to an agreement or request in writing.
- (5) This Schedule is to be interpreted in accordance with Schedule 7 to the [Health Practitioner Regulation National Law \(NSW\)](#) and, for that purpose, Schedule 7 applies as if references to this Law or a Queensland Act were references to this Schedule or an Act of this jurisdiction, and with all other necessary modifications.
- (6) The [Interpretation Act 1987](#) does not apply to or in respect of this Schedule.

## **Part 2 Administrator of the National Health Funding Pool**

### **2 The office of Administrator**

- (1) The office of Administrator of the National Health Funding Pool is established by this Schedule.
- (2) It is the intention of Parliament that the same individual holds the office established under subclause (1) and under the corresponding provision of the laws of the Commonwealth and the other States.
- (3) The Administrator appointed under this Schedule may exercise and perform the functions of the Administrator in relation to:
  - (a) one jurisdiction, or
  - (b) 2 or more or all jurisdictions collectively.
- (4) A reference in a provision of this Schedule (other than in clause 8 (1) and Part 3) to a function of the Administrator under this Schedule includes a reference to a function of the Administrator under the corresponding provision of the laws of the Commonwealth and the other States.



### **3 Appointment of Administrator**

- (1) The Minister for this jurisdiction who is a member of the Standing Council on Health is to appoint an individual to the office of the Administrator of the National Health Funding Pool under this Schedule.
- (2) Before the appointment is made, the Chair of the Standing Council on Health is to give each member of the Council an opportunity to nominate an individual for appointment.
- (3) An appointment is not to be made unless all the members of the Standing Council on Health have agreed on the individual who will be appointed as Administrator, the date that the appointment will take effect, the period of appointment and the conditions of appointment.
- (4) The appointment is to be made by instrument in writing.
- (5) The Administrator is to be appointed (subject to subclause (3)) for the period, not exceeding 5 years, and on the conditions specified in his or her instrument of appointment, but is eligible for re-appointment.
- (6) The Administrator is entitled to the remuneration determined in accordance with the law of the Commonwealth.

### **4 Suspension of Administrator**

- (1) The Chair of the Standing Council on Health is required to suspend the Administrator from office if requested to do so by:
  - (a) at least 3 members of the Council who are Ministers of a State, or
  - (b) the member of the Council who is a Minister of the Commonwealth.
- (2) A member of the Standing Council on Health is not to request the suspension of the Administrator unless the member is satisfied that the Administrator:
  - (a) is, because of any physical or mental incapacity or otherwise, unable to perform his or her functions satisfactorily, or
  - (b) has failed to comply with his or her obligations or duties as Administrator, or
  - (c) has been accused or convicted of an offence that carries a penalty of imprisonment, or
  - (d) has or may become bankrupt.
- (3) A suspension is to be effected by an instrument in writing and is to be notified by the Chair of the Standing Council on Health to all members of the Council.

- (4) A suspension is terminated after a period of suspension of 60 days unless before the end of that period the Administrator is removed or resigns from office or a majority of the members of the Standing Council on Health:
  - (a) terminate the suspension, or
  - (b) extend the suspension for a specified further period.
- (5) Despite subclause (1), the Chair of the Standing Council on Health is not to suspend the Administrator from office within the period of 90 days after an earlier period of suspension was terminated unless a majority of the members of the Council request the Chair to do so.

## **5 Removal or resignation of Administrator**

- (1) The Minister for this jurisdiction who is a member of the Standing Council on Health is required to remove the Administrator from office if a majority of the members of the Council agree to the Administrator's removal from office.
- (2) The Administrator is to be removed from office by an instrument in writing that takes effect on the date agreed to by the majority of the members of the Standing Council on Health.
- (3) The Administrator may resign as Administrator by notice in writing to the Chair of the Standing Council on Health.
- (4) The resignation of the Administrator takes effect on the date notified by the Chair of the Standing Council on Health to all members of the Council.

## **6 Acting Administrator**

- (1) The Chair of the Standing Council on Health may, from time to time, appoint an individual to act as the Administrator during any period when the office is vacant or the holder of the office is suspended or absent from duty.
- (2) Any such appointment may only be made from a panel of persons, and in accordance with the procedure, agreed to by all the members of the Standing Council on Health.

### **Note—**

The applied provisions of Schedule 7 to the [Health Practitioner Regulation National Law \(NSW\)](#) (clause 27) contain additional provisions relating to acting appointments that have effect subject to this clause.

## **7 Provision of staff and facilities for Administrator**

- (1) Staff and facilities to assist the Administrator in exercising or performing his or her functions under this Schedule are to be provided by the National Health Funding Body constituted under the [National Health Reform Act 2011](#) of the Commonwealth.

- (2) The Administrator is not entitled to delegate a function conferred on the Administrator under this Schedule to that body, to any such member of staff or to any other person or body.

## **8 Functions of Administrator**

- (1) The Administrator is:
- (a) to calculate and advise the Treasurer of the Commonwealth of the amounts required to be paid by the Commonwealth into each State Pool Account of the National Health Funding Pool under the National Health Reform Agreement (including advice on any reconciliation of those amounts based on subsequent actual service delivery), and
  - (b) to monitor State payments into each State Pool Account for the purposes of Part 4, and
  - (c) to make payments from each State Pool Account in accordance with the directions of the State concerned, and
  - (d) to report publicly on the payments made into and from each State Pool Account and other matters on which the Administrator is required to report under this Schedule, and
  - (e) to exercise or perform any other functions conferred on the Administrator under this Schedule.

### **Note—**

The corresponding provisions of the laws of the Commonwealth provide that the functions of the Administrator include monitoring Commonwealth payments into each State Pool Account for the purposes of Part 4.

- (2) The Administrator and the body and staff assisting the Administrator are not subject to the control or direction of any Minister of the Commonwealth in relation to the exercise or performance of the Administrator's functions under this Schedule.
- (3) However, the Administrator is required to comply with any directions given by COAG in relation to the manner in which the Administrator exercises or performs his or her functions under this Schedule (including in relation to the preparation or provision of annual or monthly reports, financial statements or information under Part 4).
- (4) Directions given by COAG under subclause (3):
- (a) are to be given in accordance with a written resolution of COAG passed in accordance with the procedures determined by COAG, and
  - (b) are to be notified in writing to the Administrator, and

(c) are to be made publicly available by the Administrator.

(5) To avoid doubt, this Schedule is not intended:

(a) to give the Commonwealth ownership or control of money in a State Pool Account,  
or

(b) to affect the obligation of the Administrator under the law of a State to make payments from the State Pool Account of the State in accordance with the directions of the State.

(6) To avoid doubt, the Administrator may have regard to information obtained in the exercise or performance of functions under the law of another jurisdiction in the exercise or performance of the Administrator's functions under Part 4.

### **Part 3 State Pool Accounts—the National Health Funding Pool**

#### **9 Establishment of State Pool Accounts with Reserve Bank**

(1) The Health Secretary is to open and maintain with the Reserve Bank of Australia a separate State bank account for the purpose of the National Health Reform Agreement.

(2) The bank account is the State Pool Account established for the State for the purposes of this Schedule.

(3) The State Pool Account is established as an account in the Special Deposits Account.

(4) To avoid doubt, the State Pool Account and the money standing to the credit of the Account are under the control of the Health Secretary for the purposes of the application of relevant accounting standards.

#### **10 Payments into State Pool Account**

There is payable into the State Pool Account established for the State:

(a) money paid to the State by the Commonwealth for payment into the State Pool Account under the National Health Reform Agreement, and

(b) money made available by the State for the purposes of funding in the State through the State Pool Account under the National Health Reform Agreement, and

(c) money paid to the State by another State for payment into the State Pool Account under the National Health Reform Agreement, and

(d) interest paid on money deposited in the State Pool Account, unless directed to be paid into another bank account by the responsible Minister for the State.

## **11 Payments from State Pool Account**

- (1) There is payable from the State Pool Account established for the State amounts to fund the following in the State under the National Health Reform Agreement (including through a State Managed Fund):
  - (a) the services provided by local hospital networks,
  - (b) health teaching, training and research provided by local hospital networks or other organisations,
  - (c) any other matter that under that Agreement is to be funded through the National Health Funding Pool.
- (2) Payments of amounts from the State Pool Account established for the State are to be made by the Administrator strictly in accordance with the directions of the responsible Minister for the State, including on the amount of each payment, the party or account to which it is to be paid and the timing of the payment.
- (3) The Administrator is required to authorise personally each payment made from the State Pool Account.
- (4) The Administrator is, at the direction of the responsible Minister for the State, to repay any money paid by the State into the State Pool Account for the State that the responsible Minister is satisfied constitutes an overpayment into that Account.
- (5) This clause does not affect the payment from the State Pool Account of charges imposed by the Reserve Bank of Australia for the operation of that Account.
- (6) This clause does not require the payment for services and matters referred to in subclause (1) to be made only from the State Pool Account.
- (7) For the purposes of this clause, the funding of a local hospital network includes the funding of another party on behalf of the network for corporate or other services provided to the network by that other party.
- (8) If at any time when a payment from the State Pool Account is required to be made there is no Administrator or the Administrator is not available to make the payment at that time, the payment from that Account may be made by an official of this State who is directed by the responsible Minister for the State to make the payment.

## **12 State Managed Funds**

The Health Secretary is to:

- (a) open and maintain a separate bank account, or
- (b) establish and maintain a separate fund, or

(c) designate an existing bank account or fund,

as the State Managed Fund for the State for the purposes of health funding under the National Health Reform Agreement.

### **13 Distribution of Commonwealth funding**

- (1) Directions by the responsible Minister for the State to the Administrator for payments from the State Pool Account are, in relation to the distribution of Commonwealth funding provided to the State under the National Health Reform Agreement, to be consistent with the advice provided by the Administrator to the Treasurer of the Commonwealth about the basis on which the Administrator has calculated the payments to be made into that Account by the Commonwealth.
- (2) This clause does not affect the obligation of the Administrator to make payments from the State Pool Account strictly in accordance with the directions of the responsible Minister for the State.

## **Part 4 Financial management and reporting**

### **14 Financial management obligations of Administrator**

The Administrator must:

- (a) develop and apply appropriate financial management policies and procedures with respect to the State Pool Accounts (including policies and procedures to ensure payments from those Accounts are made in accordance with the directions of the responsible Ministers), and
- (b) keep proper records in relation to the administration of the State Pool Accounts, including records of all payments made into and from those Accounts and the basis on which the payments were made, and
- (c) prepare the financial statements required by this Part in relation to the State Pool Accounts and arrange for the audit of those financial statements in accordance with this Part.

### **15 Monthly reports by Administrator**

- (1) The Administrator must provide monthly reports to the Commonwealth and each State containing the following information for the relevant month:
  - (a) the amounts paid into each State Pool Account and State Managed Fund by the relevant State and the basis on which the payments were made,
  - (b) the amounts paid into each State Pool Account by the Commonwealth and the basis on which the payments were made,
  - (c) the amounts paid from each State Pool Account to local hospital networks, a State

Managed Fund or other organisations or funds and the basis on which the payments were made,

- (d) the amounts paid from each State Managed Fund to local hospital networks or other organisations or funds and the basis on which the payments were made,
- (e) the number of public hospital services funded for each local hospital network (including a running financial year total) in accordance with the system of activity based funding,
- (f) the number of other public hospital services and functions funded from each State Pool Account or State Managed Fund (including a running financial year total).

(2) A monthly report required to be provided to a jurisdiction under this clause is to be provided to the responsible Minister for that jurisdiction or to a body or officer notified to the Administrator by that Minister.

