

## Health Services Amendment Bill 2004

New South Wales

### 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 *Health Services Act 1997* for the following purposes:

- (a) to provide that area health services are to be governed by their chief executives, and consequentially to abolish the existing area health boards,
- (b) to provide for the establishment of area health advisory councils to give advice with respect to certain matters affecting the operations of area health services,
- (c) to provide that statutory health corporations may be governed by their chief executives as an alternative to their being governed by health corporation boards, and to enable the Governor, by order published in the Gazette, to change a statutory health corporation's governance from one form to another,
- (d) to provide for the establishment of advisory councils to give advice with respect to matters affecting the operations of statutory health corporations that are governed by their chief executives,
- (e) to provide for the establishment of a Health Executive Service, similar to the Senior Executive Service under the *Public Sector Employment and Management Act 2002*, in which health executives of the NSW Health Service are to be employed,
- (f) to enact savings and transitional provisions consequent on the other amendments made by the Bill,
- (g) to make other minor, consequential and ancillary amendments.

The Bill also makes consequential amendments to the *Public Sector Employment and Management Act 2002*.

#### 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.

**Clause 3** is a formal provision that gives effect to the amendments to the *Health Services Act 1997* set out in Schedules 1 and 2.

**Clause 4** is a formal provision that gives effect to the amendments to the *Public Sector Employment and Management Act 2002* set out in Schedule 3.

#### **Schedule 1 Principal amendments to Health**

##### **Services Act 1997**

##### **Control of area health services and establishment of area health advisory councils**

Under Part 2 of Chapter 3 of the Act, area health services are currently controlled by area health boards and managed by their chief executives. **Schedule 1 [2]** substitutes Part 2. The proposed Part 2, which no longer provides for area health boards, contains the following provisions:

**Proposed section 23** provides for the appointment of a chief executive for each area health service. The chief executive will not be subject to Chapter 2 of the *Public Sector Employment and Management Act 2002*, but will be an executive officer within the proposed Health Executive Service.

**Proposed section 24** provides that the affairs of an area health service are to be managed and controlled by the chief executive, and that anything done by the chief executive in the name of, or on behalf of, the service is taken to have been done by the service.

**Proposed section 25** provides that the chief executive of an area health service may

exercise additional functions but is, in the exercise of his or her functions, subject to the control and direction of the Director-General of the Department of Health.

**Proposed section 26** provides for the establishment of an area health advisory council for each area health service, comprising between 9 and 13 members, roughly equal numbers of whom are to be health professionals or community representatives, and at least one of whom is to have expertise, knowledge or experience in relation to Aboriginal health. Each member will have a term of office of up to 4 years, but with a prohibition on any member holding office for more than 8 years. One of the members will be appointed as chairperson of the council. Other provisions with respect to the constitution and procedure of an advisory council are to be prescribed by the regulations.

**Proposed section 27** provides that the role of an area health advisory council is to facilitate the involvement of providers and consumers of health services, and of other members of the local community, in the development of the area health service's policies, plans and initiatives for the provision of health services.

**Proposed section 28** provides that an area health advisory council is to have advisory, consultative and liaison roles, with an obligation to publish reports as to its work and activities.

**Proposed section 29** provides that the Minister may establish a charter for area health advisory councils, with the requirements of which such a council must comply. Such a charter may include a code of conduct to be observed by members of an area health advisory council.

**Proposed section 29A** enables the chief executive to establish such committees and councils as he or she considers appropriate to assist the area health service in the exercise of its functions.

The existing area health boards are to be abolished as a transitional matter (**Schedule 1 [30]**), and consequential amendments are to be made to sections 31, 32, 37, 39 and 40 of the Act. (**Schedule 1 [3]–[9]**).

#### **Control of statutory health corporations and establishment of advisory councils**

Under Part 2 of Chapter 4 of the Act, statutory health corporations are currently controlled by health corporation boards and managed by their chief executives.

**Schedule 1 [16]** adds a new Division 2 to Part 2. The proposed Division, which provides for the establishment of chief executive governed health corporations as an alternative to the existing board governed health corporations, contains the following provisions:

**Proposed section 52A** provides for the appointment of a chief executive for each chief executive governed health corporation. The chief executive will not be subject to Chapter 2 of the *Public Sector Employment and Management Act 2002*, but will either be an executive officer within the proposed Health Executive Service or else have his or her conditions of employment determined in accordance with section 115.

**Proposed section 52B** provides that the affairs of a chief executive governed health corporation are to be managed and controlled by the chief executive, and that anything done by the chief executive in the name of, or on behalf of, the corporation is taken to have been done by the corporation.

**Proposed section 52C** provides that the chief executive of a chief executive governed health corporation may exercise additional functions but is, in the exercise of his or her functions, subject to the control and direction of the Director-General of the Department of Health.

**Proposed section 52D** provides for the establishment of an advisory council for each chief executive governed health corporation.

**Proposed section 52E** enables the chief executive to establish such committees and councils as he or she considers appropriate to assist the health corporation in the

exercise of its functions.

Schedule 2 to the Act, which lists the statutory health corporations, is to be substituted with a new Schedule that not only lists the corporations but also indicates whether they are chief executive governed or board governed (**Schedule 1 [28]**).

Under the proposed Schedule, which can be amended under section 42 of the Act, The Royal Alexandra Hospital for Children is proposed to be chief executive governed.

Consequential amendments are made to sections 41 and 42 of the Act (**Schedule 1 [10]–[12]**) to facilitate the future change of statutory health corporations from board governed to chief executive governed and vice versa.

