

Public and Health Sector Legislation Amendment (Right of Return) Bill 2018

Contents

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
Part 2 — <i>Public Sector Management Act 1994</i> amended		
3.	Act amended	3
4.	Section 57 amended	3
5.	Section 58 amended	3
6.	Section 59 amended	7
7.	Part 9 Division 4 inserted	7
Division 4 — <i>Public and Health Sector Legislation Amendment (Right of Return) Act 2018</i> Part 2 amendments: transitional provisions		
115.	Transitional provisions (Sch. 9)	7
8.	Schedule 9 inserted	8
Schedule 9 — <i>Public and Health Sector Legislation Amendment (Right of Return) Act 2018</i> Part 2 amendments: transitional provisions		
1.	Terms used	8
2.	Right of return for executive officers on initial contracts not exceeding 2 years	9
3.	Right of return for executive officers on initial contracts exceeding 2 years	9
4.	Right of return for executive officers on other contracts	11
5.	Executive officers may elect to take compensation	12
6.	No other right of return under s. 58 or contract for executive officers on existing contracts	12

Contents

7.	Entitlements arising under s. 59 before commencement day	13
 Part 3 — <i>Health Services Act 2016</i> amended		
9.	Act amended	14
10.	Section 129 amended	14
11.	Section 132 amended	14
12.	Section 133 amended	18
13.	Part 19 Division 8 inserted	18
 Division 8 — <i>Public and Health Sector Legislation Amendment (Right of Return) Act 2018 Part 3</i>		
258A.	Terms used	18
258B.	Right of return for executives on initial contracts not exceeding 2 years	19
258C.	Right of return for executives on initial contracts exceeding 2 years	20
258D.	Right of return for executives on other contracts	22
258E.	Executives may elect to take compensation	23
258F.	No other right of return under s. 132 or contract for executives on existing contracts	23
258G.	Entitlements arising under s. 133 before commencement day	24

Western Australia

LEGISLATIVE ASSEMBLY

**Public and Health Sector Legislation
Amendment (Right of Return) Bill 2018**

A Bill for

**An Act to amend the *Public Sector Management Act 1994* and the
Health Services Act 2016 —**

- **to restrict the right of return to members of the Senior Executive Service and the Health Executive Service who are on initial contracts; and**
- **to reduce the maximum compensation payable to a person who ceases to be a member of the Senior Executive Service or the Health Executive Service; and**
- **for related purposes.**

The Parliament of Western Australia enacts as follows:

1

Part 1 — Preliminary

2

1. Short title

3

This is the *Public and Health Sector Legislation Amendment
(Right of Return) Act 2018*.

4

5

2. Commencement

6

This Act comes into operation as follows —

7

(a) Part 1 — on the day on which this Act receives the
Royal Assent;

8

9

(b) the rest of the Act — on a day fixed by proclamation,
and different days may be fixed for different provisions.

10

1 **Part 2 — *Public Sector Management Act 1994* amended**

2 **3. Act amended**

3 This Part amends the *Public Sector Management Act 1994*.

4 **4. Section 57 amended**

5 Delete section 57(1)(c) and insert:

6

7 (c) in the case of an executive officer to whom
8 section 58 applies, any election by the
9 executive officer to retain a right of return as
10 defined in section 58(7).

11

12 **5. Section 58 amended**

13 (1) Before section 58(1) insert:

14

15 (1A) This section applies to an executive officer who —

16 (a) is appointed under section 45 or 53 on or after
17 the day on which the *Public and Health Sector*
18 *Legislation Amendment (Right of Return)*
19 *Act 2018* section 5 comes into operation; and

20 (b) has not, at any time before that appointment,
21 been a member of the Senior Executive
22 Service.