(3) The Administrator is to make reports provided under this clause publicly available.

#### **16 Annual report by Administrator**

(1) The Administrator must, within 4 months after the end of each financial year, provide to the responsible Ministers an annual report on the exercise or performance of his or her functions under this Schedule during the financial year.

(2) The annual report must include the following information for the relevant financial year:

- (a) the amounts paid into each State Pool Account and State Managed Fund by the relevant State and the basis on which the payments were made,
- (b) the amounts paid into each State Pool Account by the Commonwealth and the basis on which the payments were made,
- (c) the amounts paid from each State Pool Account to local hospital networks, a State Managed Fund or other organisations or funds and the basis on which the payments were made,
- (d) the amounts paid from each State Managed Fund to local hospital networks or other organisations or funds and the basis on which the payments were made,
- (e) the number of public hospital services funded for each local hospital network in accordance with the system of activity based funding,
- (f) the number of other public hospital services and functions funded from each State Pool Account or State Managed Fund.

(3) The annual report is to be accompanied by:

- (a) an audited financial statement for each State Pool Account, and
  - (b) a financial statement that combines the audited financial statements for each State Pool Account.
- (4) A responsible Minister must, as soon as practicable after receiving an annual report under this clause, cause a copy of the report to be tabled in the Parliament of the responsible Minister's jurisdiction.

#### **17 Administrator to prepare financial statements for State Pool Accounts**

The Administrator must, after each financial year, prepare:

- (a) a financial statement for each State Pool Account that details financial transactions during that financial year, and
- (b) a combined financial statement that consists of the financial statements for each State Pool Account for the financial year.

#### **18 Audit of financial statements**

A financial statement under this Part for the State Pool Account of a State is to be audited by the Auditor-General of that State in accordance with the relevant legislation of that State relating to financial audit by the Auditor-General.

#### **19 Performance audits**

- (1) For the purposes of this clause, a **performance audit** is an audit by the Auditor-General of a jurisdiction of the exercise or performance of the functions of the Administrator in relation to that jurisdiction to determine whether the Administrator is acting effectively, economically, efficiently and in compliance with all relevant laws.
- (2) Before the Auditor-General of this jurisdiction conducts a performance audit, the Auditor-General must notify the Auditors-General of all other jurisdictions of his or her intention to conduct the proposed audit.
- (3) Auditors-General who are conducting performance audits at the same time are to make arrangements to co-ordinate the conduct of those audits in relation to any requirements imposed on the Administrator.
- (4) A performance audit is to be conducted by the Auditor-General of this jurisdiction in accordance with the laws of this jurisdiction relating to the exercise or performance of the functions of the Auditor-General.

#### **20 States to provide Administrator with information about State Managed Funds**

- (1) The responsible Minister for a State is to provide information to the Administrator about any of the following matters relating to the State Managed Fund of the State that the Administrator requires for the preparation of reports and financial statements



under this Part:

- (a) the amounts paid by the State into the State Managed Fund and the basis on which the payments were made,
- (b) the amounts paid by the State from the State Managed Fund to local hospital networks or other organisations or funds and the basis on which the payments were made,
- (c) public hospital services and functions that are funded from the State Managed Fund.

(2) The information is to be provided by the time requested by the Administrator.

## **21 Provision of information generally**

- (1) The Administrator is required to provide to the responsible Minister for a jurisdiction any information requested by that Minister that relates to that jurisdiction.
- (2) The information is to be provided by the time requested by that responsible Minister.
- (3) The Administrator is required to provide to the responsible Ministers of all jurisdictions a copy of advice provided by the Administrator to the Treasurer of the Commonwealth about the basis on which the Administrator has calculated the payments to be made into State Pool Accounts by the Commonwealth.
- (4) The Administrator may at any time provide any information that relates to a jurisdiction to the responsible Minister for that jurisdiction.
- (5) Any information relating to a jurisdiction that is provided by the Administrator to another jurisdiction may only be publicly released by that other jurisdiction in accordance with arrangements approved by the responsible Minister for the jurisdiction to which the information relates.

## **Part 5 Miscellaneous**

### **22 Exclusion of legislation of this jurisdiction**

The following Acts of this jurisdiction do not apply to or in respect of the Administrator or any function exercised or performed by the Administrator:

- (a) the *Government Information (Public Access) Act 2009*,
- (b) the *Health Records and Information Privacy Act 2002*,
- (c) the *Ombudsman Act 1974*,
- (d) the *Privacy and Personal Information Protection Act 1998*,

- (e) the *Public Finance and Audit Act 1983*,
- (f) the *State Records Act 1998*.

### **23 Application of Commonwealth Acts**

- (1) The following Acts apply (subject to subclause (2)) as laws of this jurisdiction to or in respect of the Administrator and any function exercised or performed by the Administrator:
  - (a) the *Archives Act 1983* of the Commonwealth,
  - (b) the *Australian Information Commissioner Act 2010* of the Commonwealth,
  - (c) the *Freedom of Information Act 1982* of the Commonwealth,
  - (d) the *Ombudsman Act 1976* of the Commonwealth,
  - (e) the *Privacy Act 1988* of the Commonwealth.
- (2) Each of those Acts so applies subject to the modifications made by regulations made under the *National Health Reform Act 2011* of the Commonwealth with the agreement of all the members of the Standing Council on Health.
- (3) Until regulations referred to in subclause (2) are made, subclause (1) does not have effect and instead the legislation referred to in clause 22 (a)–(d) and (f) applies to or in respect of the Administrator and any function exercised or performed by the Administrator.

### **24 Extraterritorial operation of Act**

It is the intention of Parliament that the operation of this Schedule is to include, as far as possible, operation in relation to the following:

- (a) things situated in or outside the territorial limits of this jurisdiction,
- (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction,
- (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Schedule, be governed or otherwise affected by the law of another jurisdiction.

### **25 Schedule to bind Crown**

This Schedule binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

## **26 Delegation of functions of responsible Minister**

- (1) The responsible Minister for this State may delegate to an authority or officer of the State the responsible Minister's functions under this Schedule.
- (2) This clause does not apply to the functions of a Minister under Part 2.

## **27 Transitional and validation provisions**

- (1) If, on the commencement of this Schedule, corresponding provisions to this Schedule have not been enacted by another jurisdiction, the responsible Minister for that jurisdiction for the purposes of this Schedule is the Minister of that jurisdiction with portfolio responsibility for health.
- (2) Any thing done by a Minister of the Commonwealth or of a State before the commencement of this Schedule that would have been validly done if this Schedule, and the corresponding provisions of other jurisdictions, had been in force at the time is taken to have been validly done.

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

(Section 141)

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) If the regulations so provide, any such provision may:
  - (a) have effect despite any specified provision of this Act (including a provision of this Schedule), and
  - (b) take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## Part 2 Provisions consequent on enactment of this Act

### Division 1 General

#### 2 Definitions

In this Part:

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

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

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

**former health organisation** means:

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

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

- (a) Far West Health Service,
- (b) Greater Murray Health Service,
- (c) Macquarie Health Service,
- (d) Mid North Coast Health Service,
- (e) Mid Western Health Service,
- (f) New England Health Service,
- (g) Northern Rivers Health Service,
- (h) Southern Health Service.

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

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

**repealed hospitals Act** means the *Public Hospitals Act 1929* as in force immediately before its repeal.

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

**successor:**

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

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

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

A former area health service:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Division 3 Incorporated health service**

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

An incorporated health service:

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

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

- (1) **Wyalong Health Service** On and from 16 March 1996:
  - (a) the Wyalong Health Service is taken to have been transferred to the Greater Murray Health Service, and
  - (b) the assets, rights and liabilities relating solely or principally to the operation of the Wyalong Health Service are taken to have been the assets, rights and liabilities of the Greater Murray Health Service, and
  - (c) a member of staff at the Wyalong Health Service is taken to have been employed as a member of staff of the Greater Murray Health Service in accordance with any relevant statutory provisions, awards, agreements and determinations that applied to the person during the relevant period, and
  - (d) any agreement between the hospital owner and another person relating solely or principally to the operation of the Wyalong Health Service is taken to be an agreement between the Greater Murray Health Service and the person, and
  - (e) any delegation given by the hospital owner in respect of the Wyalong Health Service is taken to have been given by the Greater Murray Health Service, and
  - (f) any by-laws in force under section 28 of the repealed hospitals Act in respect of

the Wyalong Health Service are taken to have been made by the Greater Murray Health Service, and

- (g) any act, matter or thing done by the Greater Murray Health Service during the relevant period in relation to the Wyalong Health Service that could have been done validly by the hospital owner is validated to the extent of any invalidity.

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

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

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

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

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

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



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

**hospital owner** means:

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

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

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

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

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

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

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

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

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

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

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

The by-laws in force under section 28 of the repealed hospitals Act immediately before its repeal in relation to an incorporated health service are taken to have been made under section 39 of this Act. However, this does not prevent the future amendment or repeal of those by-laws.

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

- (1) A person holding office as a chief executive officer of an incorporated health service

immediately before its dissolution is taken to have been appointed under this Act as the chief executive officer of its successor. Such an appointment is for the remainder of the period of appointment to the position that is abolished by reason of the dissolution of the incorporated health service.

- (2) Appointment by virtue of this clause does not change the terms of the contract of employment between the person as an executive officer and the executive officer's employer.
- (3) However:
  - (a) the contract is taken to be with the successor of the incorporated health service, and
  - (b) the chief executive officer's appointment is also taken to be an appointment made under section 28 of this Act and therefore to be an appointment to which Part 2A (but not Part 2) of the *Public Sector Management Act 1988* applies.

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

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

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

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

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

- (1) A reference in any other Act or instrument made under any other Act or in any instrument of any kind to any particular incorporated hospital that was an incorporated health service is taken to be a reference to its successor.
- (2) This clause does not apply to the *State Public Service Superannuation Act 1985*.

### **Division 4 Incorporated hospitals other than incorporated health services**

#### **22 Application of this Division**

This Division applies to any incorporated hospital other than an incorporated health service.

### **23 Dissolution of incorporated hospital**

An incorporated hospital:

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

### **24 Agreements by incorporated hospitals**

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

### **25 Delegations by former incorporated hospitals**

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

### **26 Staff of incorporated hospital**

A member of staff of an incorporated hospital is (until other provision is duly made under any Act or law) to be employed as a member of staff of its successor in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person had the person remained a member of staff of the incorporated hospital.

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

The by-laws in force under section 28 of the repealed hospitals Act immediately before its repeal in relation to an incorporated hospital are taken to have been made under section 60 of this Act. However, this does not prevent the future amendment or repeal of those by-laws.

### **28 Chief executive officers of incorporated hospitals**

- (1) A person holding office as a chief executive officer of an incorporated health service immediately before its dissolution is taken to have been appointed under this Act as the chief executive officer of its successor. Such an appointment is for the remainder of the period of appointment to the position that is abolished by reason of the dissolution of the incorporated hospital.
- (2) Appointment by virtue of this clause does not change the terms of the contract of employment between the person as an executive officer and the executive officer's employer.
- (3) However:

- (a) the contract is taken to be with the successor of the incorporated hospital, and
- (b) the chief executive officer's appointment is taken, for the purposes of section 51:
  - (i) if the officer's current appointment is to a position referred to in Schedule 3B to the *Public Sector Management Act 1988*—to be an appointment to which Part 2A of that Act applies, or
  - (ii) in any other case—to be an appointment to which Part 2A of that Act does not apply.

