

Government Sector Employment (Health Service Senior Executives) Rules 2016

[2016-772]



New South Wales

Status Information

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Authorisation

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New South Wales

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Government Sector Employment (Health Service Senior Executives) Rules 2016



New South Wales

Part 1 Preliminary

1 Name of Rules

These Rules are the *Government Sector Employment (Health Service Senior Executives) Rules 2016*.

2 Commencement

These Rules commence on 1 January 2017 and are required to be published on the NSW legislation website.

3 Definitions

(1) In these Rules:

capability-based assessment means a process that assesses a person's capabilities against those required for an executive role.

employer of a Health executive means the person who, in accordance with section 116 of the *Health Services Act 1997*, exercises employer functions in relation to the executive.

executive role means a role in the NSW Health Service that is or is to be assigned to a Health executive.

external advertising means the process of advertising on the NSW Government jobs website. It may also include any other form of advertising that is accessible to the general public.

GSE Act means the *Government Sector Employment Act 2013*.

Health executive means a person employed in the NSW Health Service as a NSW Health Service senior executive.

Health Secretary means the Secretary of the Ministry of Health.

Note—

The GSE Act and the [Interpretation Act 1987](#) contain definitions and other provisions that affect the interpretation and application of these Rules.

(2) Notes included in these Rules do not form part of these Rules.

4 Application of Rules

(1) These Rules apply only in relation to Health executives.

(2) Parts 6 and 7 of the *Government Sector Employment (General) Rules 2014* also apply in relation to Health executives.

Part 2 Initial engagement

5 Probation period (cf rule 5 GSE (General) Rules 2014)

(1) The employer of a Health executive may determine that the engagement of the executive in ongoing employment in the NSW Health Service for the first time or following the cessation of any previous employment in the NSW Health Service is subject to the condition that the executive is required:

- (a) to serve a period of probation on commencing the executive's employment, and
- (b) to satisfy the requirements for the executive role to which the executive is assigned during that period of probation.

(2) Any such period of probation is to be no more than 3 months.

(3) If a Health executive is required to serve a period of probation, the employer may, at any time during or at the end of the probation period:

- (a) confirm the executive's employment, or
- (b) terminate the executive's employment under section 121H of the [Health Services Act 1997](#).

6 Citizenship or residency requirements (cf rules 6 & 46 (1) GSE (General) Rules 2014)

(1) A person is not to be employed as a Health executive unless the person is:

- (a) an Australian citizen, or
- (b) a permanent resident of Australia, or
- (c) a New Zealand citizen with a current New Zealand passport, or
- (d) a citizen of another country with a current visa that allows the person to work in Australia.

- (2) A person is not to be offered employment as a Health executive if that employment would exceed any limitation imposed by or in accordance with law as to the person's entitlement to work in Australia.
- (3) A Health executive must ensure that the executive at all times holds and maintains the citizenship or other residency requirements for employment in the NSW Health Service.

7 Formal qualifications (cf rules 7 & 46 (1) GSE (General) Rules 2014)

- (1) This rule applies to a Health executive whose engagement in the NSW Health Service is made subject to a condition that the executive is required to have such qualifications as the employer may determine to be necessary for performing the duties of the executive role to which the executive is to be assigned.
- (2) A Health executive who is required to have any such qualifications but who has not provided evidence of the qualifications may be employed on the condition that the executive provides that evidence in the time and manner determined by the employer.
- (3) A Health executive must ensure that the executive at all times holds and maintains the qualifications required for the executive's role.

8 Security and other clearances (cf rule 8 GSE (General) Rules 2014)

- (1) This rule applies to a Health executive whose engagement in the NSW Health Service is made subject to a condition that the executive is required to have such security or other clearances as the employer determines are necessary for performing the duties of the executive role to which the person is to be assigned.
- (2) A Health executive who is required to have any such security or other clearances must ensure that those clearances are maintained.

