First print

New South Wales

Health Legislation Amendment Bill 2017

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

(a) to amend the *Health Administration Act 1982* to establish new procedures for dealing with reportable incidents and other incidents and to make a consequential amendment to the *Government Information (Public Access) Act 2009* to protect information arising from reviews of those incidents,

(b) to amend the *Health Services Act 1997* to change the name of the Ambulance Services Advisory Council to the Ambulance Service Advisory Board, to require the Secretary of the Ministry of Health (the ***Health Secretary***) (instead of the Minister for Health) to appoint persons to the Board, to provide that local health district boards must not exercise functions inconsistently with the exercise of functions by the Health Secretary and to provide that the employment of a NSW Health Service senior executive may not be terminated without the concurrence of the Health Secretary,

(c) to amend the *Human Tissue Act 1983* to enable persons (other than medical practitioners) appointed by the Health Secretary to remove tissue from the body of deceased persons,

(d) to amend the *Mental Health Act 2007* to enable the Mental Health Review Tribunal to hear reviews and electro convulsive therapy inquiries in the absence of a patient or person in certain circumstances if the patient or person refuses to attend or is too unwell to attend,

(e) to amend the *Mental Health (Forensic Provisions) Act 1990* to require regular reviews by the Mental Health Review Tribunal of persons (other than forensic patients) who are subject to community treatment orders and who are detained in correctional centres and to provide

for the apprehension of forensic patients and correctional patients who breach conditions of leave from mental health facilities,

(f) to amend the *Government Sector Employment Act 2013* to clarify that the Health Secretary may terminate the employment of a health executive for unsatisfactory performance.

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 the date of assent to the proposed Act, except for Schedules 1, 4, 5 and 7 which commence on proclamation.

Schedule 1 Amendment of Health Administration Act 1982 No 135

Schedule 1 [2] inserts proposed Part 2A into the *Health Administration Act 1982* (the ***principal Act***) to establish new procedures for dealing with incidents involving relevant health services organisations. **Schedule 1 [1]** contains a consequential amendment.

Proposed Division 1 of Part 2A includes a number of definitions to be used in the proposed Part and also specifies the incidents to which the proposed Part applies. These incidents are those involving the provision of health services by local health districts, prescribed statutory health corporations or prescribed affiliated health organisations (in which case the ***relevant health services organisation*** in respect of the incident is the local health district, prescribed statutory health corporation or prescribed affiliated health organisation) and incidents involving the provision of health services under Chapter 5A of the *Health Services Act 1997* or the provision of services under Part 1A of Chapter 10 of that Act (in which case the ***relevant health services organisation*** in respect of the incident is the Secretary of the Ministry of Health (the ***Health Secretary***)).

Proposed Division 2 of Part 2A requires a relevant health services organisation to direct one or more assessors appointed by the organisation to carry out a preliminary risk assessment of an incident that has been reported to the organisation if the organisation is of the opinion that the incident is (or may be) a type prescribed by the regulations under the principal Act as a ***reportable incident*** or if the incident is not a reportable incident but may be the result of a serious systemic problem and the organisation is of the opinion that a preliminary risk assessment of the incident should be carried out. The assessor is to carry out a preliminary risk assessment of the incident and is to provide advice to the organisation about the incident to assist the organisation in understanding the cause of the incident and the measures to be taken. An assessor must immediately notify the organisation if the assessor is of the opinion that the incident raises matters that indicate a problem giving rise to a risk of serious or imminent harm to a person.

Proposed Division 3 of Part 2A requires a relevant health services organisation to appoint one or more persons to a serious adverse event review team to carry out a serious adverse event review of an incident if the incident is a reportable incident or the incident is not a reportable incident but may be the result of a serious systemic problem and the organisation is of the opinion that a serious adverse event review of the incident should be carried out. The team is to report to the organisation findings identified by the team as to how the incident occurred, any factors contributing to the incident and any procedures, practices or systems that could be reviewed. After considering the findings the organisation may direct the team to prepare a report setting out the team's recommendations. If the team forms the opinion that the incident raises matters that may involve professional misconduct or unsatisfactory professional conduct by a health practitioner, or may indicate that a health practitioner is suffering from an impairment, it must notify the organisation as soon as practicable. A team must immediately notify the organisation if it is of the opinion that the incident raises matters that indicate a problem giving rise to a risk of serious or imminent harm to a person.

Proposed Division 4 of Part 2A places some general limitations on ***incident reviewers*** (being members of serious adverse event review teams and assessors) relating to the recording and disclosure of information and the requirement to act in a fair and reasonable manner. It also makes it clear that an incident reviewer does not have authority to carry out an investigation relating to the competence of an individual. Certain information and documents relating to preliminary risk assessments, serious adverse event reviews or clinical incident reviews cannot be used in evidence in courts and other proceedings. Incident reviewers are also protected from personal liability.