### **29 Members of board of directors of incorporated hospitals**

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

### **30 Preservation of existing functions**

- (1) The successor of an incorporated hospital has the same functions as the incorporated hospital had immediately before its dissolution.
- (2) However, nothing in this clause prevents the future alteration of the functions of the successor, by or under this Act.

### **31 Successor same legal entity as incorporated hospital**

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

### **32 References to incorporated hospitals**

- (1) A reference in any other Act or instrument made under any other Act or in any instrument of any kind:
  - (a) to any particular incorporated hospital is taken to be a reference to its successor, and
  - (b) to an incorporated hospital constituted under the repealed hospitals Act is taken to be a reference to a statutory health corporation constituted under this Act.
- (2) This clause does not apply to the *State Public Service Superannuation Act 1985*.

## **Division 5 Separate institutions**

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

Any by-laws made by a separate institution in force under section 29AE of the repealed hospitals Act immediately before its repeal are taken to have been made under section 63 of this Act by its successor. However, this does not prevent the future amendment or repeal of those by-laws.

### **34 Borrowing by separate institutions**

The repeal of sections 37 and 37A of the repealed hospitals Act does not affect any borrowing by a separate institution effected before the repeal of the repealed hospitals Act. Those provisions continue to apply to that borrowing until such time as it is repaid by its successor.

### **35 Funding agreements under section 17A of repealed hospitals Act**

Any agreement made under section 17A of the repealed hospitals Act in relation to a separate institution that is in force on the repeal of that Act is taken to be an agreement made under section 128 of this Act in relation to its successor.

### **36 References to separate institutions**

- (1) A reference in any other Act or instrument made under any other Act or in any instrument of any kind to a separate institution is taken to be a reference to an affiliated health organisation.
- (2) This clause does not apply to the [State Public Service Superannuation Act 1985](#).

## **Division 6 Associated organisations**

### **37 Borrowing by associated organisations**

The repeal of sections 37 and 37A of the repealed hospitals Act does not affect any borrowing by an associated organisation effected before the repeal of the repealed hospitals Act. Those provisions continue to apply to that borrowing until such time as it is repaid by its successor.

### **38 References to associated organisations**

- (1) A reference in any other Act or instrument made under any other Act or in any instrument of any kind to an associated organisation is taken to be a reference to an affiliated health organisation.
- (2) This clause does not apply to the [State Public Service Superannuation Act 1985](#).

## Division 7 Miscellaneous

### 39 Existing Samaritan Funds

- (1) Any Samaritan Fund established under section 40A of the repealed hospitals Act and in effect immediately before its repeal is taken to be a Samaritan Fund established under section 133 of this Act by the public health organisation that controls the hospital in respect of which the original Samaritan Fund was established.
- (2) A reference in this clause to a public health organisation includes a reference to the Crown in relation to any public hospital controlled by the Crown (including the Minister or the Health Administration Corporation).

### 40 Debts owing by patients of public hospitals under repealed hospitals Act

- (1) A debt owing to a board under section 30 or 30A of the repealed hospitals Act is taken to be a debt owing under section 70 or 72 (as the case may be) of this Act to the public health organisation that controls the hospital in respect of which the debt is owed.
- (2) A reference in this clause to a public health organisation includes a reference to the Crown in relation to any public hospital controlled by the Crown (including the Minister or the Health Administration Corporation).

### 41 Employment matters under repealed area Act and repealed hospitals Act

- (1) In this clause:

***existing employment agreement or determination*** means:

- (a) any agreement or determination in respect of officers or employees of a former area health service or former area health services made under section 26 of the repealed area Act that is in force immediately before the repeal of that section, and
- (b) any agreement or determination in respect of officers or employees of a hospital or hospitals made under section 40BA of the repealed hospitals Act that is in force immediately before the repeal of that section.

***hospital*** has the same meaning as it had in section 40BA of the repealed hospitals Act immediately before its repeal.

- (2) Any existing employment agreement or determination is taken to have been made under section 115 of this Act and therefore binds the successor of the former area health service or hospital to which it originally related.
- (3) Nothing in this clause prevents the making of any future agreement or determination under section 115 of this Act.

#### **42 Arbitrations under repealed hospitals Act**

- (1) The provisions of Part 5C of the repealed hospitals Act, as in force immediately before its repeal, continue to apply to arbitrations under that Part that have not been determined before that repeal.
- (2) For the purposes of subclause (1), any reference in Part 5C of the repealed hospitals Act (or any instrument made under that Part):
  - (a) is, to the extent that it applies to any particular former area health service, incorporated hospital or separate institution (or governing body), to be read as a reference to the successor of the service, hospital or institution concerned, and
  - (b) to former area health services, incorporated hospitals or separate institutions (or their governing bodies) generally is to be read as a reference to public health organisations.

#### **43 Appeals under repealed hospitals Act**

- (1) The provisions of Part 6B of the repealed hospitals Act, as in force immediately before its repeal, continue to apply to appeals under that Part that have not been determined before that repeal.
- (2) For the purposes of subclause (1), any reference in Part 6B of the repealed hospitals Act (or any instrument under that Part) to the **board** is to be read as a reference to the public health organisation that is the successor to the former area health service, incorporated hospital, separate institution or associated organisation concerned.

#### **44 Approved standard contracts under repealed hospitals Act**

- (1) Any standard conditions approved by the Minister under section 29RB of the repealed hospitals Act and in force immediately before the repeal of that Act are taken to be standard conditions approved under section 87 of this Act.
- (2) Any reference in those standard conditions:
  - (a) to any particular former area health service, incorporated hospital or separate institution is to be read as a reference to the successor of the service, hospital or institution, or
  - (b) to former area health services, incorporated hospitals or separate institutions generally is to be read as a reference to area health services, statutory health corporations and affiliated health organisations, respectively, within the meaning of this Act.
- (3) For the purposes of section 89 (3), 5 years is taken to be the period specified by an order of the Minister made under section 29RB of the repealed hospitals Act approving any such standard conditions.

- (4) Nothing in this clause prevents the making of any future orders under section 87 of this Act approving standard conditions.

#### **44A Determination under repealed hospitals Act**

- (1) In this clause:

**existing determination** means the Public Hospitals (Visiting Medical Officers—Sessional Contracts) Determination 1994, made under Division 2 of Part 5C of the *Public Hospitals Act 1929* and which, immediately before the repeal of that Act, applied to sessional visiting medical officers by operation of section 29R of that Act.

- (2) The existing determination is taken to be a determination made under Division 3 of Part 2 of Chapter 8 and applying, by virtue of section 98, in relation to any service contract between an organisation and a visiting medical officer providing his or her services as an individual.
- (3) A reference in that determination:
- (a) to any particular former area health service, incorporated hospital or separate institution is to be read as a reference to the successor of the service, hospital or institution, as the case may be, or
  - (b) to former area health services, incorporated hospitals or separate institutions generally is to be read as a reference to area health services, statutory health corporations and affiliated health organisations, respectively.
- (4) On and from a date appointed by proclamation for the purposes of this subclause, the existing determination is taken to also be a determination made under Division 3 of Part 2 of Chapter 8 and applying, by virtue of section 98, in relation to any service contract between an organisation and a practice company through which a visiting medical officer provides services (in accordance with section 85).

**Editorial note—**

Date appointed for the purposes of this subclause: 30.6.2000—see Gazette No 81 of 30.6.2000, p 5354.

- (5) On and from that date, a reference in that determination:
- (a) to any particular former area health service, incorporated hospital or separate institution is to be read as a reference to the successor of the service, hospital or institution, as the case may be, or
  - (b) to former area health services, incorporated hospitals or separate institutions generally is to be read as a reference to area health services, statutory health corporations and affiliated health organisations, respectively, or
  - (c) to a contract with or payment to a visiting medical officer is to be read as including a reference to a contract with or payment to a visiting medical officer's



practice company, or

(d) to the termination of a sessional contract is to be read as including a reference to the termination of a visiting medical officer's appointment as a visiting medical officer.

(6) Nothing in this clause prevents the making of any future orders under section 87 approving standard conditions.

#### **45 Scale of fees under repealed hospitals Act**

(1) Any scale of fees fixed by the Minister under section 30 (8) of the repealed hospitals Act and in force on the date of the repeal of that Act is taken to be a scale of fees fixed by the Minister under section 69 of this Act.

(2) Nothing in this clause prevents the future fixing, amendment or revocation of a scale of fees under section 69 of this Act.

#### **46 Descriptions of parts of areas of area health services**

Until a regulation made under section 18 (2) of this Act provides otherwise:

(a) a reference in column 2 of Schedule 1 to the area "Sydney and South Sydney (part)" in relation to the Central Sydney Area Health Service is a reference to the western sector of the cities of Sydney and South Sydney with the boundaries as shown on the map deposited in the principal office of the Department of Health marked "Area Health Service Boundaries—Cities of Sydney and South Sydney", and

(b) a reference in column 2 of Schedule 1 to the area "Sydney and South Sydney (part)" in relation to the South Eastern Sydney Area Health Service is a reference to the eastern sector of the cities of Sydney and South Sydney with the boundaries as shown on the map deposited in the principal office of the Department of Health marked "Area Health Service Boundaries—Cities of Sydney and South Sydney".

#### **47 Effect of amendments to other Acts on existing appointments**

An amendment made by Schedule 6 to a provision of any other Act does not affect the validity of any appointment made under that provision before its amendment by that Schedule.

#### **48 Existing visiting practitioners**

(1) Subject to this Schedule, a person who was a visiting practitioner within the meaning of the repealed hospitals Act of a former health organisation immediately before the repeal of that Act is taken to be a visiting practitioner under this Act appointed as such by the successor of the organisation.

(2) Section 100 is taken not to apply to any conviction for a serious sex or violence

offence of a person referred to in subclause (1) if, before the person was appointed as a visiting practitioner by the former health organisation concerned, the Director-General (or a person acting on behalf of the Director-General) notified the chief executive officer or the governing body of the organisation that, despite the conviction, he or she approved of (or did not object to) the person being appointed as a visiting practitioner.

#### **49 Disclosure of serious sex or violence offences by existing employees**

(1) Section 118 is taken not to apply to any conviction for a serious sex or violence offence of an existing employee if, before the person was employed by the former health organisation concerned, the Director-General (or a person acting on behalf of the Director-General) notified the chief executive officer or the governing body of the organisation that, despite the conviction, he or she approved of (or did not object to) the person being employed by the organisation.

(2) In this clause:

**existing employee** means a person who, by operation of this Schedule, is taken to be an employee of the successor of a former health organisation.

#### **50 Model by-laws for former area health services preserved**

(1) Any order of the Minister setting the terms of model by-laws made under section 32 of the former area Act that was published in the Gazette and was in force immediately before the repeal of that Act is taken:

- (a) to be an order of the Minister made under section 39 (2) of this Act, and
- (b) to set out model by-laws in respect of which the Minister has received advice from the Medical Services Committee for the purposes of section 39 (3) (a) of this Act.

(2) Any reference in any such by-laws:

- (a) to an area health service is taken to be a reference to an area health service within the meaning of this Act, and
- (b) to an area health board is taken to be a reference to an area health board within the meaning of this Act, and
- (c) to a chief executive officer of an area health board is taken to be a reference to a chief executive officer of an area health service within the meaning of this Act, and
- (d) to a visiting practitioner in relation to a hospital under the control of an area health service is taken to be a visiting practitioner of an area health service within the meaning of this Act, and
- (e) to the clinical privileges of a visiting practitioner is taken to be a reference to

clinical privileges within the meaning of section 105 (2) of this Act.

- (3) Nothing in this clause prevents the making of a future order under section 39 (2) of this Act.

