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LEGISLATIVE ASSEMBLY

Northern Beaches Hospital (Voluntary Contract Termination) Bill 2025

First print

Proposed amendments

No. 1 **Termination of Northern Beaches Hospital Deed**

Page 2, clause 1, lines 3–4. Omit all words on the lines. Insert instead—

This Act is the *Health Services Amendment (Northern Beaches Hospital Deed Termination) Act 2025*.

No. 2 **Termination of Northern Beaches Hospital Deed**

Page 2, clause 2, line 6. Omit all words on the line. Insert instead—

This Act commences on a day or days to be appointed by proclamation.

No. 3 **Termination of Northern Beaches Hospital Deed**

Pages 2 and 3, clauses 3–5, line 7 on page 2 to line 25 on page 3. Omit all words on the lines. Insert instead—

Schedule 1 Amendment of Health Services Act 1997 No 154

Schedule 9

Insert after Schedule 8—

Schedule 9 Termination of Northern Beaches Hospital Deed

Part 1 Preliminary

1 Definitions

In this schedule—

appointed person—see clause 6(1).

Change has the same meaning as in the Northern Beaches Hospital Deed.

Change in Law has the same meaning as in the Northern Beaches Hospital Deed.

compensation includes—

- (a) damages, and
- (b) another form of monetary compensation, and
- (c) another amount, whether or not described as compensation, payable under this schedule or a legal instrument, including an agreement to which the State and the Healthscope NBH entities are parties, and
- (d) liability to make payments under this schedule or a legal instrument, including an agreement, to which the State and the Healthscope NBH entities are parties on occurrence of events specified in the legal instrument.

Default Termination Payment has the same meaning as in the Northern Beaches Hospital Deed.

Health Initiative has the same meaning as in the Northern Beaches Hospital Deed.

Healthscope NBH entities means the following—

- (a) NBH Operator Co Pty Ltd ACN 169 029 081 in its capacity as trustee of the NBH Operating Trust ABN 83 722 380 020,
- (b) NBH Operator B Pty Ltd ACN 602 943 911,
- (c) a successor party to the Northern Beaches Hospital Deed to a person referred to in paragraphs (a) and (b), other than a person approved by the Minister.

legal instrument means the following—

- (a) an Act, including this Act,
- (b) a regulation, ordinance, rule, by-law, proclamation, order, notice, notification or other instrument made under an Act, including this Act,
- (c) a contract or agreement, whether oral or in writing or both,
- (d) a deed or other instrument having legal effect.

NBH State Counter-parties means—

- (a) the Health Administration Corporation, and
- (b) the Northern Sydney Local Health District.

Northern Beaches Hospital Deed means the deed, entitled *Project Deed—Northern Beaches Hospital*, entered into on 11 December 2014, between the NBH State Counter-parties and the Healthscope NBH entities for Northern Beaches Hospital in Frenchs Forest, as amended from time to time.

Operator Termination Event has the same meaning as in the Northern Beaches Hospital Deed.

Parent Company Guarantee means the document entitled *Parent Company Guarantee* entered into on 11 December 2014, between the NBH State Counter-parties and Healthscope Operations Pty Ltd ACN 006 405 152, as amended from time to time.

Private Patient Portion has the same meaning as in the Northern Beaches Hospital Deed.

Project has the same meaning as in the Northern Beaches Hospital Deed.

Project Documents has the same meaning as in the Northern Beaches Hospital Deed.

Qualifying Change in Law has the same meaning as in the Northern Beaches Hospital Deed.

relevant compensation—see clause 7(1).

statutory termination notice—see clause 2(1).

Termination Notice has the same meaning as in the Northern Beaches Hospital Deed.

the State—

- (a) means the Crown within the meaning of the *Crown Proceedings Act 1988*, and
- (b) includes—
 - (i) the Health Administration Corporation, and
 - (ii) the Northern Sydney Local Health District, and
 - (iii) an officer, employee or agent of the Crown or a body referred to in subparagraph (i) or (ii).

