

Health Services (Transfer of Assets, Rights and Liabilities) Order 2010

[2010-727]



New South Wales

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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

MARIE BASHIR

I, Professor Marie Bashir AC, CVO, Governor of the State of New South Wales, with the advice of the Executive Council, and in pursuance of sections 131 and 132 of the *Health Services Act 1997*, make the following Order.

Dated, this 15th day of December 2010.

By Her Excellency's Command,

CARMEL TEBBUTT, MP Minister for Health

Part 1 Preliminary

1 Name of Order

This Order is the *Health Services (Transfer of Assets, Rights and Liabilities) Order 2010*.

2 Commencement

This Order commences on the day on which it is published on the NSW legislation website.

3 Definitions

(1) In this Order:

agreement includes a contract, deed, licence agreement, memorandum of understanding, heads of agreement, funding agreement, clinical trial agreement or research agreement.

applicable health reform transitional organisation means:

- (a) for the Sydney West Area Health Service, the Sydney South West Area Health Service or the Greater Western Area Health Service—the Health Reform Transitional Organisation Western, or

- (b) for the Northern Sydney and Central Coast Area Health Service, the North Coast Area Health Service or the Hunter and New England Area Health Service—the Health Reform Transitional Organisation Northern, or
- (c) for the South Eastern Sydney Illawarra Area Health Service or the Greater Southern Area Health Service—the Health Reform Transitional Organisation Southern.

existing area health service has the same meaning it has in Part 7 of Schedule 7 to the Act.

health facility means a public hospital or health institution.

proposed local health network has the same meaning it has in clause 77 of Schedule 7 to the Act.

proposed local health networks geographical area means the area of a proposed local health network as listed in Columns 2 and 3 of Schedule 1 to the Act on 1 January 2011.

statutory authorisation includes a statutory approval, licence, permit, consent, certificate or authorisation.

the Act means the [Health Services Act 1997](#).

- (2) Notes included in this Order do not form part of this Order.

4 Order does not apply to data centres

- (1) This Order does not apply to any of the following that relate exclusively to a data centre:
 - (a) any interest of an existing area health service in land or other property (including any lease or licence, between the existing area health service and any other person or body, to which that land or property may be subject),
 - (b) any agreement to which an existing area health service is a party immediately before 1 January 2011,
 - (c) any statutory authorisation that is held by, or applies to, an existing area health service immediately before 1 January 2011,
 - (d) any asset, right or liability of an existing area health service that is not otherwise referred to in this clause.
- (2) In this clause:

data centre means the information technology and associated equipment, used exclusively to provide networked information technology services to support the public

health system and public health organisations and the public hospitals they control, that is located in a dedicated building or part of a building at Liverpool Hospital, Prince of Wales Hospital, Royal North Shore Hospital or Wollongong Hospital.

Part 2 Transfers of certain services

5 Forensic medicine and analytical services

- (1) All interests of an existing area health service in land or other property that relate exclusively to a forensic medicine or analytical service are transferred on 1 January 2011 to the Health Reform Transitional Organisation Western.
- (2) If, at the time property is transferred under this clause, the property is subject to a lease or licence between the existing area health service and any other person or body, the lease or licence is, on the transfer, taken to be between the Health Reform Transitional Organisation Western and that other person or body on the same terms.
- (3) On the transfer under this clause of an interest in land or other property that relates exclusively to a forensic medicine or analytical service, the following are also transferred if they relate exclusively to the service:
 - (a) any agreement to which an existing area health service is a party immediately before 1 January 2011 is transferred on the same terms so that the Health Reform Transitional Organisation Western becomes a party to the agreement instead of the existing area health service,
 - (b) any statutory authorisation that is held by, or applies to, an existing area health service immediately before 1 January 2011 is transferred so that it is held by, or applies to, the Health Reform Transitional Organisation Western,
 - (c) any asset, right or liability of an existing area health service that is not otherwise transferred under this clause is transferred to the Health Reform Transitional Organisation Western.
- (4) In this clause:

forensic medicine or analytical service means the following:

 - (a) the Newcastle Department of Forensic Medicine (being a unit of Hunter and New England Area Health Service),
 - (b) the Division of Analytical Laboratories (being a unit of Sydney West Area Health Service),
 - (c) the Glebe Department of Forensic Medicine (being a unit of Sydney South West Area Health Service).