**51 Minister entitled to certain payments under [Local Government and Other Authorities \(Superannuation\) Act 1927](#)** (cf PH Act s 40BB)

- (1) Any money that would, but for this subclause, be payable to a public health organisation under section 15Y or 15Z of the [Local Government and Other Authorities \(Superannuation\) Act 1927](#) is to be paid to the Minister instead.
- (2) The Minister may, on the written application of a contributing employer, pay to the employer such part of any money the Minister has received under subsection (1) in respect of a contributor or former contributor as the Minister considers proper having regard to the payments made by the employer to the Board in respect of the contributor or former contributor.
- (3) In this clause:

**Board** has the same meaning as in the [Local Government and Other Authorities \(Superannuation\) Act 1927](#).

**contributing employer** means a person who has:

- (a) employed a contributor or former contributor, and
- (b) made payments to the Board in respect of the contributor or former contributor.

**contributor** and **former contributor** have the same meanings as in sections 15Y and 15Z of the [Local Government and Other Authorities \(Superannuation\) Act 1927](#).

**52 References to repealed area Act and repealed hospitals Act**

- (1) A reference in any other Act or instrument made under an Act, or in any instrument of any kind, to the repealed area Act or the repealed hospitals Act is taken to be a reference to this Act.
- (2) This clause does not apply to the [State Public Service Superannuation Act 1985](#).

**53 Reference to this Act in [Health Care Complaints Act 1993](#)**

A reference in section 25 (1) of the [Health Care Complaints Act 1993](#) to this Act is taken to include a reference to the repealed area Act and the repealed hospitals Act.

**Note—**

Section 25 of the [Health Care Complaints Act 1993](#) requires the Health Care Complaints Commission to notify the Director-General of the details of a complaint under that Act if it appears to the Commission that it involves a possible breach of any of the various Acts (or the regulations made under them) listed in that section.

This clause ensures that the reference in that Act to this Act will be read so as to require the Commission to

notify the Director-General of possible breaches of the repealed area Act and the repealed hospitals Act committed before their repeal.

#### **54 General savings**

Subject to this Schedule, anything done by, to or in relation to a former health organisation is taken to have been done by, to or in relation to the successor of the organisation.

### **Part 3 Provisions consequent on the enactment of the [Health Legislation Amendment Act 1999](#)**

#### **55 Validation of loans to public health organisations**

Any loan made before the commencement of this clause to an area health service, statutory health corporation or affiliated health organisation out of money appropriated from the Consolidated Fund to the Minister for Health is validated.

### **Part 4 Provisions consequent on the enactment of the [Health Services Amendment Act 2004](#)**

#### **56 Definition**

In this Part, **the 2004 amending Act** means the [Health Services Amendment Act 2004](#).

#### **57 Abolition of area health boards**

- (1) Each area health board constituted under section 23, as in force immediately before the commencement of Schedule 1 [2] to the 2004 amending Act, is abolished.
- (2) The members of each area health board cease to hold office on the commencement of Schedule 1 [2] to the 2004 amending Act, but are not entitled to be paid any compensation by reason of ceasing to hold office.
- (3) The chief executive officer of an area health service is not removed from office just because he or she ceases to be a member of the area health board for the service.

#### **58 Abolition of health corporation board for The Royal Alexandra Hospital for Children**

- (1) The health corporation board for The Royal Alexandra Hospital for Children, as existing immediately before the commencement of Schedule 1 [28] to the 2004 amending Act, is abolished.
- (2) The members of the health corporation board for The Royal Alexandra Hospital for Children cease to hold office on the commencement of Schedule 1 [28] to the 2004 amending Act, but are not entitled to be paid any compensation by reason of ceasing to hold office.

## **59 Appointment of first health executives**

- (1) This clause applies to the following positions:
  - (a) the position of chief executive of an area health service,
  - (b) a position that, as at the commencement of this clause, is the subject of a determination in force under section 121B (1) (b).
- (2) On the commencement of Schedule 1 [27] to the 2004 amending Act, a person who, immediately before that commencement, held a position to which this clause applies, or was an appointee to such a position, is taken to have been appointed to the position under section 121C (1).
- (3) Until further provision is made under Part 3 of Chapter 9, the person's conditions of employment (including remuneration) are, subject to that Part, to be the same as those that applied to the person immediately before the commencement of Schedule 1 [27] to the 2004 amending Act.
- (4) An appointment by the Governor under section 28, as in force immediately before the commencement of Schedule 1 [2] to the 2004 amending Act, has the same effect as if it were an appointment by the Health Administration Corporation under section 121C, as inserted by that Act.

## **60 Existing executive officers**

Any person within the NSW Health Service who, immediately before the commencement of Schedule 1 [27] to the 2004 amending Act, was an executive officer under Part 3.1 of the *Public Sector Employment and Management Act 2002*, is taken, on that commencement, to be a health executive under Part 3 of Chapter 9 of this Act.

## **61 Unattached officers**

Any person who, immediately before the commencement of section 121N, was an unattached officer under section 77 of the *Public Sector Employment and Management Act 2002*, being a person who was then:

- (a) an employee in the NSW Health Service, or
- (b) an employee of an area health service, having been the chief executive officer of the service immediately before he or she became an unattached officer,

is taken, on that commencement, to be an unattached officer under section 121N.

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

## Employment Legislation Amendment Act 2006

### 62 Definitions

In this Part:

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

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

**relevant commencement** means:

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

**relevant public health organisation** means:

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

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

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

### 63 Transitional provision—construction of superseded references

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

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

(2) This clause is subject to the regulations.

#### **64 Existing staff of public health organisations and Health Administration Corporation**

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

State.

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

#### **65 Existing executive officers**

Any person within the NSW Health Service who, immediately before the commencement of Schedule 2 [27] to the amending Act, was an executive officer under Part 3.1 of the [Public Sector Employment and Management Act 2002](#), is taken, on that commencement, to be a health executive under Part 3 of Chapter 9 of this Act.

#### **66 Abolition of former corporation**

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



whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

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

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

#### **67 Ambulance Service Board**

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

#### **68 Chief Executive Officer of Ambulance Service Board**

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

#### **69 Transfer of staff of former corporation**

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

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

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

#### **70 Appointment of certain staff of former corporation as executive officers**

- (1) This clause applies to a position on the staff of the former corporation that is, as at the repeal date, the subject of a determination under section 121B (1) (b).
- (2) On the repeal date, a person who, immediately before that date, held a position to which this clause applies, or was an appointee to such a position, is taken to have been appointed to the position under section 121C (1).
- (3) Until further provision is made under Part 3 of Chapter 9, the person's conditions of employment (including remuneration) are, subject to that Part, to be the same as those that applied to the person immediately before the repeal date.

#### **71 Continuation of regulation made under repealed Act**

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

#### **72 Existing workers compensation policies of insurance**

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

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

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

## Part 6 Provision consequent on enactment of [Health Practitioner Regulation Amendment Act 2010](#)

### 74 Service contracts

Despite its repeal by the [Health Practitioner Regulation Amendment Act 2010](#), section 85 (3) continues to apply to a service contract between a public health organisation and a medical practitioner's practice company that was entered into and in force immediately before its repeal.

## Part 7 Provisions consequent on enactment of [Health Services Amendment \(Local Health Networks\) Act 2010](#)

### 75 Definitions

In this Part:

**amending Act** means the [Health Services Amendment \(Local Health Networks\) Act 2010](#).

**existing area health advisory council** means an area health advisory council for an existing area health service.

**existing area health service** means an area health service in existence immediately before the network establishment day.

**existing by-laws** means any by-laws made by an area health service that were in force immediately before the network establishment day.

**local health network** means a local health network constituted by this Act (as in force on the network establishment day).

**network establishment day** means the day on which Schedule 1 is substituted by the amending Act.

### 76 Dissolution of existing area health services

On and from the network establishment day:

- (a) each existing area health service is dissolved, and

- (b) each existing area health advisory council is dissolved, and
- (c) the members (including chairpersons) of each existing area health advisory council cease to hold office as such, and
- (d) any person who ceases to be a member of an existing area health advisory council because of the operation of this clause is not entitled to any compensation for the loss of that office.

**77 Transfers of assets, rights, liabilities and staff of area health services**

- (1) Without limiting the generality of section 131, the Governor may make an order under that section during the transitional period as if any reference in the section to a statutory health organisation also included references to both a proposed local health network and proposed statutory health corporation.
- (2) Section 131 (3) does not apply during the transitional period in relation to an order made under that section that transfers to a proposed local health network, proposed statutory health corporation, local health network or statutory health corporation:
  - (a) a public hospital, health institution, health service or health support service under the control of an area health service, or
  - (b) any assets, rights or liabilities of an area health service.
- (3) A transfer under an order made under section 131 to a proposed local health network or proposed statutory health corporation is taken to have effect on the network establishment day.
- (4) The provisions of Schedule 4 apply in relation to any of the residual assets, rights and liabilities of each area health service dissolved by operation of clause 76 as if:
  - (a) an order under section 20 (1) (a) had been made dissolving the service on the network establishment day, and
  - (b) Schedule 4 continued to apply in relation to the dissolution of an area health service by an order made under that section in the same way as it applied to such a dissolution immediately before the network establishment day.
- (5) The Governor may make an order under section 131 transferring to any one or more statutory health organisations any residual assets, rights or liabilities of an area health service that are vested in the Minister by operation of subclause (4) as if the Minister were a statutory health organisation for the purposes of that section. Section 131 (3) does not apply in relation to such an order.
- (6) Without limiting clause 18 of Schedule 4, regulations of a savings and transitional nature may be made consequent on the dissolution of an existing area health service by clause 76.

(7) In this clause:

**proposed local health network** means a local health network to be constituted on the network establishment day.

**proposed statutory health corporation** means a statutory health corporation to be constituted on the network establishment day.

**residual assets, rights and liabilities** of an existing area health service dissolved by operation of clause 76 means any assets, rights and liabilities of the area health service that:

- (a) have not already been transferred under this Act to another person before the network establishment day, and
- (b) will not otherwise be transferred to a local health network or statutory health corporation on the network establishment day by means of an order made under section 131 or any other provision of this Act.

**transitional period** means the period commencing on the day on which this clause commences and ending on the day immediately after the network establishment day.

#### **78 Constitution of local health networks**

- (1) Each of the local health networks specified in Schedule 1 (as substituted by the amending Act) is constituted as such on the network establishment day, subject to subclause (2).
- (2) Nothing in this clause prevents the amendment of Schedule 1 (whether on or after the network establishment day) by an order made under section 19 or 20.

#### **79 Change in corporate governance of The Sydney Children's Hospitals Network**

- (1) The SCHN becomes a network governed health corporation on the reconstitution day.
- (2) A person who was a member of the existing advisory council of the SCHN immediately before the reconstitution day:
  - (a) ceases to be a member of the existing advisory council on that day, and
  - (b) if the person consents, becomes instead a member of the governing council of the SCHN.
- (3) A person who becomes a member of the governing council of the SCHN by operation of subclause (2) holds office as such for a term of 2 years commencing on the reconstitution day unless the person vacates office before the expiry of that term.
- (4) The provisions of this clause have effect despite anything to the contrary in Division 2 of Part 2 of Chapter 3 (as applied to network governed health corporations by section

52F), including in relation to the maximum number of members for the governing council of a network governed health corporation.

(5) In this clause:

**existing advisory council** of the SCHN means the advisory council constituted for the SCHN under section 52D that was in existence immediately before the reconstitution day.

**reconstitution day** means the day on which Schedule 1 [35] to the amending Act commences.

**SCHN** means the statutory health corporation with the corporate name “The Sydney Children’s Hospitals Network (Randwick and Westmead) (incorporating The Royal Alexandra Hospital for Children)”.

