



New South Wales

Cancer Institute (NSW) Amendment Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Cancer Institute (NSW) Act 2003* (**the Act**) to make the provisions dealing with the constitution and governance of the Cancer Institute (NSW) consistent with similar provisions in the *Health Services Act 1997* that deal with board governed statutory health corporations.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 **Amendment of Cancer Institute (NSW) Act 2003 No 14**

Schedule 1 [2], [3], [5] and [10] amend the provisions of the Act dealing with the constitution and governance of the Cancer Institute (NSW) to make them consistent with the provisions dealing with the constitution and governance of board governed

statutory health corporations set out in Division 1 of Part 2 of Chapter 4 of the *Health Services Act 1997* and Schedule 5 to that Act.

Schedule 1 [1] and [4] make consequential amendments.

Schedule 1 [9] removes certain spent transitional provisions relating to the New South Wales Cancer Council.

Schedule 1 [11] contains certain savings and transitional provisions. It includes provisions that save the appointments of current members of the Board of the Cancer Institute (NSW), saves the appointment and employment of the current Chief Cancer Officer and transfers the staff of the Cancer Institute (NSW) from employment within the Government Service under Chapter 1A of the *Public Sector Employment and Management Act 2002* to employment within the NSW Health Service under Part 1 of Chapter 9 of the *Health Services Act 1997*. The amendment and **Schedule 1 [9]** also move provisions that enable regulations of a savings or transitional nature to be made from the main body of the Act to a schedule to the Act.

Schedule 1 [6] makes a consequential amendment.

Schedule 1 [8] provides that Chapter 10 (Administration of the public health system) of the *Health Services Act 1997* extends to the Cancer Institute (NSW) as if it were a statutory health corporation.

Schedule 1 [7] makes a consequential repeal of a provision the subject matter of which is dealt with in Chapter 10 of the *Health Services Act 1997*.

Schedule 2 Amendment of other Acts

Amendment of Health Services Act 1997

Schedule 2.1 [1] enables the Government of New South Wales to employ staff under Part 1 of Chapter 9 of the *Health Services Act 1997* to enable the Cancer Institute (NSW) to exercise its functions under the Act or any other Act.

Schedule 2.1 [2] makes a consequential amendment.

Amendment of Public Sector Employment and Management Act 2002

Schedule 2.2 makes a consequential repeal.

First print



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New South Wales

Cancer Institute (NSW) Amendment Bill 2012

No. , 2012

A Bill for

An Act to amend the *Cancer Institute (NSW) Act 2003* to make further provision regarding the constitution and functions of the Cancer Institute (NSW); and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Cancer Institute (NSW) Amendment Act 2012</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5

Schedule 1	Amendment of Cancer Institute (NSW)	1
	Act 2003 No 14	2
[1]	Section 3 Definitions	3
	Omit the definition of <i>Chief Cancer Officer</i> from section 3 (1).	4
	Insert instead:	5
	<i>Chief Cancer Officer</i> means the Chief Cancer Officer appointed under section 10.	6 7
[2]	Section 8 Membership of Board	8
	Omit section 8 (1) (a). Insert instead:	9
	(a) at least 5, but not more than 11, persons appointed by the Minister, and	10 11
[3]	Section 10 Chief Cancer Officer	12
	Omit section 10 (1) and (2). Insert instead:	13
	(1) There is to be a Chief Cancer Officer.	14
	(2) If the position of Chief Cancer Officer is an executive position within the meaning of Part 3 of Chapter 9 of the <i>Health Services Act 1997</i> , the appointment and employment of the Chief Cancer Officer is subject to that Part.	15 16 17 18
	(2A) If the position of Chief Cancer Officer is not an executive position within the meaning of Part 3 of Chapter 9 of the <i>Health Services Act 1997</i> :	19 20 21
	(a) the Chief Cancer Officer is to be appointed by the Minister, and	22 23
	(b) the Chief Cancer Officer is, while holding that office, to be employed under Part 1 of Chapter 9 of the <i>Health Services Act 1997</i> in the NSW Health Service.	24 25 26
[4]	Section 10 (5), (7) and (8)	27
	Omit the subsections.	28