Consequential amendments to sections 51 and 52 of the Act are also made with respect to the appointment and removal from office of chief executives for statutory health corporations that are to be board governed (**Schedule 1 [13]–[15]**).

Further amendments to sections 53, 58, 60 and 61 of the Act provide that the powers conferred on the Minister by those sections will in future be exercised by the Minister (in relation to board governed health corporations) and by the Director-General (in relation to chief executive governed health corporations) (**Schedule 1 [17]–[26]**).

#### **Establishment of Health Executive Service**

Chapter 9 of the Act deals with the NSW Health Service, which comprises persons employed by area health services, statutory health corporations and affiliated health organisations. **Schedule 1 [27]** adds a new Part 3 to Chapter 9. The proposed Part contains the following provisions:

**Proposed section 121A** defines various expressions for the purposes of the proposed Part.

**Proposed section 121B** provides that the Health Executive Service is to comprise the chief executives of the area health services and persons holding such offices in the NSW Health Service or the Health Administration Corporation as are designated as executive positions by the Health Administration Corporation (referred to collectively as *health executives*).

**Proposed section 121C** enables the Health Administration Corporation to make appointments (including acting appointments) to executive positions.

**Proposed section 121D** limits the term of a health executive's appointment to 5 years, but allows re-appointment.

**Proposed section 121E** provides for the employment of a health executive to be governed by a contract of employment between the health executive and the Health Administration Corporation.

**Proposed section 121F** requires a health executive's contract of employment to deal with the health executive's duties, monetary remuneration and employment benefits.

**Proposed section 121G** requires a health executive's performance to be subject to review, at least annually, by a person nominated by the Health Administration Corporation.

**Proposed section 121H** excludes matters relating to a health executive's employment from review under the *Industrial Relations Act 1996* and from review by the Government and Related Employees Appeal Tribunal or by any court.

**Proposed section 121I** defines certain expressions for the purposes of proposed sections 121J, 121K and 121L.

**Proposed section 121J** provides for remuneration packages to be determined by the Health Administration Corporation, for amounts not less than the minimum amounts determinable by the Statutory and Other Offices Remuneration Tribunal for public servants in the Senior Executive Service under the *Public Sector Employment and Management Act 2002*.

**Proposed section 121K** entitles a health executive to monetary remuneration and employment benefits in accordance with his or her contract of employment, the sum of each to total the health executive's remuneration package. The section also

provides for how the cost of an employment benefit is to be calculated.

**Proposed section 121L** entitles a health executive to such allowances as the Health Administration Corporation may determine in relation to the executive.

**Proposed section 121M** specifies the circumstances in which the position of a health executive becomes vacant.

**Proposed section 121N** authorises the Health Administration Corporation to remove a health executive from an executive position at any time and for any or no reason and without notice, and sets out the consequences of any such removal in relation to a former health executive's future employment in the Health Administration Corporation.

**Proposed section 121O** entitles a person who ceases to be a health executive (otherwise than for misbehaviour) to compensation to be determined by the Statutory and Other Offices Remuneration Tribunal. Such compensation will not exceed 38 weeks' worth of the person's former remuneration package. During the period to which compensation relates, the person will not be able to be employed in the public sector.

**Proposed section 121P** deals with a health executive's entitlements with respect to leave that the executive had accrued while formerly employed in the public sector.

**Proposed section 121Q** provides that an executive position is taken to be abolished when it ceases to be an executive position, but entitles the former holder of the position to the same rights as to compensation as if he or she had been removed from office.

**Proposed section 121R** provides that an executive position does not cease to be an executive position merely because its name is changed.

**Proposed section 121S** prohibits a health executive from undertaking paid work outside the duties of his or her executive position without the consent of the Health Administration Corporation.

**Proposed section 121T** provides that the proposed Part is to prevail over any inconsistent provisions of any other Act or law or of the terms of any person's appointment or contract.

An amendment is made to section 16 of the Act (**Schedule 1 [1]**) so as to provide that health executives, who will be employed by the Health Administration Corporation, will remain part of the NSW Health Service.

#### **Savings and transitional provisions**

Schedule 7 to the Act contains savings and transitional provisions. **Schedule 1 [30]** inserts a new Part at the end of Schedule 7 with respect to matters consequent on the enactment of the proposed Act. The proposed Part abolishes the existing area health boards, abolishes the health corporation board for The Royal Alexandra Hospital for Children (which is to become a chief executive governed health corporation) and provides that the current chief executive officers of the existing area health services, and current appointees to those offices, are to become the chief executives of those services in the proposed Health Executive Service. **Schedule 1 [29]** allows further provision of a savings or transitional nature to be made by regulations.

#### **Schedule 2 Consequential amendments to Health**

##### **Services Act 1997**

**Schedule 2** contains a number of amendments to the Act that are consequential on the amendments made by Schedule 1.

##### **Schedule 3 Amendments to Public Sector**

##### **Employment and Management Act 2002**

**Schedule 3 [1]** amends the definition of *public authority* in section 63 of the Act so as to make it clear that persons in the NSW Health Service are not eligible to become executive officers under Part 3.1.

**Schedule 3 [2]** amends section 77 (6) of the Act to reflect the fact that persons in the NSW Health Service will no longer be executive officers under Part 3.1.

**Schedule 3 [3]** amends Part 3 of Schedule 2 to the Act so as to omit a reference to the chief executive officer of an area health board. Pursuant to the proposed amendments to the *Health Services Act 1997 (Schedule 1 [27])*, holders of that office are to become executive officers in the proposed Health