## **80 Preservation of existing by-laws**

- (1) The regulations may make provision for or with respect to the continued application of existing by-laws made in relation to public hospitals, health institutions, health services or health support services controlled by area health services until new by-laws are made under this Act in relation to such hospitals, institutions or services.
- (2) Any regulations made for the purposes of this clause may provide for the continued application of existing by-laws subject to such modifications as may be prescribed by the regulations.

## **81 Updating of references to area health services**

- (1) A reference in any other Act or instrument made under any other Act or in any instrument of any kind to an area health service constituted under this Act (other than a particular area health service) is to be read on and from the network establishment day as being a reference to a local health network constituted under this Act.
- (2) The regulations may make provision for or with respect to how a reference in any other Act or instrument made under any other Act or in any instrument of any kind to a particular area health service (or a hospital, health institution, health service or health support service controlled by a particular area health service) is to be read on and from the network establishment day.

## **82 Relationship of this Part with [Interpretation Act 1987](#)**

The provisions of this Part are in addition to, and do not derogate from, the provisions of section 26 of the [Interpretation Act 1987](#).

### **Note—**

Section 26 of the [Interpretation Act 1987](#) enables a power to make instruments of a legislative or administrative character that is to be conferred by an enacted but uncommenced amendment to an Act to be exercised before the amendment commences. Any such instrument will have effect on the commencement of the amendment.

## Part 8 Provisions consequent on enactment of Health Services Amendment (Local Health Districts and Boards) Act 2011

### Division 1 Preliminary

#### 83 Interpretation

(1) In this Part:

**amending Act** means the *Health Services Amendment (Local Health Districts and Boards) Act 2011*.

**existing by-laws** means any by-laws made (or taken to have been made) by an existing local health network that were in force immediately before the reconstitution day.

**existing local health network** means a local health network in existence immediately before the reconstitution day.

**existing local health network governing council** means a local health network governing council for an existing local health network in existence immediately before the reconstitution day.

**existing network governed health corporation** means a network governed health corporation in existence immediately before the reconstitution day.

**initial local health district** means a local health district constituted by this Act (as in force on the reconstitution day).

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

**reconstitution day** means the day on which section 17 is substituted by the amending Act.

**successor**, in relation to an existing local health network, means an initial local health district having substantially the same name as the existing local health network.

(2) For the purposes of the definition of **successor** in subclause (1), an initial local health district has substantially the same name as an existing local health network if the only difference between the corporate names of the district and network is the use of the word "District" instead of the word "Network".

### Division 2 Dissolution and reconstitution of existing local health

## **networks**

### **84 Dissolution of existing local health networks**

- (1) On the reconstitution day:
  - (a) each existing local health network is dissolved, and
  - (b) each existing local health network governing council is dissolved, and
  - (c) the members (including chairpersons and deputy chairpersons) of each existing local health network governing council cease to hold office as such, but are eligible (if otherwise qualified) to be appointed as members (including chairpersons and deputy chairpersons) of local health district boards, and
  - (d) any person who ceases to be a member (including a chairperson or deputy chairperson) of an existing local health network governing council because of the operation of this clause is not entitled to any compensation for the loss of that office.
- (2) Subject to this Division, on the dissolution of an existing local health network, the network's successor is taken for all purposes (including the rules of private international law) to be a continuation of and the same legal entity as the network.

### **85 Constitution of initial local health districts**

- (1) Each of the local health districts specified in Schedule 1 (as amended by the amending Act on the reconstitution day) is constituted as such on that day, subject to subclause (2).
- (2) Nothing in this clause prevents the amendment of Schedule 1 (whether on or after the reconstitution day) by an order made under section 19 or 20.

### **86 Transfer of existing local health network's undertaking to network's successor**

- (1) The following provisions have effect in relation to the assets, rights and liabilities of an existing local health network on its dissolution:
  - (a) the assets of the network vest in the network's successor by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance,
  - (b) the rights or liabilities of the network become by virtue of this clause the rights or liabilities of the network's successor,
  - (c) all proceedings relating to the assets, rights or liabilities commenced before the network's dissolution by or against the network or a predecessor of the network and pending immediately before the network's dissolution are taken to be proceedings pending by or against the network's successor,



- (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the network's dissolution by, to or in respect of the network is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the network's successor,
  - (e) the network's successor has all the entitlements and obligations of the network in relation to those assets, rights and liabilities that the network would have had but for its dissolution, whether or not those entitlements and obligations were actual or potential at the time the dissolution took effect.
- (2) Without limiting subclause (1):
- (a) any agreement between an existing local health network and any person that was in force (or taken to be in force) immediately before the dissolution of the network is taken on and from that dissolution to have been entered into between the network's successor and the person, and
  - (b) any delegation given (or taken to have been given) by an existing local health network in force immediately before the dissolution of that network is taken on and from that dissolution to have been given by the network's successor.
- (3) The operation of this clause is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
  - (d) as an event of default under any contract or other instrument.
- (4) No attornment to an existing local health network's successor by a lessee from the network is required.
- (5) No compensation is payable to any person or body in connection with the transfer of any asset, right or liability by operation of this clause.
- (6) State tax is not payable in relation to:
- (a) an exempt matter, or
  - (b) anything done because of, or for a purpose connected with or arising out of, an exempt matter.
- (7) The Minister may, by notice in writing, confirm that particular assets, rights or

liabilities have become the assets, rights or liabilities of an initial local health district by operation of this clause. Such a notice is conclusive evidence of that fact.

(8) In this clause:

**exempt matter** means any of the following:

- (a) the transfer of any assets, rights or liabilities by operation of this clause (including, without limitation, any instrument executed only for a purpose ancillary to or consequential on the operation of this clause),
- (b) anything certified by the Minister in writing as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land).

**State tax** means application or registration fees, duty or any other tax, fee or charge imposed by any legislation or other law of the State.

### **87 Existing chief executives continue in office**

On the reconstitution day, any person holding office as a chief executive of an existing local health network immediately before its dissolution is taken to have been appointed as the chief executive of the network's successor for the balance of his or her term of office as the chief executive of the local health network, unless the person vacates office before the expiry of the balance of that term.

### **88 Continuation of existing by-laws**

- (1) Subject to the regulations, the existing by-laws of an existing local health network continue in force on and from the reconstitution day as by-laws of the network's successor (with such modifications as are necessary or prescribed by the regulations) until by-laws are made by the successor.
- (2) Subject to the regulations, any committee, subcommittee or council established (or taken to have been established or continued in existence) under the existing by-laws of an existing local health network continues in existence as a committee, subcommittee or council of the network's successor until such time as a replacement committee, subcommittee or council is established under the successor's by-laws.
- (3) The continuation of an existing committee, subcommittee or council by operation of this clause does not alter or otherwise affect the existing membership or functions of the committee, subcommittee or council.

### **89 Continuation of existing approved quality assurance committees**

- (1) Subject to the regulations, each of the committees declared (or taken to have been declared) as an approved quality assurance committee under section 20E of the [Health Administration Act 1982](#) in relation to any local health network that is in existence immediately before the reconstitution day is taken on and from that day to

be an approved quality assurance committee of the network's successor.

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

## **90 Updating of references to local health networks and their governing councils**

- (1) Subject to the regulations:

- (a) a reference in any other Act or instrument made under any other Act or in any instrument of any kind to a local health network constituted under this Act (other than a particular local health network) is to be read on and from the reconstitution day as being a reference to a local health district constituted under this Act, and
- (b) a reference in any other Act or instrument made under any other Act or in any instrument of any kind to a particular local health network is to be read on and from the reconstitution day as being a reference to the network's successor, and
- (c) a reference in any other Act or instrument made under any other Act or in any instrument of any kind to a local health network governing council established under this Act (other than a local health network governing council of a particular local health network) is to be read on and from the reconstitution day as being a reference to a local health district board established under this Act, and
- (d) a reference in any other Act or instrument made under any other Act or in any instrument of any kind to a local health network governing council for a particular local health network is to be read on and from the reconstitution day as being a reference to the local health district board for the network's successor.

- (2) Subclause (1) does not apply in relation to clause 38 of the *Children (Criminal Proceedings) Regulation 2005* or such other references as may be prescribed by the regulations.

## **Division 3 Miscellaneous**

### **91 Change in corporate governance of existing network governed health corporations**

- (1) On the conversion day:

- (a) the governance of each existing network governed health corporation changes to specialty network governance and, accordingly, the corporation becomes a specialty network governed health corporation within the meaning of this Act, and
- (b) each governing council for an existing network governed health corporation is dissolved, and
- (c) the members (including chairpersons and deputy chairpersons) of each governing

council for an existing network governed health corporation cease to hold office as such, but are eligible (if otherwise qualified) to be appointed as members (including chairpersons and deputy chairpersons) of the boards for specialty network governed health corporations, and

(d) any person who ceases to be a member (including a chairperson or deputy chairperson) of a governing council for an existing network governed health corporation because of the operation of this clause is not entitled to any compensation for the loss of that office.

(2) Without limiting clause 1, the regulations may make provision for or with respect to the re-appointment of existing council members of the SCHN to the new board of the SCHN.

**Note—**

The SCHN becomes a specialty network governed health corporation on the conversion day by operation of subclause (1) (a).

(3) Any regulation made for the purposes of subclause (2) has effect despite anything to the contrary in subclause (1) or in Division 2 of Part 2 of Chapter 3 (as applied to specialty network governed health corporations by section 52F), including in relation to the maximum number of members for the board of a specialty network governed health corporation.

(4) A change in the governance of an existing network governed health corporation that is effected by operation of this clause does not operate:

(a) to create a new legal entity, or

(b) to prejudice or affect the identity of the body corporate constituted as the health corporation or its continuity as a body corporate, or

(c) to affect the property, or the rights or obligations, of the health corporation, or

(d) to render defective any legal proceedings by or against the health corporation, or

(e) to affect the appointment of the chief executive of the health corporation.

(5) In this clause:

**conversion day** means the day on which Schedule 1.1 [3] to the amending Act commences.

**existing council member** of the SCHN means a person who is a member (including the chairperson or deputy chairperson) of the governing council of the SCHN immediately before the conversion day.

**SCHN** means the statutory health corporation with the corporate name “The Sydney Children’s Hospitals Network (Randwick and Westmead) (incorporating The Royal

Alexandra Hospital for Children)”.

## **92 Status of local health districts and specialty network governed health corporations for purposes of National Health Reform Agreement**

It is declared that each local health district and specialty network governed health corporation constituted under this Act is intended to operate as a local hospital network of the kind referred to in the National Health Reform Agreement.

## **93 Regulations**

Without limiting clause 1, the regulations may make provision for or with respect to the following:

- (a) the updating of references in any other Acts or instruments made under any other Acts or in any instruments of any kind to local health networks, local health network governing councils, network governed health corporations or governing councils of network governed health corporations,
- (b) the application (whether with or without modifications) of the by-laws of existing local health networks to local health districts,
- (c) the continuation of committees declared (or taken to have been declared) as approved quality assurance committees under section 20E of the *Health Administration Act 1982* and of committees, subcommittees and councils established (or taken to be established or continued in existence) under existing by-laws.

## **Part 9 Provisions consequent on enactment of Health Services Amendment (Ambulance Fees) Act 2014**

### **94 Scale of fees**

An order made under section 67D of this Act and in force immediately before the repeal of that section by the *Health Services Amendment (Ambulance Fees) Act 2014* is taken, on that repeal, to have been made under section 67L.