23

24 (2) In section 58(1):

25 (a) after “executive officer” (1st occurrence) insert:

26

27 to whom this section applies

28

s. 5

- 1 (b) delete “his or her first appointment as an executive
2 officer,” and insert:
3
4 the appointment referred to in subsection (1A)(a),
5
- 6 (3) Delete section 58(2) and insert:
7
- 8 (2) An election referred to in subsection (1) —
9 (a) can only be made in the executive officer’s first
10 contract of employment, being the contract
11 entered into upon the appointment referred to in
12 subsection (1A)(a); and
13 (b) may, by notice in writing delivered to the
14 executive officer’s employing authority, be
15 revoked by the executive officer at any time
16 before, as referred to in subsection (3A),
17 subsection (3) ceases to apply to the executive
18 officer; and
19 (c) if revoked as referred to in paragraph (b),
20 cannot be made again during the term of the
21 first contract of employment; and
22 (d) cannot be made in any subsequent contract of
23 employment for the same or another office in
24 the Senior Executive Service.
- 25 (2A) Subsection (2)(d) applies whether the executive
26 officer’s first contract of employment expired by
27 effluxion of time or was terminated under this Act
28 before it so expired.
29

- 1 (4) In section 58(3) delete “An executive officer who has elected to
2 retain a right of return is entitled to employment in a department
3 or organisation” and insert:
4

5 Subject to subsection (3A), an executive officer who has elected
6 under subsection (1) to retain a right of return is entitled to
7 employment in the executive officer’s SES place of
8 employment
9

- 10 (5) After section 58(3) insert:
11

12 (3A) Subsection (3) ceases to apply to an executive
13 officer —

14 (a) in the case of an executive officer appointed for
15 a term exceeding 2 years, on the earlier of the
16 following days —

17 (i) the day that is 2 years after the day on
18 which the executive officer is first
19 appointed;

20 (ii) the day after the day on which the
21 executive officer’s first contract of
22 employment is terminated;

23 or

24 (b) in the case of an executive officer appointed for
25 a term not exceeding 2 years, on the earlier of
26 the following days —

27 (i) the day after the day on which the
28 executive officer’s first contract of
29 employment expires by effluxion of
30 time;

31 (ii) the day after the day on which the
32 executive officer’s first contract of
33 employment is terminated.

s. 5

- 1 (3B) When subsection (3) ceases to apply to an executive
2 officer —
- 3 (a) the election contained in the executive officer's
4 first contract of employment ceases to have any
5 effect; and
- 6 (b) the executive officer cannot, during the
7 remainder (if any) of the term of the first
8 contract of employment, make another election;
9 and
- 10 (c) as referred to in subsection (2)(d), the executive
11 officer cannot, in any subsequent contract of
12 employment for the same or another office in
13 the Senior Executive Service, elect to retain a
14 right of return.
15
- 16 (6) In section 58(7) insert in alphabetical order:
- 17
- 18 ***SES place of employment***, in relation to an executive
19 officer who has an entitlement under subsection (3) to
20 employment, means —
- 21 (a) in the case of an executive officer other than a
22 chief executive officer — the department or
23 organisation in which the executive officer was
24 employed immediately before the
25 circumstances referred to in subsection (3)(a)
26 and (b) arose; or
- 27 (b) in the case of a chief executive officer — the
28 department principally assisting in the
29 administration of this Act;
30

1 (7) In section 58(7) in the definition of *right of return* delete “a
2 department or organisation” and insert:

3

4 the executive officer’s SES place of employment

5

6 Note: The heading to amended section 58 is to read:

7

Right of return for executive officers under first appointment

8 **6. Section 59 amended**

9 (1) In section 59(1)(b) delete “within the meaning of section 58.”
10 and insert:

11

12 as defined in section 58(7).