9 Health assessment (cf rule 9 GSE (General) Rules 2014)

- (1) This rule applies to a Health executive whose engagement in the NSW Health Service is made subject to a condition that the executive's fitness to perform the duties of the executive role to which the executive is assigned has been confirmed by a health assessment.
- (2) For the purposes of this rule, ***fitness to perform the duties of a role*** includes the ability to carry out the executive role without endangering the health and safety of the public, of other persons employed in the NSW Health Service or of the executive concerned.
- (3) The form of the health assessment may include (but is not limited to) any one or more of the following:

- (a) a declaration (which may be a statutory declaration if required) provided by the Health executive concerning any illness, disability or condition of which the executive is aware that might make the executive unfit to carry out the role,
 - (b) a medical examination by a medical practitioner approved by the employer or the Health Secretary,
 - (c) an examination, by a medical practitioner, optometrist or other appropriately qualified health care professional, approved by the employer or the Health Secretary, of a particular aspect of the executive's health likely to detrimentally affect the executive's capacity to carry out the role.
- (4) The employer of the Health executive is to give the health care professional providing a health assessment referred to in subrule (3) (b) or (c) any requested information about the role concerned that is reasonably required for the purpose of providing the assessment.

Part 3 Merit-based employment

10 Comparative assessments (cf rule 17 GSE (General) Rules 2014)

- (1) For the purposes of this Part, a **comparative assessment** is the process of assessing an individual's claim against:
 - (a) the pre-established standards for an executive role, and
 - (b) any other claimants for the role.
- (2) The process is to include the following:
 - (a) screening for essential requirements such as a qualification or licence,
 - (b) reviewing an application and resume,
 - (c) at least 3 capability-based assessments, one of which is an interview,
 - (d) referee checks against the pre-established standards for the executive role.
- (3) More than one assessor must be involved in a comparative assessment.

11 Suitability assessment (cf rule 18 GSE (General) Rules 2014)

- (1) For the purposes of this Part, a **suitability assessment** is the process of assessing an individual against the pre-established standards for an executive role (and not against other persons).
- (2) The process is to include the following:
 - (a) screening for essential requirements such as a qualification or licence,

- (b) reviewing a resume,
- (c) at least 2 capability-based assessments, one of which is an interview,
- (d) referee checks against the pre-established standards for the executive role.

12 Talent pools (cf rule 19 GSE (General) Rules 2014)

- (1) A **talent pool** is a list of those persons (whether or not existing members of the NSW Health Service) who have satisfied the pre-established standards for an executive role or type of executive role through a comparative assessment.
- (2) A talent pool may be used for recruitment to ongoing employment or for term employment.
- (3) A talent pool may, without limitation, be established jointly by more than one division of the NSW Health Service and may be used for recruitment purposes by any division of the NSW Health Service.
- (4) A person may be included in a talent pool for no longer than the period of 12 months following the completion of the comparative assessment that entitled the person to be included in the talent pool.

13 Merit principles to be applied in employment decisions (cf rule 16 GSE (General) Rules 2014)

- (1) This rule applies to any of the following decisions (an **employment decision**):
 - (a) the employment of a person as a Health executive in ongoing or term employment and the assignment under section 121D of the *Health Services Act 1997* of the person to an executive role,
 - (b) the conversion to ongoing employment of a Health executive's term employment.
- (2) Any employment decision relating to an executive role is to be based on an assessment of the capabilities, experience and knowledge of the person concerned against the pre-established standards for the role to determine the person best suited to the requirements of the role and the needs of the relevant division of the NSW Health Service.
- (3) Without limiting subrule (2), the following principles apply in relation to employment decisions:
 - (a) any recruitment action (whether for ongoing employment or term employment) is to take into account:
 - (i) long and short term capability needs to meet the objectives of the relevant division of the NSW Health Service, and

- (ii) existing workforce capabilities,
- (b) pre-established standards for an executive role are to be expressed as levels against each capability or other requirements for the role,
- (c) any assessment for an executive role is to include appropriate methods to assess different requirements,
- (d) except in the case where a development opportunity is being provided, a person may be employed in an executive role only if the person meets the pre-established standards for the role or type of role,
- (e) any employment decision is to be made on balance taking into account all the results provided by the assessment process.

14 Ongoing employment (cf rule 20 GSE (General) Rules 2014)

The following decisions must be based on a comparative assessment after external advertising:

- (a) the decision to employ a person in ongoing employment in a particular band and the initial assignment of the person to an executive role in that band,
- (b) any subsequent decision to employ the person in a different band and the initial assignment of the person to an executive role in that band.