Proposed Division 5 of Part 2A sets out how an incident is reported to a relevant health services organisation and permits regulations to be made for the purposes of proposed Part 2A.

Schedule 1 [4] inserts a number of savings and transitional provisions relating to incidents occurring, and RCA teams created, before the commencement of proposed Part 2A.

Schedule 1 [3] permits regulations to be made under the *Health Administration Act 1982* containing savings and transitional provisions consequent on any Act that amends that Act (including the proposed Act).

Schedule 2 Amendment of Health Services Act 1997 No 154

Schedule 2 [1] provides that a local health district board must not exercise a function in a way that is inconsistent with the exercise of a function by the Health Secretary (including a function that has been delegated to the Health Secretary).

Schedule 2 [2] changes the name of the Ambulance Services Advisory Council to the Ambulance Service Advisory Board (the ***Board***). **Schedule 2 [3], [7], [8] and [11]** make consequential amendments.

Schedule 2 [4] removes the requirement for the Minister for Health to appoint persons to the Board and instead requires the Health Secretary to appoint persons to the Board.

Schedule 2 [5] requires persons appointed to the Board to have, in the opinion of the Health Secretary, expertise and experience in health management, financial management, health services or business management and removes a requirement that at least 3 of the persons appointed must be members of the Ambulance Service of NSW. **Schedule 2 [9] and [10]** make consequential amendments (including enabling the Health Secretary to determine the remuneration of persons appointed to the Board).

Schedule 2 [6] provides that a person who exercises employer functions in relation to a NSW Health Service senior executive may not terminate the employment of the executive under section 121H of the *Health Services Act 1997* or section 68 (2) of the *Government Sector Employment Act 2013* unless the employer is, or has the concurrence of, the Health Secretary.

Schedule 2 [12] inserts a savings provision to make it clear that the proposed amendments made in relation to the Ambulance Service Advisory Board by the proposed Act do not terminate an existing member's appointment.

Schedule 3 Amendment of Human Tissue Act 1983 No 164

Schedule 3 [1]–[3] and [5] update references to the Director-General of the Department of Health and to the Director-General of the Department of Family and Community Services.

Section 27 (1A) enables a person other than a medical practitioner to remove certain tissue from the body of a deceased person referred to in an authority for that purpose if the person is appointed by the Health Secretary to remove that tissue and is not the person by whom the authority was given. **Schedule 3 [4]** extends that provision to include the removal of tissue for the purpose of skin transplantation and any other purpose prescribed by the regulations.

Schedule 4 Amendment of Mental Health Act 2007 No 8

Schedule 4 [1], [3] and [5] have the effect of enabling the Mental Health Review Tribunal (the ***Tribunal***) to hear reviews and ECT inquiries (***hearings***) in the absence of the person to whom the hearing relates in certain circumstances. An authorised medical officer may apply to have the hearing heard in the absence of the person if the person has refused to attend the hearing or because the officer is of the opinion that the person is too unwell to attend the hearing. The Tribunal must be satisfied that the person has refused to attend or is too unwell to attend, that the person's ***representative*** (being an Australian legal practitioner or other person approved by the Tribunal to represent the person at the hearing) has been notified and that it has considered the views (if known) of the person, the person's representative, the designated carer of the person and the principal care provider of the person. Finally, the Tribunal must be of the opinion that conducting the hearing in the absence of the person is desirable for the safety or welfare of the person. In the case of an ECT inquiry the Tribunal is not required to be satisfied that the person's representative has been notified if the Tribunal is satisfied that reasonable steps have been taken to notify the representative. **Schedule 4 [9]** makes a consequential amendment to ensure that the rights to representation are the same for a patient or person who is absent from proceedings as for a patient or person who appears before the Tribunal. **Schedule 4 [6]–[8]** make consequential amendments to allow the Tribunal to take reasonable steps to carry out certain procedures for the purposes of an ECT inquiry (in circumstances where the patient is absent from the inquiry).

Schedule 4 [2] makes it clear that a person who apprehends a person who is absent from a mental health facility does not have to convey that person directly to the mental health facility from which the person absented himself or herself but can instead convey the person to another mental health facility from which the person will be conveyed to the mental health facility from which the person absented himself or herself.

Schedule 4 [4] requires a designated carer or principal care provider of a person to be notified of matters before the Tribunal involving the person.

Schedule 5 Amendment of Mental Health (Forensic Provisions) Act 1990 No 10

Schedule 5 [1] updates a definition of ***correctional patient*** to take account of the different ways in which a person can cease to be a correctional patient.