13

14 (2) In section 59(2) and (3) delete “remuneration” and insert:

15

16 salary

17

18 **7. Part 9 Division 4 inserted**

19 At the end of Part 9 insert:

20

21 **Division 4 — Public and Health Sector Legislation**
22 **Amendment (Right of Return) Act 2018**

23

Part 2 amendments: transitional provisions

24 **115. Transitional provisions (Sch. 9)**

25 Schedule 9 sets out transitional provisions.

26

s. 8

8. Schedule 9 inserted

After Schedule 8 insert:

**Schedule 9 — *Public and Health Sector Legislation
Amendment (Right of Return) Act 2018* Part 2 amendments:
transitional provisions**

[s. 115]

1. Terms used

In this Schedule —

commencement day means the day on which the *Public and
Health Sector Legislation Amendment (Right of Return)
Act 2018* section 8 comes into operation;

contract of employment means a contract of employment
referred to in section 56;

existing contract, in relation to an executive officer, means
the contract of employment under which the executive
officer is employed immediately before commencement
day;

new section 58 means section 58 as amended by the *Public
and Health Sector Legislation Amendment (Right of Return)
Act 2018* section 5;

new section 59 means section 59 as amended by the *Public
and Health Sector Legislation Amendment (Right of Return)
Act 2018* section 6;

old section 58 means section 58 as in force immediately
before the day on which the *Public and Health Sector
Legislation Amendment (Right of Return) Act 2018* section 5
comes into operation;

old section 59 means section 59 as in force immediately
before the day on which the *Public and Health Sector
Legislation Amendment (Right of Return) Act 2018* section 6
comes into operation.

2. Right of return for executive officers on initial contracts not exceeding 2 years

- (1) This clause applies to an executive officer if —
- (a) the executive officer's existing contract —
 - (i) is the executive officer's first contract of employment, being the contract entered into upon the executive officer's first appointment to the Senior Executive Service; and
 - (ii) is for a term not exceeding 2 years;
 - and
 - (b) the existing contract contains an election made by the executive officer under old section 58(1) to retain a right of return; and
 - (c) immediately before commencement day, the election has not been revoked by the executive officer as referred to in old section 58(2)(c).
- (2) An executive officer to whom this clause applies is entitled to employment in accordance with new section 58(3) to (7) as if a reference to an executive officer in those provisions were a reference to an executive officer to whom this clause applies.
- (3) For the purposes of new section 59(1)(b), an executive officer who has an entitlement to employment under subclause (2) is taken to be a person who has a right of return as defined in new section 58(7).

3. Right of return for executive officers on initial contracts exceeding 2 years

- (1) This clause applies to an executive officer if —
- (a) the executive officer's existing contract —
 - (i) is the executive officer's first contract of employment, being the contract entered into upon the executive officer's first appointment to the Senior Executive Service; and

s. 8

- 1 (ii) is for a term exceeding 2 years;
2 and
3 (b) the executive officer's existing contract contains an
4 election made by the executive officer under old
5 section 58(1) to retain a right of return; and
6 (c) immediately before commencement day, the
7 election has not been revoked by the executive
8 officer as referred to in old section 58(2)(c).
9 (2) In the case of an executive officer who was appointed less
10 than 2 years before commencement day, this clause ceases
11 to apply to the executive officer —
12 (a) on the later of the following days —
13 (i) the day that is 2 years after the day on
14 which the executive officer was appointed;
15 (ii) the day that is 6 months after
16 commencement day;
17 or
18 (b) if the executive officer's existing contract expires
19 by effluxion of time before the later of the days
20 referred to in paragraph (a), on the day after the
21 expiry; or
22 (c) if the executive officer's existing contract is
23 terminated before the later of the days referred to in
24 paragraph (a), on the day after the termination.
25 (3) In the case of an executive officer who was appointed
26 2 years or more before commencement day, this clause
27 ceases to apply to the executive officer on the earlier of the
28 following days —
29 (a) the day that is 6 months after commencement day;
30 (b) the day after the day on which the executive
31 officer's existing contract expires by effluxion of
32 time;
33 (c) the day after the day on which the executive
34 officer's existing contract is terminated.