Part 2 Statutory termination of deed

2 Termination by Minister by notice

- (1) The Minister may issue a termination notice to the Healthscope NBH entities (a **statutory termination notice**).
- (2) The statutory termination notice—
 - (a) on the date specified in the statutory termination notice, terminates—
 - (i) the Project in accordance with the Northern Beaches Hospital Deed, clause 81.1(a), or
 - (ii) the Project but allows the Healthscope NBH entities to continue operating the Private Patient Portion in accordance with the Northern Beaches Hospital Deed, clause 81.1(b), and
 - (b) is taken to be a validly issued Termination Notice and election under and for the purpose of the Northern Beaches Hospital Deed, clauses 78.2(a) and 81.1, and the Project Documents, that was issued after an Operator Termination Event had occurred.
- (3) If a statutory termination notice is issued, an Operator Termination Event under and for the purpose of the Northern Beaches Hospital Deed, and the Project Documents, is taken to have occurred and to be subsisting at all times after the issue of the notice.
- (4) A dispute resolution provision of the Northern Beaches Hospital Deed does not apply in relation to the following—
 - (a) a dispute arising from the issue of the statutory termination notice, including a dispute about compensation payable under the Northern Beaches Hospital Deed,
 - (b) a dispute about compensation arising from the issue of the statutory termination notice.
- (5) No liability is incurred by the State, and no claim, action or demand may be made or taken against the State, whether under the Northern Beaches Hospital Deed, a Project Document or otherwise, by any person in relation to or arising out of the issue of the statutory termination notice, other than for a Default Termination Payment if the amount of the payment, when calculated under the Northern Beaches Hospital Deed is positive.
- (6) However, the liability incurred by the State for a Default Termination Payment is reduced by the following amounts—
 - (a) a payment of compensation under clause 3,

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- (b) other amounts payable to the NBH State Counter-parties under the Northern Beaches Hospital Deed or a Project Document.
 - (7) The regulations may provide that other provisions of the Northern Beaches Hospital Deed or a Project Document do not apply in the event of the issue of the statutory termination notice.

Part 3 Compensation arising from termination

3 Compensation payable

- (1) On the issue of the statutory termination notice, the Healthscope NBH entities are liable to pay to the NBH State Counter-parties the following compensation—
 - (a) handover costs, including transition costs and remediation costs, being the costs expected to be reasonably incurred by the State in assuming control of Northern Beaches Hospital, or a part of it, and transitioning the operation of the hospital, or a part of it, to—
 - (i) the public health system, or
 - (ii) another person or body, and
 - (b) other costs prescribed by the regulations.
- (2) The regulations may specify costs that are and are not handover costs for subclause (1)(a).
- (3) The compensation payable under subclause (1) is in addition to any amount payable by the Healthscope NBH entities to the NBH State Counter-parties under the Northern Beaches Hospital Deed.
- (4) However, if the NBH State Counter-parties are entitled to, and recover, an amount under the Northern Beaches Hospital Deed for specific handover costs, however described, the NBH State Counter-parties are not entitled to recover an amount under this clause for the same handover costs.
- (5) An amount of compensation owed by the Healthscope NBH entities to the NBH State Counter-parties under this clause must be set off against any amount owing by the NBH State Counter-parties to the Healthscope NBH entities under the Northern Beaches Hospital Deed.

4 Negotiation for compensation

After the issue of the statutory termination notice, the NBH State Counter-parties and the Healthscope NBH entities must negotiate to ascertain an agreed amount of compensation payable under this schedule and the Northern Beaches Hospital Deed.

5 Healthscope NBH entities or NBH State Counter-parties may request determination of compensation

- (1) The Healthscope NBH entities or the NBH State Counter-parties may, by written notice to the Treasurer and in accordance with the regulations, request a determination of the compensation under this schedule and the Northern Beaches Hospital Deed.
- (2) The Healthscope NBH entities and the NBH State Counter-parties must not make the request unless—
 - (a) negotiations have been unsuccessful, and
 - (b) a period of at least 30 days, or another period specified by the Treasurer by written order given to the Healthscope NBH entities and the NBH State Counter-parties, has elapsed since the issue of the statutory termination notice.

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- (3) To avoid doubt, for subclause (2)(b), the Treasurer may specify the other period before or after the 30 day period, or another specified period, has elapsed.
 - (4) Only a single request may be made under subclause (1).

6 Appointment of person to determine compensation

- (1) As soon as practicable after receiving a request under clause 5, the Treasurer must appoint a person who meets the eligibility criteria set out in subclause (2) to determine the compensation (the *appointed person*).
- (2) The Treasurer must appoint a person who has—
 - (a) appropriate qualifications or experience to determine the relevant compensation, and
 - (b) no pecuniary or other interest that appears to raise a conflict with the proper exercise of the appointed person's functions under this Act.