### **95 Recovery of fees for services provided before commencement**

- (1) A debt notice may be issued under Part 4 of Chapter 5A in respect of an existing ambulance fee, as if a fee invoice had already been served on the person by whom the fee is payable, if:
  - (a) a notice specifying the existing ambulance fee and the person by whom it was payable was issued by or on behalf of the Health Secretary before the relevant commencement date, and
  - (b) the person by whom the fee was payable was given a copy of the notice, and
  - (c) the fee specified in the notice was not greater than the fee for the relevant

ambulance services fixed by the scale of fees in force under section 67D at the time that the notice was issued, and

(d) the fee is not paid in full by the date that is 7 days after the due date for payment specified in the notice.

(2) In such a case, the person is taken to have been served with a fee invoice for the purposes of this Act.

(3) This clause does not prevent the Health Secretary from issuing a fee invoice, in accordance with Part 4 of Chapter 5A, for ambulance services provided before the relevant commencement date if the Health Secretary charges the fee after the relevant commencement date.

(4) This clause is subject to the *Limitation Act 1969*.

(5) In this clause:

**existing ambulance fee** means an ambulance fee charged by the Health Secretary before the relevant commencement date.

**relevant commencement date** means the date of commencement of section 67P (as inserted by the *Health Services Amendment (Ambulance Fees) Act 2014*).

## 96 Charging of parents for services provided to child

Section 67M (3), as inserted by the *Health Services Amendment (Ambulance Fees) Act 2014*, does not apply to ambulance services provided before the commencement of that subsection.

## 97 References to Health Secretary

(1) In Chapter 5A and Schedule 9, as inserted by the *Health Services Amendment (Ambulance Fees) Act 2014*, and in this Part, a reference to the Health Secretary is a reference to the Secretary of the Ministry of Health.

(2) A reference in this Part to anything done by or on behalf of the Health Secretary includes, in relation to anything done before the commencement of the *Government Sector Employment Act 2013*, a reference to anything done by or on behalf of the Head of the Government Department or Division responsible for charging ambulance fees for ambulance services or a delegate of the Head.

## Schedule 8 Transferred provisions—*Sydney Hospital (Trust Property) Act 1984*

### 1 Future property

(1) To the extent to which, by a deed, will or other instrument, whether taking effect

before, on or after 14 December 1984 (the **appointed day**):

- (a) any property would, but for this clause, be devised, bequeathed, given, granted, released, conveyed or appointed on or after the appointed day to The Sydney Hospital, or another person, for, or for the benefit of, or in trust for, a unit or the purposes of a unit, or
- (b) any property would, but for this clause, be declared or directed on or after the appointed day to be held by any person for, or for the benefit of, or in trust for, a unit or the purposes of a unit,

the deed, will or other instrument shall be construed and have effect as if the reference therein to The Sydney Hospital or the person, as the case may be, were a reference to the relevant hospital.

(2) In this clause:

**relevant hospital**, in relation to a unit, means:

- (a) where the unit is the Cardio-renal Unit, the Endocrine Unit or the Renal Unit—The Royal North Shore Hospital of Sydney, and
- (b) where the unit is the Kanematsu Memorial Institute, the Melanoma Unit or the Solid Tissue Tumour Unit—The Royal Prince Alfred Hospital, and
- (c) where the unit is the Immunology Unit or the Radiation Oncology Unit—the Newcastle Mater Misericordiae Hospital (Waratah), and
- (d) where the unit is the Biorheology Unit—The Rachel Forster Hospital.

**unit** means a unit of The Sydney Hospital existing immediately before 1 October 1982, being one of the following:

- (a) Biorheology Unit,
- (b) Cardio-renal Unit,
- (c) Endocrine Unit,
- (d) Immunology Unit,
- (e) Kanematsu Memorial Institute,
- (f) Melanoma Unit,
- (g) Radiation Oncology Unit,
- (h) Renal Unit,
- (i) Solid Tissue Tumour Unit.

- (3) Subclauses (1) and (2) re-enact (with minor modifications) the definition of **unit** in section 3 (1), and section 5, of the *Sydney Hospital (Trust Property) Act 1984* and are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

## Schedule 9 Recovery of ambulance fees

### Part 1 Preliminary

#### 1 Definitions

- (1) In this Schedule:

**approved form** means a form approved by the Commissioner for the purposes of the provision in which the term is used.

**Commissioner** means the Commissioner of Fines Administration.

**debtor** means a person liable to pay an ambulance fee under a debt notice.

**enforcement officer** has the meaning given by clause 31.

**fee recovery costs** means the fee recovery costs payable under a fee recovery order, being:

- (a) the prescribed fee recovery costs, and
- (b) the Sheriff's additional costs (if any).

**fee recovery order** means an order under clause 2.

**garnishee order** means an order under clause 16.

**Hardship Review Board** means the Hardship Review Board constituted under the *Fines Act 1996*.

**order for examination** means an order under clause 18.

**pay** an ambulance fee or amount means to pay the ambulance fee or amount in full by its due date and, if payment by instalments is permitted under this Act, includes to pay each instalment in full by its due date.

**prescribed fee recovery costs** means the fee recovery costs prescribed under clause 11.

**property seizure order** means an order under clause 15.

**Sheriff's additional costs** means the costs payable in respect of the Sheriff under clause 12.

- (2) Other expressions used in this Schedule that are defined in Chapter 5A have the same



meaning as they have in that Chapter.

## **Part 2 Fee recovery orders**

### **Division 1 Making of fee recovery orders**

#### **2 What is a fee recovery order?**

- (1) The Commissioner may make an order (a **fee recovery order**) for the recovery of an ambulance fee.
- (2) A single order may be made for the recovery of 2 or more ambulance fees payable by a person.

**Note—**

Division 2 provides for the debtor to be notified by the Commissioner of the fee recovery order and of the fee recovery action that may be taken if the outstanding balance of the ambulance fee (and fee recovery costs) is not paid within 28 days.

#### **3 When an order may be made**

- (1) The Commissioner may make a fee recovery order only if the Health Secretary refers the ambulance fee to the Commissioner for the making of a fee recovery order under Chapter 5A.

**Note—**

Chapter 5A permits a referral only if the ambulance fee has not been paid within 7 days of the due date for payment.

- (2) A fee recovery order may be made in the absence of, and without notice to, the person liable to pay the ambulance fee.
- (3) The Commissioner may, but is not required to, make a fee recovery order if an ambulance fee to which it is to apply has previously been the subject of a fee recovery order in respect of which any fee recovery action has been taken.
- (4) The Commissioner is not to make a fee recovery order in relation to an ambulance fee if, before an order is made, the Health Secretary revokes the referral of the ambulance fee to the Commissioner.

#### **4 Form of fee recovery order**

A fee recovery order must specify the following matters:

- (a) the debtor's name, address and date of birth (if known),
- (b) a description of the services in respect of which the ambulance fee is payable,
- (c) the date or dates on which the services were provided,

- (d) the amount required to be paid, being the amount of the ambulance fee that remains to be paid, together with specified fee recovery costs.

## **Division 2 Service of fee recovery order**

### **5 Service on debtor of notice of order**

As soon as practicable after a fee recovery order is made, the Commissioner is to serve notice of the order on the debtor.

### **6 What notice must say**

- (1) The notice of a fee recovery order must inform the debtor that:
  - (a) the order has been made, and
  - (b) the debtor has until the final date specified in the notice to pay the ambulance fee and fee recovery costs specified in the notice, and
  - (c) if the payment is not made by that final date, further fee recovery action will be taken against the debtor to recover the ambulance fee in accordance with this Schedule, and
  - (d) if the payment is not made by that final date, further fee recovery costs will be payable (indicating the amount of the prescribed fee recovery costs and the circumstances in which they are payable), and
  - (e) review options are available relating to the fee recovery order, including withdrawal, time to pay and the cancellation of fee recovery action because of hardship.
- (2) The notice of a fee recovery order may (but need not) contain information relating to the Sheriff's additional costs.
- (3) If there is an approved form for such a notice, the notice must be in that form.
- (4) The inclusion in the notice of additional information and directions for the assistance or guidance of the person on whom it is served does not affect the validity of the notice.

### **7 Service of notice**

- (1) Notice of a fee recovery order may be served on a person:
  - (a) personally, or
  - (b) by post, or
  - (c) by electronic transmission, or

(d) by any other manner prescribed by the regulations.

(2) The address for service of any such notice includes, subject to this section:

- (a) the address supplied by the person in connection with the provision of the service for which the ambulance fee is payable, or
- (b) the address obtained for the person by the Commissioner under this Schedule, if the Commissioner is satisfied that it is the most recent address available for the person.

(3) Notice of a fee recovery order may be served by electronic transmission only if the person has consented to service of notices or other documents under Chapter 5A or this Schedule by electronic transmission. If the notice is served electronically, the address for service is the address provided by the person.

(4) Despite any other provision of this Act, it is presumed that a notice of a fee recovery order sent to a person by post is served on the person 7 days after it is posted, unless the person establishes that it was not served within that 7-day period.

#### **8 Final date for payment in notices**

- (1) The final date for payment in a notice of a fee recovery order must be at least 21 days after it is served on the person.
- (2) Accordingly, a notice that is posted may specify a date that is at least 28 days after the notice of the fee recovery order is posted as the final date for making the payment concerned.

#### **9 Extension of final date if notice takes more than 7 days**

- (1) If a notice is served on a person more than 7 days after it was posted, the notice is not invalid merely because it specifies as the final date a date that is less than 21 days after it was served on the person.
- (2) In such a case however, the final date is extended to a date that is 21 days after the notice was served and the notice is taken to specify that date as the final date.

### **Division 3 Cost recovery**

#### **10 Fee recovery costs to be paid**

- (1) Fee recovery costs are payable under a fee recovery order.
- (2) The following amounts are the only amounts payable as fee recovery costs under a fee recovery order:
  - (a) the prescribed fee recovery costs,

(b) the Sheriff's additional costs (if any).

(3) Any amount recovered in consequence of the making of a fee recovery order is to be applied firstly towards fee recovery costs and the balance towards the ambulance fee.

#### **11 Prescribed fee recovery costs**

(1) The regulations may prescribe the fee recovery costs payable under a fee recovery order.

(2) The regulations may:

(a) prescribe an amount as the fee recovery costs payable to the Commissioner on the making of the order, and

(b) prescribe an amount as the fee recovery costs payable into the Consolidated Fund for any fee recovery action taken by the Sheriff or other official under Part 3 before payment is made under the order.

#### **12 Sheriff's additional costs**

(1) The Commissioner may approve any costs and expenses reasonably incurred by the Sheriff in taking fee recovery action under Part 3 as fee recovery costs payable by the debtor under the fee recovery order.

(2) The amount of those costs and expenses is to be determined in accordance with the scale applicable to the enforcement of judgment debts under the [Civil Procedure Act 2005](#), but is to be reduced by the prescribed fee recovery costs payable to the Consolidated Fund for any fee recovery action taken by the Sheriff or other official under Part 3.

(3) For the purposes of this clause, the Commissioner has the functions of the registrar of the relevant court with respect to the approval of those costs and expenses.

(4) Fee recovery costs recoverable under this clause are payable to the Sheriff and not to the Consolidated Fund.

(5) The power of the Local Court to review a decision of a registrar of the court in respect of any such fee recovery costs applies to a decision of the Commissioner under this clause.

#### **13 Fee recovery costs included in ambulance fee**

(1) After a fee recovery order is made, the ambulance fee to which it applies is taken to include the fee recovery costs payable under the fee recovery order.

(2) Accordingly, a reference in Parts 3-6 to an **ambulance fee** includes a reference to any fee recovery costs payable under the fee recovery order.