6 Information technology services and pathology cluster services

- (1) All interests of an existing area health service in land or other property that relate exclusively to information technology services or pathology cluster services are transferred on 1 January 2011 to the applicable health reform transitional organisation for the area health service.
- (2) If, at the time property is transferred under this clause, the property is subject to a lease or licence between the existing area health service and any other person or body, the lease or licence is, on the transfer, taken to be between the applicable health reform transitional organisation and that other person or body on the same terms.
- (3) On the transfer to a health reform transitional organisation under this clause of an interest in land or other property that relates exclusively to information technology services or pathology cluster services, the following are also transferred if they relate exclusively to those services:
 - (a) any agreement to which an existing area health service is a party immediately before 1 January 2011 is transferred on the same terms so that the health reform transitional organisation becomes a party to the agreement instead of the existing area health service,
 - (b) any statutory authorisation that is held by, or applies to, an existing area health service immediately before 1 January 2011 is transferred so that it is held by, or applies to, the health reform transitional organisation,
 - (c) any asset, right or liability of an existing area health service that is not otherwise transferred under this clause is transferred to the health reform transitional organisation.
- (4) In this clause:

information technology services means all information technology and associated equipment other than the following:

- (a) personal computers (including laptops) and printers,
- (b) equipment used for the management and control of medical imaging,
- (c) laboratory and analytical instruments,
- (d) medical monitoring equipment.

pathology cluster service means the following services:

- (a) South Eastern Sydney Illawarra Cluster also known as South Eastern Area Laboratory Services (incorporating the former business unit known as Illawarra

Area Health Pathology Service or IPath),

- (b) Sydney South West Cluster also known as Sydney South West Pathology Service (incorporating the former business units known as Central Sydney Laboratory Service and South Western Area Pathology Service),
- (c) Western Pathology Cluster also known as Pathology West (incorporating the former business units known as Central West Pathology Services, Far West Pathology Service, the Institute of Clinical Pathology and Medical Research, Nepean Blue Mountains and Lithgow Pathology Service, South Eastern Public Pathology Service, South West Pathology Services, Orana Pathology Service, Dubbo Base Hospital Pathology and Mudgee District Hospital Pathology),
- (d) Pathology North (incorporating the former business units known as Hunter Area Pathology Services, Mid-North Coast Pathology Service, Northern Rivers Pathology Service, Pacific Laboratory Medicine Services and Pathology New England).

Part 3 Transfer of other assets, rights and liabilities

7 Part does not apply to matters to which Part 2 applies

This Part does not apply to any asset, right or liability that is transferred under Part 2.

8 Interests in physical property other than motor vehicles

- (1) All interests of an existing area health service in land or other property (other than a motor vehicle) that is physically located in a proposed local health networks geographical area immediately before 1 January 2011 are transferred on that day to the proposed local health network.
- (2) If, at the time of the transfer, the property is subject to a lease or licence between the existing area health service and any other person or body, the lease or licence is, on the transfer, taken to be between the proposed local health network and that other person or body on the same terms.

9 Interests in motor vehicles

- (1) All interests of an existing area health service in a motor vehicle (other than a motor vehicle used exclusively for the purpose of non-emergency patient transport or ambulance services) are transferred to a proposed local health network on 1 January 2011 if:
 - (a) immediately before that day the motor vehicle is used exclusively for the purposes of the operation of one or more health facilities controlled by the existing area health service, and
 - (b) on that day each of those health facilities is controlled by the proposed local health network.

- (2) All interests of an existing area health service in a motor vehicle (other than a motor vehicle referred to in subclause (1)) are transferred to the applicable health reform transitional organisation for the area health service on 1 January 2011.
- (3) If, at the time of the transfer, a motor vehicle is subject to a lease or licence between the existing area health service and any other person or body, on the transfer under this clause the lease or licence is taken to be between the proposed local health network or the applicable health reform transitional organisation and that other person or body on the same terms.