15 Conversion of term employment to ongoing employment at-level (cf rule 12 GSE (General) Rules 2014)

- (1) The employer of a Health executive may convert the executive's term employment to ongoing employment if:
 - (a) the ongoing employment is within the same band as the band in which the executive is employed, and
 - (b) the executive has been employed in that term employment for a period of at least 12 months.
- (2) Subrule (1) (b) applies in relation to a Health executive only if the role in which the executive is employed was advertised on the basis that it was for the duration of a specified task.
- (3) The conversion to ongoing employment under this rule:
 - (a) must be based on the results of a comparative assessment after external advertising (whether a previous comparative assessment for the executive role concerned or a new comparative assessment) and on the executive's most recent performance under the NSW Health Service's performance management system, and

(b) is subject to the satisfactory conduct of the executive.

16 Term employment for up to 12 months (cf rule 21 GSE (General) Rules 2014)

- (1) The decision to employ a Health executive in term employment for a period of up to 12 months must be based on either a suitability assessment or a comparative assessment.
- (2) If the Health executive is employed in term employment on the basis of a suitability assessment, the executive cannot continue in that employment after 12 months unless the person does so on the basis of a comparative assessment after external advertising. In such a case, action to undertake the additional requirements of a comparative assessment should commence not later than 9 months after the commencement of the executive's term employment.

17 Term employment for more than 12 months (cf rule 22 GSE (General) Rules 2014)

The decision to employ a Health executive in term employment for a period of more than 12 months must be based on a comparative assessment after external advertising.

18 Use of initial suitability and comparative assessments when extending term employment (cf rule 22B GSE (General) Rules 2014)

If a Health executive is employed in accordance with rule 16 or 17 after a suitability or comparative assessment (the **initial assessment**) and the executive's term employment is subsequently extended for a further period, a further suitability assessment (if the extended period is for up to 12 months) or a further comparative assessment (if the extended period is for more than 12 months) is not required in connection with the decision to employ the executive for that further period if:

- (a) the executive is to be assigned to the same executive role as the role to which the executive was assigned after the initial assessment, or
- (b) the executive's employer is satisfied that it is appropriate to rely on the initial assessment for the executive role to which the executive is to be assigned.

Part 4 General conditions of employment

19 Health executive not to undertake other paid work without permission (cf cl 7 GSE Reg 2014)

- (1) A Health executive is not to undertake any other paid work without the permission of the executive's employer.
- (2) This rule does not apply to a Health executive who is working part-time during the period that the person is not required to perform duties in the NSW Health Service, but only if the performance of those duties is not adversely affected and no conflict of interest arises.

20 Health executive to report bankruptcy etc (cf cl 10 GSE Reg 2014)

- (1) If a Health executive becomes bankrupt or makes a composition, arrangement or assignment for the benefit of the executive's creditors, the executive must:
 - (a) immediately notify the executive's employer in writing of the bankruptcy, composition, arrangement or assignment, and
 - (b) within such period as the employer specifies, provide the employer with such further information with respect to the cause of the bankruptcy or of the making of the composition, arrangement or assignment as the employer requires.
- (2) The employer of a Health executive may, as a condition of the engagement of the person in an executive role relating to financial management, require the person to declare, before the person is engaged in that role, whether or not the person has at any time been declared bankrupt or made a composition, arrangement or assignment for the benefit of the person's creditors.

21 Absence from duty (cf cl 13 GSE Reg 2014)

- (1) A Health executive must not be absent from duty unless reasonable cause is shown.
- (2) If a Health executive is absent from duty because of illness or other emergency, the executive must, as soon as practicable, provide an explanation for the absence.
- (3) If the Health executive fails to provide that explanation to the satisfaction of the executive's employer, the employer is to cause to be deducted from the pay of the executive the amount paid to the executive for the period of absence.
- (4) This rule does not prevent the employer or the Health Secretary from taking any other action that the employer or Health Secretary is authorised to take in relation to a Health executive who is absent from duty without authorised leave.

22 Fitness for duty (cf cl 15 GSE Reg 2014)

- (1) For the purposes of this rule, a Health executive is not fit for duty if the health of the executive:
 - (a) may render the executive a risk to the health and safety of other persons employed in the NSW Health Service or the general public, or
 - (b) is likely to be seriously affected by the executive remaining on duty or, if the executive is absent from duty, by the executive resuming duty.
- (2) If the employer of a Health executive has reason to believe that the executive is not fit for duty, the employer may direct the executive to submit to such medical examination or other health assessment as the employer may, on the advice of a nominated medical assessor, consider necessary.