Schedule 5 [2] requires the Mental Health Review Tribunal to review the case of each person (not being a forensic patient) who is subject to a community treatment order and who is detained in a correctional centre no longer than 3 months after the order is made and at least once every 6 months during the term of the order.

Schedule 5 [3] makes it clear that a person does not cease to be a correctional patient if the person is transferred between mental health facilities.

Schedule 5 [4] makes it clear that a requirement that a person be discharged from a mental health facility on the person ceasing to be a correctional patient does not apply if the reason that the person ceased to be a correctional patient was because the person was reclassified as an involuntary patient.

Schedule 5 [5] permits an authorised medical officer of a mental health facility to apprehend a person, or direct a person be apprehended if the person fails to return to the facility at the end of a period of leave of absence or fails to comply with a condition to which that grant of leave was subject. Persons including police officers are authorised to apprehend the person and, in the case of a police officer, may enter premises to do so. **Schedule 5 [6]** inserts savings and transitional provisions.

Schedule 6 Amendment of Government Sector Employment Act 2013 No 40

Schedule 6 makes it clear that the Health Secretary, who is authorised to terminate the employment of a NSW Health Service senior executive under section 121H of the *Health Services Act 1997* for any reason (including misconduct), even though the Health Secretary is not the employer of the executive, may also terminate the employment of an executive for unsatisfactory performance.

Schedule 7 Amendment of Government Information (Public Access) Act 2009 No 52

Schedule 7 provides that it is to be conclusively presumed that there is an overriding public interest against disclosure of information if the disclosure of that information is prohibited under proposed Part 2A of the *Health Administration Act 1982* (as inserted by Schedule 1 [2]).

First print

New South Wales

Health Legislation Amendment Bill 2017

Contents

New South Wales

Health Legislation Amendment Bill 2017

No , 2017

A Bill for

An Act to make miscellaneous amendments to various Acts that relate to health and associated matters.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Health Legislation Amendment Act 2017*.

2 Commencement

(1) This Act commences on the date of assent to this Act, except as provided by subsection (2).

(2) Schedules 1, 4, 5 and 7 commence on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Health Administration Act 1982 No 135

[1] Part 2, Division 6C Root cause analysis teams

Omit the Division.

[2] Part 2A

Insert after Part 2:

Part 2A Response to incidents

Division 1 Preliminary

21A Definitions

In this Part:

assessor means an assessor appointed under Division 2.

health practitioner has the same meaning it has in the *Health Practitioner Regulation National Law (NSW)*.

health service includes any administrative or other service related to a health service.

impairment has the same meaning it has in the *Health Practitioner Regulation National Law (NSW)*.

incident reviewer—see section 21L.

performance or impairment issue, in relation to a health practitioner, means:

(a) professional misconduct, unsatisfactory professional conduct or unsatisfactory professional performance by the health practitioner, or

(b) the health practitioner suffering from an impairment.

professional misconduct and ***unsatisfactory professional conduct*** have the same meanings as they have in Part 8 of the *Health Practitioner Regulation National Law (NSW)*.

relevant health services organisation—see section 21B.

reportable incident means an incident of a type prescribed by the regulations or set out in a document adopted by the regulations.

serious adverse event review means a root cause analysis or any other type of review prescribed by the regulations.

serious adverse event review team means a serious adverse event review team appointed under Division 3.

unsatisfactory professional performance means professional performance that is unsatisfactory within the meaning of Division 5 of Part 8 of the *Health Practitioner Regulation National Law (NSW)*.

21B Incidents to which Part applies

This Part applies to the following incidents:

(a) an incident involving the provision of a health service by a local health district, in which case the ***relevant health services organisation*** in respect of the incident is the local health district,

(b) an incident involving the provision of a health service by a statutory health corporation prescribed by the regulations, in which case the

relevant health services organisation in respect of the incident is the statutory health corporation,

(c) an incident involving the provision of a health service by an affiliated health organisation prescribed by the regulations, in which case the ***relevant health services organisation*** in respect of the incident is the affiliated health organisation,

(d) an incident involving the provision of a health service under Chapter 5A (Ambulance services) of the *Health Services Act 1997* or the provision of a service under Part 1A of Chapter 10 of that Act, in which case the ***relevant health services organisation*** in respect of the incident is the Health Secretary.

Division 2 Preliminary risk assessment

21C Appointment of assessors to assess incidents

(1) When an incident is reported to the relevant health services organisation in respect of the incident, the organisation must appoint one or more assessors to carry out a preliminary risk assessment of the incident if:

(a) it is of the opinion that the incident is (or may be) a reportable incident, or

(b) the incident is not a reportable incident but may be the result of a serious systemic problem and the organisation is of the opinion that a preliminary risk assessment of the incident should be carried out.