## Part 3 Fee recovery action

### Division 1 Fee recovery action

#### 14 When fee recovery action can be taken

- (1) Fee recovery action may be taken against a debtor under this Part if:
  - (a) the debtor has not paid the ambulance fee as required by the notice of the fee recovery order served on the debtor, and
  - (b) the ambulance fee remains unpaid.
- (2) Fee recovery action may be taken under this Part by means of a property seizure order, a garnishee order or a charge on land, or by all or any combination of those means.

#### 15 Order to seize property of debtor

- (1) The Commissioner may make an order for the seizure of the property of a debtor for the purpose of levying the ambulance fee payable by the debtor on that property. The order is called a **property seizure order**.

**Note—**

The *Interpretation Act 1987* defines property to include land as well as personal property.

- (2) The Commissioner may make a property seizure order only if satisfied that fee recovery action is authorised against the debtor under this Part.
- (3) Section 72 of the *Fines Act 1996* applies in relation to a property seizure order made under this clause in the same way as it applies in relation to a property seizure order made under that section.

#### 16 Order to garnishee debts, wages or salary of debtor

- (1) The Commissioner may make an order that all debts due and accruing to a debtor from any person specified in the order are attached for the purposes of satisfying the ambulance fee payable by the debtor (including an order expressed to be for the continuous attachment of the wage or salary of the debtor). The order is called a **garnishee order**.
- (2) The Commissioner may make a garnishee order only if satisfied that fee recovery action is authorised against the debtor under this Part.
- (3) Section 73 of the *Fines Act 1996* applies in relation to a garnishee order made under this clause in the same way as it applies in relation to a garnishee order made under that section.

## **17 Registration of fee recovery order as charge on land**

- (1) The Commissioner may apply to the Registrar-General for registration of a fee recovery order in relation to any land owned by the debtor (including any land owned jointly with another person).
- (2) An application may not be made under this clause unless the amount payable under the order (or the total amount payable under the orders) to which the application relates exceeds \$1,000 or such other amount as is prescribed by the regulations.
- (3) Section 74 of the *Fines Act 1996* applies in relation to an application under this clause, and a charge registered under this clause, in the same way as it applies to an application under that section, and a charge registered under that section.

## **Division 2 Ancillary provisions**

### **18 Examination of debtor**

- (1) The Commissioner may issue an order (an **order for examination**) under this clause for the purpose of enabling fee recovery action to be taken under this Part.
- (2) If a person who is issued with an order for examination fails to attend in accordance with the order, the Commissioner may issue a warrant for the apprehension of the person and for the person to be brought before the Commissioner or other specified enforcement officer, or before a specified officer of a court, for examination in accordance with this clause.
- (3) Sections 75 and 75A of the *Fines Act 1996* apply in relation to an order for examination, an examination, or warrant of apprehension under this clause in the same way as they apply in relation to an order for examination, examination or warrant for apprehension under those sections.

### **19 Power of entry to execute property seizure order**

- (1) The person executing a property seizure order may, at any reasonable time of the day or night, enter any premises for the purposes of executing the order.
- (2) Subclause (1) does not authorise any such person to enter any part of premises used only for residential purposes without the permission of the occupier of the premises or the authority of a search warrant under this clause.
- (3) Any such person may apply to an authorised officer for the issue of a search warrant if the person believes on reasonable grounds that there may be property liable to seizure under the property seizure order in any premises.
- (4) An authorised officer to whom any such application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any person who is executing the property seizure order to enter the premises and seize

property in the premises in accordance with that or any other property seizure order.

- (5) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this clause.
- (6) Without affecting the generality of section 71 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, a police officer:
  - (a) may accompany a person executing a search warrant, and
  - (b) may take all reasonable steps to assist the person in the exercise of the person's functions under this clause.
- (7) This clause does not authorise a person to seize property under any warrant of execution or order (other than a property seizure order) while the person is in premises in pursuance only of the authority conferred by this clause.
- (8) In this clause:

**authorised officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**premises** includes any structure, building, aircraft, vehicle, vessel or place (whether built upon or not).

## **20 Power of person executing order or warrant to demand name and address**

- (1) The Sheriff or other person executing an order or warrant under this Part may require a person whom the Sheriff or other person suspects on reasonable grounds to be the debtor to state his or her full name and residential address and to produce evidence of his or her identity.
- (2) A person is not required to comply with such a requirement unless the person was warned on that occasion that a failure to comply is an offence.
- (3) A person who, without reasonable excuse, fails to comply with such a requirement is guilty of an offence.

Maximum penalty: 10 penalty units.

## **21 Electronic transmission of documents**

- (1) The following directions, orders and warrants under this Part may be transmitted electronically to the persons to whom they are given or directed:
  - (a) a property seizure order directed to the Sheriff,
  - (b) a garnishee order, or a summons requiring a garnishee under such a garnishee order to show cause, given to the Sheriff for service,

(c) an order for examination given to the Sheriff for service,

(d) a warrant of apprehension directed to the Sheriff.

- (2) For the purpose of executing any such order or warrant, the Sheriff or other officer to whom the order or warrant is so transmitted is to cause a copy of the order or warrant to be converted into written form and to be endorsed with the following words:

This document has been transmitted electronically by the Commissioner of Fines Administration in accordance with clause 21 of Schedule 9 to the *Health Services Act 1997*.

## **Part 4 Suspension, withdrawal and cancellation of fee recovery action**

### **22 Fee recovery action may be suspended**

- (1) The Commissioner may make an order (a **suspension order**) for the suspension of fee recovery action in relation to an ambulance fee referred to the Commissioner by the Health Secretary if the Commissioner is satisfied that:
- (a) the person charged with the ambulance fee may be exempt from payment of the ambulance fee under Chapter 5A, or
  - (b) the matter should be referred back to the Health Secretary for some other reason.
- (2) A suspension order must be made if the Health Secretary requests the making of the suspension order.
- (3) A suspension order may be made:
- (a) before or after the making of a fee recovery order, and
  - (b) on application or on the Commissioner's own initiative.
- (4) While a suspension order has effect:
- (a) a fee recovery order is not to be made in relation to the ambulance fee, and
  - (b) if a fee recovery order has already been made in relation to the ambulance fee, any fee recovery action already taken in relation to the order is to be suspended.
- (5) Fee recovery action is to be suspended as follows:
- (a) any property seizure order that has already been made in relation to the ambulance fee that has not been executed is to be cancelled,
  - (b) any garnishee order that has already been made in relation to the ambulance fee is to be cancelled.
- (6) However, any property obtained as a result of fee recovery action is not required to be



returned, and a charge on land created under Part 3 need not be cancelled, unless the relevant fee recovery order is withdrawn.

- (7) A suspension order has effect until the Commissioner revokes the suspension order or the Health Secretary revokes the referral of the ambulance fee to the Commissioner (whichever happens first).

**Note—**

The Commissioner must withdraw any fee recovery order that has been made and reverse any fee recovery action taken if the referral of the fee to the Commissioner is revoked.

- (8) The Commissioner may revoke a suspension order only if the Health Secretary requests the revocation of the suspension order.
- (9) The Commissioner must give notice in writing of the making or revocation of a suspension order:
- (a) to the Health Secretary, and
  - (b) to the Sheriff, but only if a property seizure order has already been made in relation to the ambulance fee.
- (10) The suspension of fee recovery action does not prevent further fee recovery action being taken after the suspension has ceased to have effect.

**23 Withdrawal of order and reversal of fee recovery action**

- (1) The Commissioner may, on application or on the Commissioner's own initiative, withdraw a fee recovery order if satisfied that:
- (a) the person named in the fee recovery order is exempt from payment of an ambulance fee specified in the order under Chapter 5A, or
  - (b) the person was not aware that a debt notice had been issued before the fee recovery order was served, or
  - (c) the person was otherwise hindered by accident, illness, misadventure or other cause from taking action in relation to the debt notice, or
  - (d) an ambulance fee to which it applies has previously been the subject of a fee recovery order in respect of which any fee recovery action has been taken, or
  - (e) the person named in the fee recovery order is not the person by whom the ambulance fee is payable, or
  - (f) the order was otherwise made in error.
- (2) The Commissioner must withdraw a fee recovery order in relation to an ambulance fee if the Health Secretary revokes the referral of the ambulance fee to the

Commissioner.

- (3) A fee recovery order may be withdrawn completely or only to the extent of some of the amount or amounts to which it applies.
- (4) If a fee recovery order is withdrawn completely:
  - (a) the order then ceases to have effect, and
  - (b) any fee recovery action already taken is to be reversed, unless the same recovery action is authorised under another fee recovery order, and
  - (c) fee recovery costs are not payable under the order and, if paid, are repayable.
- (5) If a fee recovery order is withdrawn only to the extent of some of the amount or amounts to which it applies:
  - (a) the order continues to have effect in respect of the remaining amount or amounts to which it applies, and
  - (b) any amount that has been paid under the order is to be applied to payment of the remaining amount or amounts to which it applies and any fee recovery costs payable under the order.
- (6) The withdrawal of a fee recovery order does not prevent the making of a further fee recovery order in respect of the ambulance fee.

#### **24 Cancellation of fee recovery action generally**

- (1) The Commissioner may cancel any or all fee recovery action in respect of an ambulance fee at any time for any good reason.
- (2) The Commissioner cancels fee recovery action by cancelling a property seizure order, garnishee order or charge on land in respect of the ambulance fee.
- (3) A property seizure order, garnishee order or charge on land under this Part is taken to be cancelled on the payment of the ambulance fee concerned.
- (4) The cancellation of a charge on land does not take effect until the Registrar-General registers the cancellation of the charge.
- (5) The Commissioner must give the Health Secretary notice in writing of a decision to cancel fee recovery action in respect of an ambulance fee.

### **Part 5 Hardship and time to pay**

#### **25 Cancellation of fee recovery action because of hardship**

- (1) The Commissioner may, on the application of a debtor or at the Commissioner's own

discretion, cancel fee recovery action in respect of the whole or part of an unpaid ambulance fee if satisfied that, due to any or all of the financial, medical or personal circumstances of the debtor:

- (a) the debtor does not have sufficient means to pay the ambulance fee and is not likely to have sufficient means to pay the ambulance fee, and
  - (b) fee recovery action has not been or is unlikely to be successful in satisfying the ambulance fee.
- (2) The Commissioner must cancel fee recovery action in respect of the whole or part of an unpaid ambulance fee if directed to do so by the Hardship Review Board.
- (3) This section does not prevent the Commissioner from making a further fee recovery order for an unpaid ambulance fee at any time within 5 years after the fee recovery action is cancelled under this clause if:
- (a) the Health Secretary again refers the matter to the Commissioner for the making of a fee recovery order, and
  - (b) the Commissioner is satisfied that the debtor has sufficient means to pay the ambulance fee and that fee recovery action is likely to be successful in satisfying the ambulance fee.

## **26 Time to pay**

- (1) A debtor may apply to the Commissioner for time to pay an ambulance fee any time after a fee recovery order is made.
- (2) The Commissioner may, by order, allow further time to pay the ambulance fee if satisfied the application is genuine and it appears expedient to do so.
- (3) Section 100 of the *Fines Act 1996* applies in relation to an order made under this clause in the same way as it applies in relation to an order made under that section.