- (3) If the employer of a Health executive gives the executive a direction under subrule (2), the executive:
 - (a) must, if on duty, cease duty immediately, and
 - (b) must not resume duty until the completion of the medical examination or other health assessment concerned unless the concurrence of a nominated medical assessor is first obtained or a certificate is furnished by a medical practitioner that the executive is fit for duty.
- (4) If the employer of a Health executive receives a health assessment from a nominated medical assessor that the executive is fit for duty and the executive is absent from duty, the employer is to direct in writing that the executive must resume duty.
- (5) If the employer of a Health executive receives a health assessment from a nominated medical assessor that the executive is not fit for duty:
 - (a) the employer is to direct in writing that the executive must cease duty immediately or, if absent from duty, must not resume duty, and
 - (b) the executive must not resume duty unless the employer, on the advice of a nominated medical assessor, approves the resumption of duty in writing.
- (6) If a direction has been given to a Health executive under subrule (4) or (5), the nature of the leave, if any, to be granted to the executive during the absence from duty is to be determined by the employer after consideration of any relevant advice of the nominated medical assessor.
- (7) The employer of a Health executive is to give the health care professional providing a health assessment of the executive under this rule any requested information about the employment of the executive that is reasonably required for the purpose of providing the assessment.
- (8) In this rule:

nominated medical assessor means a person or body, or a person who is a member of a class of persons, nominated by the Public Service Commissioner for the purposes of this rule.

23 Specific conditions of employment (cf rule 46 (2) & (3) GSE (General) Rules 2014)

- (1) The employer of a Health executive may attach a specific condition of employment to the role assigned to the executive.
- (2) Any such condition cannot vary the terms of the executive's contract of employment (including changing the executive's remuneration package).
- (3) If the Health executive assigned to a role to which a specific condition of employment

is attached under this rule is assigned to a different role that does not have the condition of employment attached to it, the condition no longer applies in relation to the executive.

24 Assignment to other role—payment of allowances (cf rule 47 GSE (General) Rules 2014)

If an allowance of a particular kind is payable in relation to the role of a Health executive and the executive is assigned to another role in respect of which the allowance is not payable, the executive is no longer entitled to the allowance.

25 Part-time work (cf rule 48 GSE (General) Rules 2014)

- (1) The employer of a Health executive may approve a request by the executive to undertake work on a part-time basis (namely, that the executive is not available for duty during the whole or part of a normal working day).
- (2) An agreement between the employer and the Health executive about part-time work must specify the days or parts of days when the executive is available for duty.
- (3) The remuneration of the Health executive is to be calculated on a pro-rata basis (excluding allowances in the nature of reimbursement where the part-time executive will receive the same amount as a full-time executive in the same circumstances).

26 Performance management (cf rule 49 GSE (General) Rules 2014)

- (1) A Health executive must, in accordance with the performance management system applying to the executive under section 67 of the GSE Act:
 - (a) enter into a performance agreement with his or her employer, and
 - (b) have his or her performance reviewed at least annually.
- (2) A Health executive may be employed under a contract of employment even though the agency's performance management system has not been implemented or the executive has not entered into a performance agreement. In that case, the Health executive's contract of employment is to be construed accordingly.

27 Capability-based assessments (cf rule 50 GSE (General) Rules 2014)

A Health executive must participate in:

- (a) periodic capability-based assessments, and
- (b) any assessment relating to the technical requirements of the executive's role.

28 Certain leave or payments not available (cf rule 51 GSE (General) Rules 2014)

A Health executive is not entitled to any allocated day off for working flexible hours or to be paid for working overtime.

Part 5 Contract of employment

29 Model contract of employment for Health executives (cf rule 43 GSE (General) Rules 2014)

- (1) The contract of employment specified in Schedule 1 is, for the purposes of section 121F (2) of the *Health Services Act 1997*, prescribed as the model contract of employment for a Health executive.
- (2) The provisions of a model contract of employment prescribed under this rule:
 - (a) are mandatory (except any provisions that are not applicable as indicated in the model contract), and
 - (b) are subject to the GSE Act, the *Health Services Act 1997*, the *Government Sector Employment Regulation 2014* and these Rules.
- (3) Any amendment made to Schedule 1 does not apply to a contract of employment entered into before the amendment is made.