(2) Assessors may be appointed in response to a particular incident or otherwise.

(3) The persons appointed as assessors in respect of an incident must (subject to the regulations) be persons that the relevant health services organisation reasonably considers can properly carry out a preliminary risk assessment of the incident.

21D Functions of assessors in relation to incidents

An assessor is to carry out a preliminary risk assessment of the incident and is to provide advice (in writing or otherwise) to the relevant health services organisation to assist the organisation in understanding the events comprising the incident and the measures required to appropriately manage the incident and remove or mitigate any risk.

21E Immediate notification if person at risk

An assessor must immediately advise the relevant health services organisation in writing if the assessor is of the opinion that the incident in respect of which the assessor was appointed raises matters that indicate a problem giving rise to a risk of serious or imminent harm to a person.

21F Outcome of assessment of incidents

(1) A relevant health services organisation may only disclose an advice of an assessor or any information obtained from the advice as follows:

(a) to provide the advice to the Health Secretary,

(b) to notify any person or body authorised under section 23 of the incident,

(c) to advise a serious adverse event review team appointed to carry out a serious adverse event review of the incident to which the advice relates,

(d) to provide relevant information to a patient involved in the incident, a family member or carer of the patient or a person nominated by any such patient, family member or carer,

(e) to a law enforcement agency or regulatory body,

(f) in any other manner as may be prescribed by the regulations.

(2) A relevant health services organisation must take reasonable steps to not disclose information that identifies a person (other than the patient involved in the incident) when it provides information under subsection (1) (d).

Division 3 Serious adverse event review

21G Appointment of team to review incidents

(1) Following the preliminary risk assessment of an incident, the relevant health services organisation in respect of the incident must appoint one or more persons as a serious adverse event review team to carry out a serious adverse event review of the incident if:

(a) the incident is a reportable incident, or

(b) the incident is not a reportable incident but may be the result of a serious systemic problem and the organisation is of the opinion that a serious adverse event review of the incident should be carried out.

(2) Despite subsection (1), a relevant health services organisation may, but is not required to, appoint a serious adverse event review team to carry out a serious adverse event review of an incident:

(a) in circumstances prescribed by the regulations, or

(b) if the Health Secretary has informed the organisation that the Health Secretary intends to conduct a review of, or an inquiry into, the incident.

(3) The persons appointed as a serious adverse event review team in respect of an incident must (subject to the regulations) be persons that the relevant health services organisation reasonably considers can properly carry out a serious adverse event review of the incident.

(4) The relevant health services organisation is to cause a written record to be kept of the persons appointed as a serious adverse event review team.

(5) The Health Secretary may issue directions setting out the type of serious adverse event review, and the manner in which the serious adverse event review is to be carried out, in respect of an incident or a class of incidents.

21H Serious adverse event review of incident

(1) A serious adverse event review team is to carry out a serious adverse event review of the incident in respect of which it was appointed.

(2) A serious adverse event review team must, on completion of the serious adverse event review of an incident, provide a report in writing to the relevant health services organisation that sets out a description of the incident and details of the following findings identified by the team:

(a) how the incident occurred,

(b) any factors that caused or contributed to the incident,

(c) any procedures, practices or systems that could be reviewed (***areas for review findings***) for the purposes of a recommendations report.

(3) After considering the findings of the serious adverse event review team, the relevant health services organisation may (and must if the findings include areas for review findings) direct the team to prepare a report (a ***recommendations report***) setting out its recommendations (if any) as to the need for changes or improvements in relation to a procedure, practice or system (including clinical redesign) arising out of the incident.

(4) The relevant health services organisation may, for the purposes of the preparation of a recommendations report, appoint additional persons to the serious adverse event review team.

(5) The serious adverse event review team must provide the recommendations report in writing to the relevant health services organisation.

(6) Subject to section 21O (Information not to be given in evidence), the contents of a report of a reviewer under this section may be disclosed to any person and used for any purpose.

21I Immediate notification if person at risk

A serious adverse event review team must immediately advise the relevant health services organisation in writing if it is of the opinion that the incident in respect of which it was appointed raises matters that indicate a problem giving rise to a risk of serious or imminent harm to a person.

21J Notification about performance or impairment of health practitioner

(1) A serious adverse event review team must advise the relevant health services organisation in writing as soon as practicable once it is of the opinion that the incident in respect of which it was appointed raises matters that may involve a performance or impairment issue (other than unsatisfactory professional performance) in relation to a health practitioner.