10 Leases and licences held by area health services

All interests of an existing area health service as lessee or licensee of land or other real property located in a proposed local health networks geographical area immediately before 1 January 2011 is transferred to the proposed local health network on that day and the proposed local health network is taken to be the lessee or licensee under the lease or licence on the same terms.

11 Service contracts

- (1) This clause applies to a service contract between an existing area health service and a visiting medical officer, a visiting medical officer's practice company or an honorary medical officer that relates to the provision of services or exercise of clinical privileges at a health facility controlled, immediately before 1 January 2011, by the existing area health service.
- (2) The rights, obligations and other liabilities under a service contract to which this clause applies, that is in force immediately before 1 January 2011, are on that day:
 - (a) transferred to the proposed local health network that on that day controls the health facilities to which the contract relates, or
 - (b) if the contract relates to health facilities that are controlled on that day by different proposed local health networks, transferred to each of those proposed local health networks only to the extent that the contract relates to the health facilities controlled by the network.

12 Visiting practitioner appointments

- (1) This clause applies to the appointment by an existing area health service of a visiting practitioner under Chapter 8 of the Act that relates to the provision of services or exercise of clinical privileges at a health facility controlled, immediately before 1 January 2011, by the existing area health service.
- (2) The rights, obligations and other liabilities under an appointment to which this clause applies that is in force immediately before 1 January 2011, are on that day:
 - (a) transferred to the proposed local health network that on that day controls the

health facilities to which the appointment relates, or

- (b) if the appointment relates to health facilities controlled on that day by different local health networks, transferred to each of those proposed local health networks only to the extent that the appointment relates to the health facilities controlled by the network.

13 Other agreements

- (1) This clause applies to an agreement to which an existing area health service is a party immediately before 1 January 2011 (other than an agreement that is transferred by another provision of this Part).
- (2) An agreement to which this clause applies is, on 1 January 2011, transferred on the same terms so that a proposed local health network becomes a party to the agreement instead of the existing area health service if:
 - (a) the agreement relates exclusively to one or more health facilities that are controlled, immediately before that day, by the existing area health service, and
 - (b) on that day each of those health facilities is controlled by the proposed local health network.
- (3) Any agreement to which this clause applies (other than an agreement referred to in subclause (2)) is, on 1 January 2011, transferred on the same terms so that the applicable health reform transitional organisation for the area health service becomes a party to the agreement instead of the existing area health service.

14 Statutory authorisations

- (1) This clause applies to a statutory authorisation that is held by, or applies to, an existing area health service immediately before 1 January 2011.
- (2) A statutory authorisation to which this clause applies is, on 1 January 2011, transferred so that it is held by, or applies to, a proposed local health network if:
 - (a) the statutory authorisation relates exclusively to one or more health facilities that are controlled, immediately before that day, by the existing area health service, and
 - (b) on that day each of those health facilities is controlled by the proposed local health network.
- (3) Any statutory authorisation to which this clause applies (other than a statutory authorisation referred to in subclause (2)) is, on 1 January 2011, transferred so that it is held by, or applies to, the applicable health reform transitional organisation.

15 Other assets, rights and liabilities

- (1) This clause applies to any asset, right or liability of an existing area health service immediately before 1 January 2011 that is not otherwise transferred under this Part.
- (2) An asset, right or liability to which this clause applies is, on 1 January 2011, transferred to a proposed local health network if:
 - (a) the asset, right or liability relates exclusively to one or more health facilities, and
 - (b) on that day each of those health facilities is controlled by the proposed local health network.
- (3) Any asset, right or liability of an existing area health service to which this clause applies (other than an asset, right or liability referred to in subclause (2)) is, on 1 January 2011, transferred to the applicable health reform transitional organisation for the area health service.

Note—

Assets, rights and liabilities that may be transferred under this provision include obligations in respect of trust monies held by area health services, private practice income of staff specialists, bequests and donations held by area health services, litigation to which an area health service is a party or the intellectual property rights of an area health service.