

# Health Services Regulation 2013

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New South Wales

## Status Information

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### Provisions in force

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

### Authorisation

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New South Wales

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# Health Services Regulation 2013



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Health Services Regulation 2013*.

### 2 Commencement

This Regulation commences on 1 September 2013 and is required to be published on the NSW legislation website.

**Note—**

This Regulation replaces the *Health Services Regulation 2008*, which is repealed on 1 September 2013 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definition

(1) In this Regulation:

**the Act** means the *Health Services Act 1997*.

**Note—**

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

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

## Part 2 Visiting practitioners

### 4 Definitions

In this Part:

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

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

(a) established by the public health organisation, and

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

## **5 Applications for appointment as visiting practitioners**

- (1) A public health organisation that decides to make available an appointment as a visiting practitioner must advertise the availability of the appointment in at least one of the following:

- (a) a newspaper circulating generally in New South Wales,
- (b) an employment website affiliated with such a newspaper,

**Note—**

The employment website [www.mycareer.com.au](http://www.mycareer.com.au) is affiliated with the *Sydney Morning Herald* and the employment website [www.careerone.com.au](http://www.careerone.com.au) is affiliated with *The Daily Telegraph*.

- (c) the employment website <https://nswhealth.erecruit.com.au>.

The public health organisation may, in addition, advertise the availability in other ways.

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

- (a) may be made in respect of a particular appointment or in respect of appointments of any specified kind or description, and
- (b) must be made in writing.

## **6 Appointment and conditions to be in written agreement**

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

## **7 Term of appointment**

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

## **8 Resignation**

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

## **Part 3 Transfer of accrued leave entitlements**

### **9 Definitions**

In this Part:

**accrued leave** means leave of any description that is owing to a person (but not taken),

and includes any leave to which a person would have been entitled in the event of illness.

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

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

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

(2) **Transfer of existing leave balance** If a person:

(a) ceases to be employed by a non-declared AHO, and

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

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

(3) **Election to cash-out accrued annual or long service leave** In the case of any such accrued leave that comprises annual leave or long service leave, the person may, instead of retaining the entitlement to that accrued leave, elect to be paid the money value of that accrued leave.

(4) **Limit on how much accrued annual leave can be retained** The amount of any accrued annual leave that a person may retain under this clause cannot, except with the approval of the Director-General, exceed the amount of annual leave that the person was entitled to over a 2-year period as an employee of the non-declared AHO.

(5) **Liability for cost of existing annual or long service leave** The non-declared AHO is liable for the cost of any annual or long service leave entitlements in respect of the person concerned that have accrued up until the date on which the person ceases to be employed by the non-declared AHO.

(6) **Orders under section 64 of the Act** This clause does not apply in relation to a person who ceases to be employed by a non-declared AHO by the operation of an order under section 64 of the Act.

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

(1) **Period between employment must be continuous** This clause applies in relation to a person only if the person's employment with a non-declared AHO immediately follows the person's employment in the NSW Health Service. However, this clause does apply in relation to a person's accrued long service leave entitlement if the break in

employment is no longer than 2 months.

(2) **Transfer of existing leave balance** If a person:

(a) ceases to be employed in the NSW Health Service in connection with a public health organisation, and

(b) commences employment with a non-declared AHO,

the person is taken to have the amount of any accrued leave to which the person was entitled immediately before ceasing to be employed in the NSW Health Service.

(3) **Election to cash-out accrued annual or long service leave** In the case of any such accrued leave that comprises annual leave or long service leave, the person may, instead of retaining the entitlement to that accrued leave, elect to be paid the money value of that accrued leave.

(4) **Limit on how much accrued annual leave can be retained** The amount of any accrued annual leave that a person may retain under this clause cannot, except with the approval of the non-declared AHO, exceed the amount of annual leave that the person was entitled to over a 2-year period as a member of the NSW Health Service.

(5) **Liability for cost of existing annual or long service leave** The Government of New South Wales is liable for the cost of any annual or extended leave entitlements in respect of the person concerned that have accrued up until the date on which the person ceases to be employed in the NSW Health Service.

## **Part 4 Ambulance Service**

### **Division 1 Preliminary**

#### **12 Part applies to staff of Ambulance Service**

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

#### **13 Objects of Part**

The objects of this Part are:

(a) to protect the health and safety of the public by providing mechanisms to maintain appropriate standards of conduct in the Ambulance Service, and

(b) to ensure that the public interest is protected.

#### **14 Definitions**

(1) In this Part:



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

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

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

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

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

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

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

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

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

**traffic offence** means an offence under any of the following provisions of the [Road Transport Act 2013](#) or a former corresponding provision within the meaning of that Act:

- (a) section 54 (relating to driving while disqualified or unlicensed),
  - (b) section 110, 111, 112, 117, 118, 146 or 175.
- (2) In this Part, a reference to an allegation that a member of staff may have engaged in misconduct includes a reference to the chief executive being made aware, or becoming aware, by any means that the member of staff may have engaged in misconduct.
- (3) For the purposes of this Part, the subject-matter of an allegation of misconduct may relate to an incident or conduct that happened:
- (a) while the member of staff concerned was not on duty, or
  - (b) before the member of staff was appointed to his or her position.