(2) A serious adverse event review team may advise the relevant health services organisation in writing if it is of the opinion that the incident raises matters that may involve unsatisfactory professional performance by a health practitioner.

(3) A written advice under this section must disclose the identity of the health practitioner to whom the notification relates (regardless of whether the health practitioner consents to the disclosure) and the nature of the concern, and specify whether the notification relates to:

(a) professional misconduct, unsatisfactory professional conduct or unsatisfactory professional performance by the health practitioner, or

(b) the health practitioner suffering from an impairment.

21K Discontinuing serious adverse event review

(1) The relevant health services organisation may authorise a serious adverse event review team to discontinue taking any further steps in relation to a serious adverse event review of an incident:

(a) if advice has been provided to the organisation under section 21J (Notification about performance or impairment of health practitioner) and the organisation is of the opinion that the incident was substantially caused by a performance or impairment issue in relation to a health practitioner and the team is not likely to identify any other root causes, contributory factors or system improvements, or

(b) in circumstances prescribed by the regulations.

(2) A serious adverse event review team that is authorised under this section may, if it considers it to be appropriate, determine to take no further steps in relation to the serious adverse event review and in such a case may discontinue the review.

Division 4 Incident reviewers

21L Meaning of "incident reviewer"

In this Part:

incident reviewer means a member of a serious adverse event review team or an assessor.

21M Restrictions on incident reviewers

(1) An incident reviewer does not have authority to carry out an investigation relating to the competence of an individual in providing services.

(2) Except as otherwise provided by or under this Part, an advice or report furnished by a serious adverse event review team must not disclose:

(a) the name or address of an individual who is a provider or recipient of services unless the individual has consented in writing to that disclosure, or

(b) as far as is practicable, any other material that identifies, or may lead to the identification of, such an individual.

(3) An incident reviewer is to act in a fair and reasonable manner in the exercise of his or her functions as an incident reviewer.

21N Disclosure of information

A person who is or was an incident reviewer must not make a record of, or divulge or communicate to any person, any information acquired by the person as such a reviewer, except:

(a) for the purpose of exercising the functions of an incident reviewer, or

(b) for the purpose of any advice provided as an incident reviewer, or

(c) for the purpose of any advice or report under this Part, or

(d) in accordance with the regulations.

Maximum penalty: 50 penalty units.

21O Information not to be given in evidence

(1) A person is neither competent nor compellable to produce any document or disclose any communication (or to disclose any information that the person obtained from any such document or communication) to a court, tribunal, board, person or body if the document was prepared, or the communication was made, for the dominant purpose of the exercise of a function under this Part by an incident reviewer.

(2) This section does not apply to a requirement made:

(a) in proceedings in respect of any act or omission by an incident reviewer, or

(b) by a person or body who has been approved by the Health Secretary to carry out a review or audit of an assessment or review by an incident reviewer.

21P Advice and reports not to be admitted in evidence

(1) Evidence as to the contents of an advice or report of an incident reviewer cannot be adduced or admitted in any proceedings.

(2) Subsection (1) does not apply to proceedings in respect of any act or omission by an incident reviewer.

21Q Personal liability of incident reviewers

(1) Anything done by an incident reviewer or any person acting under the direction of an incident reviewer, in good faith for the purposes of the exercise of the incident reviewer's functions, does not subject the incident reviewer or person personally to any action, liability, claim or demand.

(2) Without limiting subsection (1), an incident reviewer has qualified privilege in proceedings for defamation in respect of:

(a) any statement made orally or in writing in the exercise of the functions of an incident reviewer, or

(b) the contents of any advice or report or other information published by an incident reviewer.

(3) An incident reviewer is, and is entitled to be, indemnified in respect of any costs incurred in defending proceedings in respect of a liability against which the reviewer is protected by this section by the relevant health services organisation in respect of the incident for which the incident reviewer was appointed.

Division 5 Miscellaneous

21R When incident is reported to relevant health services organisation

(1) An incident is reported to a relevant health services organisation (other than the Health Secretary) when the incident is reported to:

(a) the chief executive of the organisation, or

(b) if the incident reporting procedures of the organisation specify another person to whom incidents are to be reported—that other person.

(2) An incident is reported to the Health Secretary when it is reported to the Health Secretary or to a person nominated by the Health Secretary for the purposes of this Part.

21S Regulations for purposes of Part

The regulations may make provision for or with respect to the following:

(a) the appointment of persons as members of a serious adverse event review team or as assessors,

(b) the functions of incident reviewers and the manner in which they are to exercise those functions,

(c) the procedures of a preliminary risk assessment or a serious adverse event review,

(d) permitting or requiring incident reviewers or a relevant health services organisation to make specified information (including personal information and health information) available to the public,

(e) permitting or requiring incident reviewers to furnish reports concerning their activities to the Minister and to relevant health services organisations,

(f) the carrying out of reviews or audits of any preliminary risk assessment or serious adverse event review.