30 Requirement to comply with contract of employment (cf rule 44 GSE (General) Rules 2014)

A Health executive must comply with any of the obligations imposed on the executive under the executive's contract of employment.

31 Contract of employment subject to conditions of engagement being satisfied (cf rule 45 GSE (General) Rules 2014)

The contract of employment of a Health executive is subject to all the conditions to which the engagement of the executive is subject being satisfied.

Part 6 Miscellaneous

32 Termination of employment of certain chief executives for unsatisfactory performance

The employment of the chief executive of a local health district or of a specialty network governed health corporation within the meaning of the *Health Services Act 1997* may not be terminated under section 68 (2) of the GSE Act without the concurrence of the Health Secretary.

Note—

Part 7 of the *Government Sector Employment (General) Rules 2014* contains other procedural requirements for dealing with unsatisfactory performance of Health executives.

Schedule 1 Model contract of employment for NSW Health Service senior executives

(Rule 29)

Contract of employment under section 121F of the *Health Services Act 1997*

This contract of employment is made

on the day of 20

Between

THE GOVERNMENT OF NEW SOUTH WALES

and

[*Insert full name*] (the “Health Executive”)

Parties

1.1

This contract of employment is between the Health Executive and the Government of New South Wales.

Commencement

2.1

The employment of the Health Executive under this contract commences on [*insert date*].

Definitions

3.1

In this contract:

“Employer” of the Health Executive means the person who, in accordance with section 116 of the [Health Services Act 1997](#), exercises the employer functions of the Government of New South Wales in relation to the Health Executive.

“the Rules” means the [Government Sector Employment \(Health Service Senior Executives\) Rules 2016](#) made under the [Government Sector Employment Act 2013](#).

3.2

Terms used in this contract that are defined in the [Health Services Act 1997](#), the [Government Sector Employment Act 2013](#) or the Rules have the same meanings as they have in those Acts or the Rules (as the case requires).

Band

4.1

The Health Executive is employed in Band [*specify band*].

Role

5.1

The role in the NSW Health Service assigned to the Health Executive is described in Appendix A.

5.2

The Employer may vary the description of the role to which the Health Executive is assigned at any time.

5.3

The Health Executive acknowledges that he or she may be assigned to another role in any division of the NSW Health Service, or be transferred to another government sector agency and assigned to a role, in the band in which the Health Executive is employed.

5.4

The Health Executive must perform the duties and responsibilities of the role to which the Health Executive is duly assigned.

Core values

6.1

The Health Executive agrees to perform the duties and responsibilities of the assigned role in accordance with the government sector core values under section 7 of the [Government Sector Employment Act 2013](#).

Probation period

7.1

The Health Executive's employment is subject to a probation period of [*insert number of months—not exceeding 3 months*].

[OR]

The Health Executive's employment is not subject to a probation period.

Duration of employment

8.1

The employment of the Health Executive under this contract is ongoing employment (that is, employment that continues until the Health Executive resigns or the Health Executive's employment is terminated).

[OR]

The employment of the Health Executive under this contract is, unless the Health Executive sooner resigns or the Health Executive's employment is sooner terminated, for the period ending on [*specify date*]. The period of employment may be extended by the Employer.

Annual performance agreement

9.1

The Health Executive is required to enter into an annual performance agreement with the Employer setting out the performance obligations of the Executive, and reviews of performance, for the year. The performance agreement continues until a new agreement is signed.

Capability-based assessments

10.1

The Health Executive agrees to participate in periodic capability-based assessments.

10.2

The Health Executive agrees to the use of these assessments for workforce planning purposes.

Total remuneration package and allowances

Note—

The total remuneration package is for full-time work. Under the Rules, pro-rata remuneration is payable for part-time work.

11.1

The total remuneration package (comprising monetary remuneration and employment benefits) of the Health Executive is specified in Appendix B.

11.2

The Health Executive may elect from time to time to allocate the total remuneration package as between monetary remuneration and employment benefits in accordance with the [Health Services Act 1997](#).

11.3

The Health Executive is entitled to such allowances as may be determined by the Health Secretary under the [Health Services Act 1997](#).