## **Division 2 Criminal conduct, traffic offences and misconduct**

### **15 Offences to be reported**

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

### **16 Driving disqualification to be reported**

A member of staff who is required to drive a motor vehicle as part of his or her duties and who is disqualified from holding a driver licence or whose licence is cancelled or

suspended must immediately report the disqualification, cancellation or suspension to the chief executive.

## **17 Disciplinary action**

- (1) The chief executive may decide to take disciplinary action or remedial action (or both) with respect to a member of staff if:
  - (a) the member of staff is convicted of a serious offence, or
  - (b) the member of staff is required to drive a motor vehicle as part of his or her duties and the member of staff is convicted of a traffic offence, or
  - (c) the member of staff has engaged in misconduct.
- (2) A reference in this clause to the conviction of a member of staff for a serious offence or a traffic offence includes a reference to the member of staff having been found guilty by a court of such an offence but where no conviction is recorded.
- (3) In this clause:

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

- (a) counselling,
- (b) training and development,
- (c) monitoring the member of staff's conduct or performance,
- (d) implementing a performance improvement plan,
- (e) transferring the member of staff to another position in the NSW Health Service that does not involve a reduction of the member of staff's classification or position,
- (f) any other action of a similar nature.

## **18 Retiring or resigning before disciplinary action taken**

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

## 19 Appointment after reduction of classification or position

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

## Division 2A Paramedics

### 19A Qualifications

(1) The following qualifications are prescribed for the purposes of section 67ZDA (2) (a) of the Act:

- (a) a Bachelor of Paramedicine or a Graduate Diploma of Paramedicine conferred by a university,
- (b) a nationally-recognised Diploma of Paramedicine issued by a registered training organisation.

(2) In this clause:

**Paramedicine** includes Clinical Practice (Paramedic), Emergency Health (Paramedic), Health Science (majoring in Paramedicine), Paramedic Practice, Paramedic Science and Science (majoring in Paramedicine).

**registered training organisation** means an NVR registered training organisation within the meaning of the [National Vocational Education and Training Regulator Act 2011](#) of the Commonwealth.

**university** means a university listed in Part 1 of Schedule 1 to the [Higher Education Act 2001](#) or a university listed in Part 1 of Schedule 13 to the [Education Act 1989](#) of New Zealand.

## Division 3 Miscellaneous

### 20 Lawful instructions to be obeyed

(1) A member of staff must obey promptly a lawful instruction that is:

- (a) consistent with such protocols and procedures as may be issued by the chief executive from time to time, and
- (b) given to the member of staff by the member of staff's supervisor.

(2) A member of staff may appeal in writing to the chief executive against an instruction given to the member of staff. The appeal must be made through the supervisor who gave the instruction. However, the member of staff must, pending the determination of the appeal, comply with this clause in relation to the instruction.

## **21 Other employment**

- (1) A member of staff must not, except with the written permission of the chief executive, engage in any employment (whether or not for remuneration) otherwise than in connection with his or her employment as a member of staff of the Ambulance Service.
- (2) If a member of staff is the holder of any office or is engaged in any employment otherwise than in connection with his or her employment as a member of staff of the Ambulance Service, the member of staff must immediately notify the chief executive of that fact.
- (3) The chief executive may require that member of staff to resign that office or abstain from engaging in that employment.
- (4) Permission given for the purposes of subclause (1) may be withdrawn by the chief executive at any time. The withdrawal must be in writing given or sent to the member of staff.

## **22 Medical examination**

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

## **23 Delegation**

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

## **Part 5 Miscellaneous**

### **24 Local health district descriptions**

- (1) A reference in Column 2 of Schedule 1 to the Act to Sydney (part), in relation to the Sydney Local Health District, is a reference to the following Statistical Local Areas:
  - (a) Sydney (C)-West,
  - (b) Sydney (C)-South.
- (2) A reference in Column 2 of Schedule 1 to the Act to Sydney (part), in relation to the South Eastern Sydney Local Health District, is a reference to the following Statistical Local Areas:
  - (a) Sydney (C)-Inner,
  - (b) Sydney (C)-East.
- (3) A reference in Column 2 of Schedule 1 to the Act to Tenterfield (part), in relation to the Hunter New England Local Health District, is a reference to the local government area of Tenterfield except for the following 2011 Statistical Areas:
  - (a) Statistical Area Level 1 (SAI) 11002119409,
  - (b) Statistical Area Level 1 (SAI) 11002119410.
- (4) A reference in Column 2 of Schedule 1 to the Act to Lachlan (part), in relation to the Murrumbidgee Local Health District, is a reference to the following 2011 Statistical Areas:
  - (a) Statistical Area Level 1 (SAI) 10302106209,
  - (b) Statistical Area Level 1 (SAI) 10302106210,
  - (c) Statistical Area Level 1 (SAI) 10302106211,
  - (d) Statistical Area Level 1 (SAI) 10302106212,
  - (e) Statistical Area Level 1 (SAI) 10302106213,
  - (f) Statistical Area Level 1 (SAI) 10302106215,
  - (g) Statistical Area Level 1 (SAI) 10302106225.
- (5) A reference in Column 2 of Schedule 1 to the Act to Lachlan (part), in relation to the Western NSW Local Health District, is a reference to the local government area of Lachlan except for the following 2011 Statistical Areas:
  - (a) Statistical Area Level 1 (SAI) 10302106209,