[3] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 13 (1):

any Act that amends this Act

[4] Schedule 2, Part 4

Insert after Part 3:

Part 4 Provisions consequent on enactment of Health Legislation Amendment Act 2017

20 Definition

In this Part:

amending Act means the *Health Legislation Amendment Act 2017*.

21 Existing incidents

Part 2A of this Act extends to an incident that occurred before the commencement of that Part.

22 Existing RCA teams

Despite clause 21, Part 2A of this Act does not extend to an incident if an RCA team has been appointed in relation to the incident before the commencement of that Part and in such a case Division 6C of Part 2, as in force immediately before its repeal, continues to apply to and in respect of the RCA team.

23 Disclosure of information

Section 21N extends to a person who was a member of an RCA team before the commencement of that section in the same way as it applies to an incident reviewer but only in respect of information that the person was not able to make a record of, or divulge or communicate to any person under section 20P immediately before the repeal of that section.

24 Information not to be given in evidence

Section 21O extends to:

(a) a document that was prepared, or a communication that was made, before the commencement of that section for the dominant purpose of the conduct of an investigation by an RCA team, and

(b) proceedings that are pending on that commencement.

25 Notifications and reports of former RCA teams not to be admitted in evidence

Section 21P extends to:

(a) a notification that was given, or a report that was prepared, before the commencement of that section by an RCA team, and

(b) proceedings that are pending on that commencement.

26 Personal liability of members of former RCA teams

Section 21Q extends to a person who was a member of an RCA team before the commencement of that section or to a person acting under the direction of

any such person in the same way as that section applies to an incident reviewer or any person acting under the direction of an incident reviewer.

Schedule 2 Amendment of Health Services Act 1997 No 154

[1] Section 28 Functions of local health district boards

Insert at the end of the section:

(2) A local health district board must not exercise a function in a way that is inconsistent with the exercise of a function by the Health Secretary (including a function that has been delegated to the Health Secretary).

[2] Section 67C Ambulance Service Advisory Board

Omit "Ambulance Services Advisory Council" from section 67C (1).

Insert instead "Ambulance Service Advisory Board (the ***Advisory Board***)".

[3] Section 67C (2), (5), (6) and (7)

Omit "Advisory Council" wherever occurring. Insert instead "Advisory Board".

[4] Section 67C (2) (b)

Omit "Minister". Insert instead "Health Secretary".

[5] Section 67C (3)

Omit section 67C (3) and (4). Insert instead:

(3) The persons appointed as members of the Advisory Board are to be persons who, in the opinion of the Health Secretary, have expertise and experience in one or more of the following areas:

(a) health management,

(b) financial management,

(c) clinical paramedic services or other health services,

(d) business management.

[6] Section 121H Termination of employment

Omit section 121H (5). Insert instead:

(5) The employer of a NSW Health Service senior executive may not terminate the employment of the executive under this section or section 68 (2) of the *Government Sector Employment Act 2013* unless the employer is, or has the concurrence of, the Health Secretary.

[7] Schedule 6, heading

Omit "**Ambulance Services Advisory Council**".

Insert instead "**Ambulance Service Advisory Board**".

[8] Schedule 6

Omit "Advisory Council" wherever occurring. Insert instead "Advisory Board".

[9] Schedule 6

Omit "Minister" wherever occurring. Insert instead "Health Secretary".

[10] Schedule 6, clause 4

Omit the clause. Insert instead:

4 Term of office

An appointed member holds office, subject to this Schedule, for such period not exceeding 4 years as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

[11] Schedule 6

Omit "the Council" wherever occurring. Insert instead "the Board".

[12] Schedule 7 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Health Legislation Amendment Act 2017

Existing members of Ambulance Services Advisory Council

A person who is a member of the Ambulance Services Advisory Council does not cease to be a member on the commencement of Schedule 2 to the *Health Legislation Amendment Act 2017* (the ***amending Act***) despite any of the following:

(a) the renaming of that Council as the Ambulance Service Advisory Board,

(b) the person having been appointed by the Minister rather than the Health Secretary,

(c) the person not having any of the expertise or experience required by section 67C (3), as substituted by the amending Act.

Schedule 3 Amendment of Human Tissue Act 1983 No 164

[1] Section 4 Definitions

Omit the definition of ***Director-General*** from section 4 (1). Insert in alphabetical order:

Health Secretary means the Secretary of the Ministry of Health.