11.4

The Employer may, subject to the [Government Sector Employment Act 2013](#) and the [Health Services Act 1997](#), vary the total remuneration package of the Health Executive from time to time.

Progression

12.1

If the Health Executive meets the performance requirements under the NSW Health Service performance management system, the Health Executive's total remuneration package may be increased within the range of remuneration applicable to the assigned role of the Health Executive. Any such increase is at the discretion of the Employer and is not an entitlement.

12.2

This clause does not limit the Employer's power to increase or reduce the Health Executive's total remuneration package in accordance with the [Government Sector Employment Act 2013](#) or the [Health Services Act 1997](#).

Hours of duty

13.1

The Health Executive must work the hours necessary to perform the duties and responsibilities of the Health Executive's role.

13.2

The Health Executive's total remuneration package compensates the Health Executive for any hours worked.

Part-time work

14.1

If the Employer agrees to the Health Executive undertaking work on a part-time basis, the Health Executive must work the agreed days or parts of days.

Leave

15.1

The Health Executive is entitled to the same leave entitlements that apply to Public Service senior executives under the [Government Sector Employment Regulation 2014](#).

15.2

The Health Executive is entitled to be absent from duty on the following days unless the executive is required to attend for duty by the Employer by a person authorised by the Employer:

- a day that is a public holiday throughout the State,
- a day (or part of a day) that is a public holiday under the [Public Holidays Act 2010](#) in that part of the State at or from which the Health Executive is working,
- a day between Boxing Day and New Year's Day determined by the Employer.

Notice of resignation

16.1

The Health Executive may resign his or her employment by providing 4 weeks written notice to the Employer or as agreed to by the Employer.

16.2

If notice of resignation is provided, the Employer may direct the Health Executive to cease duties immediately or at some other specified time during the notice period. Any such direction does not affect the Health Executive's entitlement to receive remuneration or to accrue leave during the notice period.

Compensation for termination

17.1

The Health Executive is entitled, on the termination of employment by the Employer or the Health Secretary under section 121H of the [Health Services Act 1997](#), to the payment of compensation as determined by clause 41 of the [Government Sector Employment Regulation 2014](#).

17.2

If the Health Executive's employment is terminated with compensation, the Health Executive agrees that if the Health Executive is re-employed in the public sector (as referred to in section 121H of the

Health Services Act 1997) within the period to which the compensation relates the Health Executive will repay the proportionate amount, as calculated in accordance with clause 41 of the *Government Sector Employment Regulation 2014*, before the commencement of that re-employment. This obligation continues even though the contract of employment is terminated.

Confidentiality

[The following provisions are mandatory to the extent that the contract must contain obligations relating to confidentiality. However, the following provisions may be substituted by a different set of obligations (that are not inconsistent with the following provisions) to suit the particular requirements of the division of the NSW Health Service concerned.]

18.1

During his or her employment, the Health Executive will not disclose, without lawful authority, any confidential or secret information acquired as a consequence of the employment.

18.2

On termination of employment the Health Executive will not, without lawful authority, disclose or make *[commercial]* use of any confidential or secret information acquired by the Health Executive as a consequence of his or her employment.

Intellectual property

19.1

Subject to any written agreement to the contrary between the parties, all intellectual property developed by the Health Executive in the course of his or her employment is the sole property of the Employer.

Employment directions

20.1

The Health Executive agrees to act in accordance with any applicable employment policies of the Employer or the Health Secretary or any applicable direction that the Health Secretary is authorised to give under the *Health Services Act 1997* in relation to the employment of the Executive.

20.2

However, those employment policies and directions do not form part of this contract and do not create any express or implied contractual rights or obligations between the Health Executive and the Employer.

Variation

21.1

This contract may only be varied in accordance with the *Health Services Act 1997* and this contract.

APPENDICES

The Appendices to this contract may be substituted by the Employer.

Appendix A—Assigned role

[insert description of assigned role]

Appendix B—Remuneration package

The total remuneration package of the Health Executive is [insert \$ value of package], comprising [insert components of remuneration package]:

Signatures

The Employer

Signed

Date

Name

[Insert job title and office]

pursuant to the [Health Services Act 1997](#) on behalf of the Government of NSW.

The Health Executive

Signed

Date

Name in full [*printed*]