7 Determination of compensation

- (1) The appointed person must determine the amount of compensation payable under this schedule and the Northern Beaches Hospital Deed (the *relevant compensation*).
- (2) The appointed person must determine the relevant compensation within—
 - (a) 6 months of being appointed, or
 - (b) another period prescribed by the regulations.
- (3) In determining the relevant compensation, the appointed person may—
 - (a) by written order, direct the following to give the appointed person the documents and information specified in the written order, including financial advice, within the period specified in the written order, being not less than 14 days—
 - (i) the State,
 - (ii) a Healthscope NBH entity,
 - (iii) another person, and
 - (b) consider the documents and information given in response to a direction, and
 - (c) consider any other matters the appointed person considers relevant.
- (4) The State must comply with a direction.
- (5) A person, other than the State, must not contravene a direction.
Maximum penalty—100 penalty units.
- (6) A person may, despite another legal instrument or law, disclose to the appointed person, and the appointed person may use, documents and information given under subclause (3).

8 Payment of compensation

- (1) An amount of compensation payable under this schedule and the Northern Beaches Hospital Deed that is agreed between the parties or is determined under this schedule must be paid within 60 days of the agreement or determination, or a longer period prescribed by the regulations.

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- (2) The NBH State Counter-parties may recover compensation referred to in subclause (1) from the Healthscope NBH entities as a debt due in a court of competent jurisdiction.
 - (3) An amount of compensation referred to in subclause (1) payable by the Healthscope NBH entities is taken to be Guaranteed Money under the Parent Company Guarantee.

Part 4 Miscellaneous

9 Regulations

Regulations may be made about the following matters—

- (a) the modification of the Northern Beaches Hospital Deed or a Project Document,
- (b) the appointment of the appointed person under Part 3, including the following—
 - (i) the required qualifications and experience,
 - (ii) the terms and conditions of the appointment,
 - (iii) remuneration,
- (c) the functions of the appointed person,
- (d) the matters that must and must not be considered by the following—
 - (i) the NBH State Counter-parties and the Healthscope NBH entities in negotiating the amount of compensation under clause 4,
 - (ii) the appointed person in determining the relevant compensation,
- (e) the use and disclosure of information obtained by the appointed person, including information obtained from the State and other persons,
- (f) dispute resolution procedures for disputes between the Healthscope NBH entities and the State, including disputes in relation to the amount payable under this schedule and the Northern Beaches Hospital Deed.

10 Directions by Minister

- (1) The Minister may, by order given to the Healthscope NBH entities or another person, direct the Healthscope NBH entities or the other person to do, or not do, a thing that, in the Minister's opinion, will assist in one or more of the following—
 - (a) assuming control of Northern Beaches Hospital, or a part of it,
 - (b) transitioning the operation of Northern Beaches Hospital, or a part of it, to the public health system or another person or body,
 - (c) ensuring that services will continue to be delivered at Northern Beaches Hospital in a safe and appropriate manner.
- (2) A direction must not be given after 12 months after the termination of the Northern Beaches Hospital Deed or a longer period prescribed by the regulations.
- (3) A person must not contravene a direction.
Maximum penalty—100 penalty units.
- (4) To avoid doubt—

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- (a) a direction may be given whether or not a statutory termination notice has been issued, and
 - (b) a person may comply with a direction, despite another legal instrument or law, including the *Private Health Facilities Act 2007*.

11 Enactment of schedule and other actions not a Change, Change in Law or Health Initiative

To avoid doubt, the occurrence of the following is not a Change, a Change in Law, including a Qualifying Change in Law, or a Health Initiative—

- (a) the enactment of the *Health Services Amendment (Northern Beaches Hospital Deed Termination) Act 2025*,
- (b) the making of regulations under this schedule,
- (c) the issue of a statutory termination notice,
- (d) the giving of a direction by the Minister under this schedule or the regulations made under this schedule.

12 Exercise of functions

For this schedule—

- (a) a function conferred or imposed on the NBH State Counter-parties may be exercised by any one of the NBH State Counter-parties, and
- (b) a function conferred or imposed on the Healthscope NBH entities may be exercised by any one of the Healthscope NBH entities.

13 Application of other Acts

To avoid doubt, the *Land Acquisition (Just Terms Compensation) Act 1991* does not apply to a termination, or an action under a termination under this schedule.

14 Effect of schedule

This schedule, and anything done under this schedule, has effect despite—

- (a) other provisions of this Act, or
- (b) another Act or law, or
- (c) another legal instrument, including an agreement to which the State and the Healthscope NBH entities are parties.

No. 4 **Long title**

Omit “to provide that no compensation is payable by or on behalf of the State by reason, or on the occurrence, of the voluntary termination by the State of the contract for the operation of the Northern Beaches Hospital;”.

Insert instead “to amend the *Health Services Act 1997* to provide for the statutory termination of the Northern Beaches Hospital Deed;”.