[2] Sections 4 (1) (definition of "governing body"), 21C (1) and (5), 27A, 33A (1) and (2), 33I (2), (3) and (7) (b), 33J (1), (3) and (5) and 37A (2)–(6)

Omit "Director-General" wherever occurring. Insert instead "Health Secretary".

[3] Sections 4 (7) (b) and 21Z (2) (b)

Omit "Director-General" wherever occurring. Insert instead "Secretary".

[4] Section 27 Effect of authority under this Part

Omit section 27 (1A). Insert instead:

(1A) Without limiting subsection (1), an authority under this Part which authorises the removal of tissue for one or more of the following purposes (whether or not it authorises the removal of tissue for any other purpose) is sufficient authority for a person other than a medical practitioner to remove tissue from the body of the deceased person referred to in the authority for that purpose if the person removing the tissue is appointed, in writing, by the Health Secretary to remove tissue under this section for that purpose and is not the person by whom the authority was given:

(a) corneal transplantation,

(b) skin transplantation,

(c) the transplantation of cardiovascular tissue,

(d) the transplantation of musculoskeletal tissue,

(e) any other purpose prescribed by the regulations.

[5] Section 39 Regulations

Omit "Director-General of the Department of Health" from section 39 (1A) (c).

Insert instead "Health Secretary".

Schedule 4 Amendment of Mental Health Act 2007 No 8

[1] Section 37 Reviews of involuntary patients by Tribunal

Insert after section 37 (3):

(3A) The Tribunal may review the case of an involuntary patient in the absence of the patient if:

(a) the authorised medical officer applies to have the review carried out in the absence of the patient because the patient has refused to attend the review or because the officer is of the opinion that the patient is too unwell to attend the review, and

(b) the Tribunal is satisfied that the patient has refused to attend or is too unwell to attend and is unlikely to be well enough to attend within a reasonable period, and

(c) the Tribunal is satisfied that any ***representative*** of the patient (being an Australian legal practitioner, or other person approved by the Tribunal, who is representing the patient for the purposes of the review) has been notified of the review, and

Note. Section 154 contains provisions relating to the right to representation.

(d) the Tribunal has considered the views (if known) of each of the following:

(i) the patient,

(ii) any representative of the patient,

(iii) the designated carer of the patient,

(iv) the principal care provider of the patient, and

(e) the Tribunal is of the opinion that carrying out the review in the absence of the patient is desirable for the safety or welfare of the patient.

[2] Section 48 Apprehension of persons not permitted to be absent from mental health facility

Insert "(whether directly or indirectly by way of another mental health facility)" after "herself" in section 48 (3).

[3] Section 63 Review of detained affected persons by Tribunal

Insert after section 63 (2):

(2A) The Tribunal may review the case of the affected person in the absence of the affected person if:

(a) the authorised medical officer applies to have the review carried out in the absence of the affected person because the affected person has refused to attend the review or because the officer is of the opinion that the affected person is too unwell to attend the review, and

(b) the Tribunal is satisfied that the affected person has refused to attend or is too unwell to attend and is unlikely to be well enough to attend within a reasonable period, and

(c) the Tribunal is satisfied that any ***representative*** of the affected person (being an Australian legal practitioner, or other person approved by the Tribunal, who is representing the affected person for the purposes of the review) has been notified of the review, and

Note. Section 154 contains provisions relating to the right to representation.

(d) the Tribunal has considered the views (if known) of each of the following:

(i) the affected person,

(ii) any representative of the affected person,

(iii) the designated carer of the affected person,

(iv) the principal care provider of the affected person, and

(e) The Tribunal is of the opinion that carrying out the review in the absence of the affected person is desirable for the safety or welfare of the affected person.

[4] Section 78 Notifications to designated carers and principal care providers of events affecting patients or detained persons

Insert after section 78 (1) (g):

(h) the patient or person has any matter before the Tribunal.

[5] Section 96 Purpose and findings of ECT inquiries

Insert after section 96 (5):

(5A) **Rights of appearance**

A patient or person must appear before the Tribunal during an ECT inquiry unless:

(a) an authorised medical officer applies to have the ECT inquiry carried out in the absence of the patient or person because the patient or person has refused to attend the ECT inquiry or because the officer is of the opinion that the patient or person is too unwell to attend the ECT inquiry, and

(b) the Tribunal is satisfied that the patient or person has refused to attend or is too unwell to attend and is unlikely to be well enough to attend within a reasonable period, and

(c) the Tribunal is satisfied that any ***representative*** of the patient or person (being an Australian legal practitioner, or other person approved by the Tribunal, who is representing the patient or person for the purposes of the inquiry) has been notified of the review or that reasonable steps have been taken to notify the representative, and

Note. Section 154 contains provisions relating to the right to representation.