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

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

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

(7) In this clause:

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

**2011 Statistical Area** means a Statistical Area specified in the *Australian Statistical Geography Standard (ASGS)*, published by the Australian Bureau of Statistics in December 2010.

## 25 Provisions with respect to administrators

(1) In this clause:

**administrator** means:

- (a) an administrator of a local health district appointed under section 29 of the Act.
- (b) an administrator of a statutory health corporation appointed under section 52 of the Act.

(2) On the expiration of a person's appointment or reappointment as administrator, the Minister (in relation to an administrator of a local health district) or the Governor (in relation to an administrator of a statutory health corporation) may, by order published in the Gazette, reappoint the person as administrator for a further period or appoint another person as administrator.

(3) The Minister (in relation to an administrator of a local health district) or the Governor (in relation to an administrator of a statutory health corporation) may, by order published in the Gazette:

- (a) remove from the office of administrator any person appointed to that office, or
  - (b) appoint a person to fill a vacancy in the office of administrator.
- (4) The Minister may appoint a person to act in the office of an administrator during the illness or absence of the administrator, and the person, while so acting, has and may exercise all the functions of the administrator and is taken to be the administrator.
- (5) The Minister may remove from the office of administrator any person appointed to act in that office under subclause (4).

## **26 Provision of ambulance transport**

For the purposes of section 67E (3) (e) of the Act, The Sydney Children's Hospitals Network (Randwick and Westmead) (incorporating The Royal Alexandra Hospital for Children), in respect of services provided or operations conducted by the NSW Newborn & paediatric Emergency Transport Service (NETS), is a person to whom section 67E does not apply.

### **26A Ambulance fee exemptions**

The following kinds of concession cards are prescribed for the purposes of section 67N (b) of the Act:

- (a) a Health Care Card issued on behalf of the Commonwealth of Australia,
- (b) a Pensioner Concession Card issued on behalf of the Commonwealth of Australia,
- (c) a Commonwealth Seniors Health Card issued on behalf of the Commonwealth of Australia,
- (d) a Repatriation Health Card – For All Conditions (also known as a Gold Card) issued by the Commonwealth Department of Veterans' Affairs (but not in relation to non-emergency ambulance services and transfers that are not funded by the Department of Veterans' Affairs),
- (e) a Repatriation Health Card – For Specific Conditions (also known as a White Card) issued by the Commonwealth Department of Veterans' Affairs (but only in relation to a specific condition that is funded by the Department of Veterans' Affairs).

### **26B Ambulance fee recovery costs**

- (1) The amount prescribed as the fee recovery costs payable to the Commissioner on the making of a fee recovery order in accordance with clause 2 of Schedule 9 to the Act is \$65.
- (2) The amount prescribed as the fee recovery costs payable into the Consolidated Fund for any of the following fee recovery actions is \$65:



- (a) the making of a property seizure order in accordance with clause 15 of Schedule 9 to the Act,
  - (b) the making of a garnishee order in accordance with clause 16 of Schedule 9 to the Act,
  - (c) an application to register a fee recovery order as a charge on land in accordance with clause 17 of Schedule 9 to the Act.
- (3) The Commissioner may, in such circumstances as the Commissioner considers appropriate, waive, postpone or refund all or part of the amount of any fee recovery costs.

## **27 Appeals concerning appointment decisions**

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

## **28 Samaritan Funds**

- (1) In this clause:

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

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

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

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

For the purposes of section 28 (l) of the Act, a function of a local health district board is to

liaise with the governing bodies of affiliated health organisations and Medicare Local primary health care organisations in relation to both local and State-wide initiatives for the provision of health services.

### **30 Smoke-free areas**

The following outdoor public places (within the meaning of the *Smoke-free Environment Act 2000*) are designated as smoke-free areas for the purposes of section 6A (Smoke-free areas—outdoor public places) of that Act:

any outdoor public place at Albury Hospital, 201 Borella Road, Albury

### **31 Savings**

Any act, matter or thing that, immediately before the repeal of the *Health Services Regulation 2008*, had effect under that Regulation continues to have effect under this Regulation.

## **Schedule 1 (Repealed)**