[5] Section 11	1
Insert after section 10:	2
11 Removal of members and appointment of administrator	3
(1) The Governor may at any time, for any reason or no reason and without notice, by order published in the Gazette:	4
(a) remove any member (including the Chief Cancer Officer) or all members of the Board from office, or	5
(b) remove all members of the Board from office and appoint, as administrator of the Cancer Institute, a person specified in the order for such period as may be specified in the order, or	6
(c) remove all members of the Board (other than the Chief Cancer Officer) from office and appoint, as administrator of the Cancer Institute, the Chief Cancer Officer for such period as may be specified in the order.	7
(2) The Chief Cancer Officer ceases to hold office as Chief Cancer Officer if removed from office as a member of the Board.	8
(3) An administrator of the Cancer Institute 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 Board of the Cancer Institute.	9
(4) An administrator of the Cancer Institute is entitled to be paid from the funds of the Cancer Institute such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the administrator.	10
(5) The regulations may make provision with respect to administrators of the Cancer Institute.	11
(6) If the position of Chief Cancer Officer is an executive position within the meaning of Part 3 of Chapter 9 of the <i>Health Services Act 1997</i> :	12
(a) the Chief Cancer Officer may not be removed from office under section 121N of that Act, and	13
(b) section 121N of that Act applies:	14
(i) to and in respect of a Chief Cancer Officer who is removed from office under this section, and	15
(ii) to and in respect of the executive position of a Chief Cancer Officer who is so removed,	16
in the same way as it applies to and in respect of a health executive who is removed from office under section 121N	17

	and to and in respect of the executive position of a health executive who is so removed.	1 2
[6]	Section 12 General functions of Cancer Institute	3
	Omit the note to section 12 (4). Insert instead:	4
	Note. Staff may be employed under Chapter 9 of the <i>Health Services Act 1997</i> in the NSW Health Service to enable the Cancer Institute to exercise its functions under this or any other Act.	5 6 7
[7]	Section 21 Independent review of performance of Cancer Institute	8
	Omit the section.	9
[8]	Section 21A	10
	Insert before section 22:	11
	21A Relationship with Chapter 10 of Health Services Act 1997	12
	(1) Chapter 10 (Administration of the public health system) of the <i>Health Services Act 1997</i> extends to the Cancer Institute as if it were a statutory health corporation.	13 14 15
	(2) To the extent of any inconsistency, that Chapter (as extended by subsection (1)) prevails over this Act.	16 17
[9]	Section 25 Regulations	18
	Omit section 25 (2)–(4).	19
[10]	Schedule 1 Provisions relating to members and procedure of Board	20
	Omit “3 years” from clause 4 of the Schedule. Insert instead “4 years”.	21
[11]	Schedule 3	22
	Insert after Schedule 2:	23
	Schedule 3 Savings, transitional and other provisions	24 25
	Part 1 General	26
	1 Regulations	27
	(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.	28 29 30

(2)	Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	1 2
(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:	3 4 5
(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	6 7 8
(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.	9 10 11
Part 2	Provisions consequent on enactment of Cancer Institute (NSW) Amendment Act 2012	12 13 14
2	Transfer of staff	15
(1)	A person who, immediately before the commencement of this clause, was employed under Chapter 1A of the <i>Public Sector Employment and Management Act 2002</i> to enable the Cancer Institute to exercise its functions is, on that commencement, transferred to the employment of the NSW Health Service under Part 1 of Chapter 9 of the <i>Health Services Act 1997</i> .	16 17 18 19 20 21
(2)	However, if a person referred to in subclause (1) was, immediately before the commencement of this clause, an executive officer under Part 3.1 of the <i>Public Sector Employment and Management Act 2002</i> , that person is, on that commencement, taken to be a health executive under Part 3 of Chapter 9 of the <i>Health Services Act 1997</i> .	22 23 24 25 26 27
(3)	The regulations may make provision for or with respect to the transfer of employment of such persons.	28 29
3	Saving of appointment of members of Board	30
(1)	The substitution of section 8 (1) (a) by the <i>Cancer Institute (NSW) Amendment Act 2012</i> does not affect the appointment of any member of the Board holding office under that provision immediately before the substitution.	31 32 33 34
(2)	The amendment of clause 4 of Schedule 1 to the Act by the <i>Cancer Institute (NSW) Amendment Act 2012</i> does not affect the term of office of any person holding office as a member of the Board on the commencement of the amendment.	35 36 37 38

4 Chief Cancer Officer

The person holding office as Chief Cancer Officer, immediately before the commencement of the amendment to section 10 by the *Cancer Institute (NSW) Amendment Act 2012*, is taken, on that commencement, to be employed as a health executive (within the meaning of Part 3 of Chapter 9 of the *Health Services Act 1997*) for the balance of the person's term of appointment as Chief Cancer Officer.

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Schedule 2	Amendment of other Acts	1
2.1	Health Services Act 1997 No 154	2
[1]	Section 116 Employment of staff generally	3
	Insert at the end of section 116 (1) (e):	4
	, and	5
	(f) to enable the Cancer Institute (NSW) to exercise its functions under this or any other Act.	6 7
[2]	Chapter 10 Administration of the public health system	8
	Insert after the heading to the Chapter:	9
	Note. This Chapter also applies to the Cancer Institute (NSW) as if that body were a statutory health corporation—see section 21A of the <i>Cancer Institute (NSW) Act 2003</i> .	10 11 12
2.2	Public Sector Employment and Management Act 2002 No 43	13
	Schedule 1 Divisions of the Government Service	14
	Omit the matter relating to the Cancer Institute Division from Part 2 of the Schedule.	15 16