## **27 Functions of Hardship Review Board**

- (1) The Hardship Review Board has the same functions with respect to ambulance fees as it has with respect to fines under the *Fines Act 1996*.
- (2) Section 101B of the *Fines Act 1996* applies in relation to reviews by the Hardship Review Board under this Schedule in the same way as it applies in relation to reviews by the Hardship Review Board under that Act.
- (3) The Hardship Review Board, a member of the Board, or a person otherwise engaged in the administration of this clause, may disclose to the Commissioner, or any other person engaged in the administration of this Schedule, information obtained in the administration of this clause.

## Part 6 Administration

### 28 Form of notices

Any notice given by the Commissioner to the Health Secretary under this Schedule may be given by post, by means of document exchange or by electronic transmission.

### 29 Arrangements with Health Secretary

- (1) The Commissioner may enter into arrangements with the Health Secretary for the payment to the Health Secretary of ambulance fees that are recovered under this Schedule.
- (2) The arrangements may permit the Commissioner to deduct or retain from any amount paid to the Health Secretary a fee or payment for services provided under this Schedule.
- (3) An ambulance fee recovered under this Schedule is, when recovered, payable in accordance with those arrangements.
- (4) This clause does not affect the requirements of this Schedule with respect to the payment of fee recovery costs.

### 30 Delegation

- (1) The Commissioner may delegate to any person employed in the Public Service any function of the Commissioner under this Act, other than this power of delegation.
- (2) The Commissioner may delegate to any person any of the following functions of the Commissioner:
  - (a) the function of serving notice of a fee recovery order on a debtor,
  - (b) the function of serving (but not issuing) an order for examination.

### 31 Exercise of enforcement functions

- (1) An enforcement function may be exercised by the Commissioner or by any person employed in the Public Service who is authorised by the Commissioner to exercise that function.
- (2) A person authorised to exercise enforcement functions is an **enforcement officer** for the purposes of this Schedule.
- (3) The Commissioner and any enforcement officers have, in the exercise of enforcement functions, the same protection and immunities as officers of a court.
- (4) In this clause, **enforcement function** means a function of the Commissioner of making or issuing an order or warrant under this Schedule.

### 32 Disclosure of information

- (1) The Commissioner, or any other person engaged in the administration of this Schedule, may disclose personal information obtained in relation to a person in the administration or execution of this Schedule or Chapter 5A:
  - (a) in connection with the administration or execution of this Schedule or Chapter 5A (including for the purpose of the recovery of an ambulance fee), or
  - (b) to the Health Secretary or a delegate of the Health Secretary for the purposes of the administration or execution of Chapter 5A, or
  - (c) with the consent of the person to whom the information relates or at the request of a person acting on behalf of the person to whom the information relates, or
  - (d) to the Hardship Review Board, or
  - (e) as authorised or required by or under this Act or any other Act or law.
- (2) Without limiting subclause (1) (a), personal information may be disclosed to an employer or past employer of a debtor for the purposes of the administration, enforcement or execution of a garnishee order.
- (3) A person engaged in the administration of this Schedule must not disclose any personal information obtained in relation to any person in the administration or execution of this Schedule or Chapter 5A except as authorised or required by this Act or any other Act or law.

Maximum penalty: 100 penalty units.

- (4) In this clause:

**personal information** means personal information under the [Privacy and Personal Information Protection Act 1998](#) or personal information that is health information under the [Health Records and Information Privacy Act 2002](#).

### 33 Administrative provisions of [Fines Act 1996](#) apply

- (1) The administrative provisions of the [Fines Act 1996](#) apply in respect of the exercise of functions under this Schedule in the same way as they apply in respect of the exercise of functions under that Act.
- (2) In this clause, the **administrative provisions** of the [Fines Act 1996](#) are:
  - (a) section 102, and
  - (b) Part 8, except sections 116A, 116B, 117A and 117B.

### 34 Interpretation of *Fines Act 1996* provisions that are applied by this Schedule

- (1) A provision of this Schedule that applies a provision of the *Fines Act 1996* is to be read subject to the modifications set out in this clause and to any other modifications necessary or required under this Act.
- (2) For the purposes of any such provision, a reference in the *Fines Act 1996*:
  - (a) to the *Fines Act 1996* or a provision of that Act includes a reference to this Schedule or a corresponding provision of this Schedule, and
  - (b) to a fine, fine defaulter or fine enforcement order includes a reference to an ambulance fee, debtor or fee recovery order respectively, and
  - (c) to enforcement action or other action in respect of a fine includes a reference to fee recovery action or other action in respect of an ambulance fee, and
  - (d) to the writing off of an unpaid fine includes a reference to the cancellation of fee recovery action in respect of an unpaid ambulance fee, and
  - (e) to an order under that Act includes a reference to a corresponding order under this Schedule, and
  - (f) to an authorised officer under that Act includes a reference to an enforcement officer under this Schedule, and
  - (g) to the regulations under that Act includes a reference to the regulations under this Schedule, and
  - (h) to a person engaged in the administration of that Act includes a reference to a person engaged in the administration of this Schedule.
- (3) References to work and development orders and combined payment arrangements are to be disregarded.

## Dictionary

(Section 3)

### Part 1 Definitions

**affiliated health organisation**—see section 13.

**Ambulance Service of NSW**—see section 67A.

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

**appellant** means a person who appeals under section 106.

**appoint**, in relation to a visiting practitioner, includes re-appoint.

**arbitrator** means a person appointed under section 90 to be an arbitrator.

**area** of a local health district means the area described in Column 2 or 3 (or both) of Schedule 1 in respect of which the local health district is constituted.

**assets** means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**Association** means the Australian Medical Association (NSW) Limited.

**authorised officer** means a person appointed under section 124.

**board governed health corporation** means a statutory health corporation that, as specified in Schedule 2, is governed by a board.

**by-laws** means by-laws under this Act.

**chief executive:**

(a) of a local health district—means the chief executive of that district, or

(b) of a statutory health corporation—means the chief executive of that corporation, or

(c) of an affiliated health organisation—means the person who is responsible to the governing body of the organisation for the management of its recognised establishments and recognised services.

**chief executive governed health corporation** means a statutory health corporation that, as specified in Schedule 2, is governed by a chief executive.

**Committee** means a Committee of Review appointed by the Minister under section 108.

**conviction** means a conviction within the meaning of the [Criminal Records Act 1991](#).

**declared affiliated health organisation**—see section 62A.

**eligible person** has the same meaning as it has in the [Health Insurance Act 1973](#) of the Commonwealth.

**exercise** of a function includes performance of a duty.

**fee-for-service contract**—see section 82.

**financial year** means the period of 12 months beginning on 1 July.

**function** includes a power, authority or duty.

**governing body** of an affiliated health organisation means the person or the board or other body that is responsible for the management of the organisation in relation to its recognised establishments and recognised services.

**Health Administration Corporation** means the Health Administration Corporation constituted by

the *Health Administration Act 1982*.

**health corporation board** means a health corporation board constituted under section 46 for a statutory health corporation.

**Health Executive Service** means the Health Executive Service referred to in section 121B.

**health institution** means an institution (other than a hospital) by or at which health services or health support services are provided.

**Health Secretary** means the Secretary of the Ministry of Health.

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

- (a) any hospital service,
- (b) any medical service,
- (c) any paramedical service,
- (d) any community health service,
- (e) any environmental health service,
- (e1) the supply or fitting of any prosthesis or therapeutic device,
- (f) any other service (including any service of a class or description prescribed by the regulations) relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or injury to persons.

**health support service** means a service that is provided in aid or support of a health service, such as:

- (a) the professional, technical or other education or training of persons to be employed within the public health system to provide health services, or
- (b) the procurement or supply (or both) of goods, substances or services to providers of health services, or
- (c) the planning or construction of any building or facility for use in the provision of health services, or
- (d) the provision of corporate services to providers of health services,

and includes a service prescribed by the regulations.

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

**honorary contract**—see section 84.

**honorary medical officer**—see section 79.

**hospital** means an institution at which relief is given to sick or injured people through the provision of care or treatment.



**liabilities** means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

**local government area** has the same meaning as **area** has in the [Local Government Act 1993](#).

**local health district**—see section 8.

**local health district board** means a local health district board for a local health district established under section 26.

**Medical Services Committee** means the Medical Services Committee established under section 20B of the [Health Administration Act 1982](#).

**Medicare Agreement** means the Agreement (as in force from time to time) between the Commonwealth and the States referred to in section 24 of the [Health Insurance Act 1973](#) of the Commonwealth.

**Medicare Principles and Commitments**—see section 68.

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

**modification** includes addition, exception, omission or substitution.

**National Health Reform Agreement** has the same meaning as it has in Schedule 6A and includes any agreement that replaces or supersedes that Agreement.

**non-chargeable hospital service** means any health service provided to a patient by a public hospital that is a recognized hospital and for which it has been agreed under the Medicare Agreement that the patient is not to be charged, but only if the Medicare Agreement is in force at the time the service is provided.

**NSW Health Service** means the NSW Health Service referred to in section 115.

**nursing home** means a nursing home within the meaning of the [Public Health Act 2010](#).

**practice company** means a corporation (however incorporated) that is controlled or conducted by a medical practitioner and by means of which the medical practitioner conducts his or her medical practice.

**private health facility** means a private health facility within the meaning of the [Private Health Facilities Act 2007](#).

**public health organisation**—see section 7.

**public health system**—see section 6.

**public hospital**—see section 15.

**recognised establishment** of an affiliated health organisation means a hospital or health institution of the organisation that is listed in column 2 of Schedule 3 next to its name.

**recognised service** of an affiliated health organisation means a health service or health support

service of the organisation that is listed in column 2 of Schedule 3 next to its name.

**recognized hospital** has the same meaning as it has in the *Health Insurance Act 1973* of the Commonwealth.

**relevant Minister** means the Minister administering the *Industrial Relations Act 1996* for the time being.

**rights** means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

**serious sex or violence offence** means an offence involving sexual activity, acts of indecency, physical violence or the threat of physical violence that:

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

**service contract**—see section 80.

**sessional contract**—see section 83.

**specialty network governed health corporation** means a statutory health corporation that, as specified in Schedule 2, is specialty network governed.

**standard service contract**—see section 87 (2).

**statutory health corporation**—see section 11.

**statutory health organisation** means a local health district or a statutory health corporation.

**visiting medical officer**—see section 78.

**visiting practitioner**—see section 76.

## Part 2 Other expressions

### 1 References to acts, omissions or things of affiliated health organisations

- (1) A reference in this or any other Act (however expressed) to any act, omission or thing of an affiliated health organisation in relation to any of its recognised establishments or recognised services:
  - (a) in the case of an affiliated health organisation that is unincorporated—is a reference to an act, omission or thing of the governing body of the organisation or a member of that body (as the case may be) in relation to that establishment or service, or
  - (b) in the case of an affiliated health organisation that is incorporated—is a reference to an act, omission or thing of the corporate body constituting the organisation in relation to that establishment or service.

(2) A reference in this or any other Act (however expressed) to:

- (a) a hospital, health institution, health service or health support service of an affiliated health organisation is a reference to a hospital, health institution, health service or health support service that is a recognised establishment or recognised service of the organisation, or
- (b) the staff, assets, rights or liabilities of an affiliated health organisation is a reference to the staff, assets, rights or liabilities of the organisation relating solely or principally to the operation of the recognised establishments or the provision of the recognised services of the organisation.

**2 References to control of hospitals, health institutions, health services or health support services**

A reference in this Act to a hospital, health institution, health service or health support service controlled by the Crown or any public health organisation or other body or person includes a reference to a hospital, health institution or service that is conducted by or on behalf of such an organisation, body or person.

**3 References to serious sex or violence offence**

A reference in this Act to a serious sex or violence offence includes a reference to an attempt to commit a serious sex or violence offence or a conspiracy to commit such an offence.