(d) the Tribunal has considered the views (if known) of each of the following:

(i) the patient or person,

(ii) any representative of the patient or person,

(iii) the designated carer of the patient or person,

(iv) the principal care provider of the patient or person, and

(e) the Tribunal is of the opinion that determining the ECT inquiry in the absence of the patient or person is desirable for the safety or welfare of the patient or person.

[6] Section 96 (6) (a)

Insert "take reasonable steps to" before "find out".

[7] Section 96 (6) (b)

Insert "take reasonable steps to" before "inform".

[8] Section 96 (6) (d)

Insert "take reasonable steps to" before "consider".

[9] Section 154 Rights of appearance and representation

Insert after section 154 (4):

(5) This section applies to a patient or person who is absent from proceedings held by the Tribunal in relation to the patient or person in the same way as it applies to a patient or person who appears before the Tribunal.

Schedule 5 Amendment of Mental Health (Forensic Provisions) Act 1990 No 10

[1] Section 41 Definitions

Omit "has not been classified by the Tribunal as an involuntary patient" from the definition of ***correctional patient*** from section 41 (1).

Insert instead "has not ceased to be a correctional patient under section 64 or 65".

[2] Section 61 Reviews by Tribunal of correctional patients

Omit "every 3 months" from section 61 (3).

Insert instead "no later than 3 months after the community treatment order is made and at least once every 6 months during the term of the order".

[3] Section 64 Termination of classification as correctional patient

Insert "(other than another mental health facility)" after "other place" in section 64 (a).

[4] Section 66 Release from mental health facility on ceasing to be correctional patient

Insert "who ceases to be a correctional patient because the person is" after "other than a person".

[5] Section 68A

Insert after section 68:

68A Apprehension of persons not permitted to be absent from mental health facility

(1) Without limiting section 68, the authorised medical officer of a mental health facility may apprehend a person, or direct a person to be apprehended, if the person fails to return to the facility at the end of a period of leave of absence granted under this Part or fails to comply with a condition to which that grant of leave was subject.

(2) The person may be apprehended by any of the following persons:

(a) the authorised medical officer or any other suitably qualified person employed at the mental health facility,

(b) a police officer,

(c) a person authorised by the Secretary or the authorised medical officer,

(d) a person assisting a person referred to in paragraph (a), (b) or (c).

(3) The authorised medical officer may request that a police officer apprehend, or assist in apprehending, a person under this section if the authorised medical officer is of the opinion that there are serious concerns relating to the safety of the person or other persons if the person is taken to the mental health facility without the assistance of a police officer.

(4) A police officer to whose notice any such request is brought may:

(a) apprehend and take or assist in taking the person to the mental health facility, or

(b) cause or make arrangements for some other police officer to do so.

(5) A police officer may enter premises to apprehend a person under this section, and may apprehend any such person, without a warrant and may exercise any of the powers conferred on a person who is authorised under section 81 of the *Mental Health Act 2007* to take a person to a mental health facility.

(6) A person who is apprehended is to be conveyed to and detained at the mental health facility at which the person was detained immediately before the period of leave commenced.

(7) The authorised medical officer must notify the Tribunal of the following occurrences as soon as practicable after the occurrence:

(a) the authorised medical officer, directing under subsection (1), a person to be apprehended,

(b) a person being apprehended under this section.

[6] Schedule 3 Savings and transitional provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Health Legislation Amendment Act 2017

Apprehension of persons not permitted to be absent from mental health facility

Section 68A extends to permit the apprehension of a person who has failed to return to a mental health facility or who has failed to comply with a condition even if the relevant failure occurred before the day on which Schedule 5 [5] to the *Health Legislation Amendment Act 2017* commenced.

Schedule 6 Amendment of Government Sector Employment Act 2013 No 40

Section 68 Unsatisfactory performance of government sector employees

Insert after section 68 (3):

(4) Without limiting the action that may be taken under this section by the person who exercises employer functions in relation to a NSW Health Service senior executive, the Secretary of the Ministry of Health may, if the Secretary is not the employer of the executive, terminate the executive's employment under this section.

Schedule 7 Amendment of Government Information (Public Access) Act 2009 No 52

Schedule 1 Information for which there is conclusive presumption of overriding public interest against disclosure

Omit "Divisions 6B (Quality assurance committees) and 6C (Root cause analysis teams) of Part 2, and section 23 (Specially privileged information)" from the matter relating to the *Health Administration Act 1982* in clause 1 (1).

Insert instead "Division 6B (Quality assurance committees) of Part 2, Part 2A (Response to incidents) and section 23 (Specially privileged information)".