- 1 (4) An executive officer to whom this clause applies is entitled
2 to employment in accordance with new section 58(3) and
3 (4) to (7) as if —
4 (a) a reference to an executive officer in those
5 provisions were a reference to an executive officer
6 to whom this clause applies; and
7 (b) the words “Subject to subsection (3A),” at the
8 beginning of new section 58(3) were omitted.
9 (5) For the purposes of new section 59(1)(b), an executive
10 officer who has an entitlement to employment under
11 subclause (4) is taken to be a person who has a right of
12 return as defined in new section 58(7).

13 **4. Right of return for executive officers on other contracts**

- 14 (1) This clause applies to an executive officer if —
15 (a) the executive officer’s existing contract is not a
16 contract of the kind referred to in clause 2(1)(a) or
17 3(1)(a); and
18 (b) the existing contract contains an election made by
19 the executive officer under old section 58(1) to
20 retain a right of return; and
21 (c) immediately before commencement day, the
22 election has not been revoked by the executive
23 officer as referred to in old section 58(2)(c).
24 (2) This clause ceases to apply to an executive officer on the
25 earlier of the following days —
26 (a) the day that is 6 months after commencement day;
27 (b) the day after the day on which the executive
28 officer’s existing contract expires by effluxion of
29 time;
30 (c) the day after the day on which the executive
31 officer’s existing contract is terminated.

s. 8

- 1 (3) An executive officer to whom this clause applies is entitled
2 to employment in accordance with new section 58(3) and
3 (4) to (7) as if —
4 (a) a reference to an executive officer in those
5 provisions were a reference to an executive officer
6 to whom this clause applies; and
7 (b) the words “Subject to subsection (3A),” at the
8 beginning of new section 58(3) were omitted.
- 9 (4) For the purposes of new section 59(1)(b), an executive
10 officer who has an entitlement to employment under
11 subclause (3) is taken to be a person who has a right of
12 return as defined in new section 58(7).
- 13 **5. Executive officers may elect to take compensation**
- 14 (1) An executive officer who has an entitlement to employment
15 by reason of clause 2(2), 3(4) or 4(3) may elect in writing
16 given to the Commissioner to take compensation under new
17 section 59 instead of exercising the entitlement to
18 employment.
- 19 (2) On an election under subclause (1) taking effect, the
20 executive officer concerned —
21 (a) ceases to have the entitlement to employment; and
22 (b) becomes entitled to compensation under new
23 section 59.
- 24 **6. No other right of return under s. 58 or contract for**
25 **executive officers on existing contracts**
- 26 (1) No executive officer employed under an existing contract
27 has a right of return under old section 58.
- 28 (2) Except as provided by clauses 2, 3 and 4, no executive
29 officer employed under an existing contract has a right of
30 return under new section 58.

- 1 (3) When, as referred to in clause 3(2), (3) or 4(2) (as the case
2 requires), clause 3 or 4 ceases to apply to an executive
3 officer —
- 4 (a) the election contained in the executive officer's
5 existing contract ceases to have any effect; and
- 6 (b) the executive officer cannot, during the remainder
7 (if any) of the term of the existing contract, make
8 another election; and
- 9 (c) the executive officer cannot, in any subsequent
10 contract of employment for the same or another
11 office in the Senior Executive Service, elect to
12 retain a right of return.
- 13 **7. Entitlements arising under s. 59 before commencement**
14 **day**
- 15 (1) This clause applies if, immediately before commencement
16 day —
- 17 (a) an executive officer is entitled to compensation
18 under old section 59, whether by reason of old
19 section 59(1) or section 60(2)(b); but
- 20 (b) the Commissioner has not determined under old
21 section 59 the compensation (if any) to which the
22 executive officer is entitled.
- 23 (2) The Commissioner is to determine the compensation (if any)
24 to which the executive officer is entitled under new
25 section 59.
26

1 **Part 3 — *Health Services Act 2016* amended**

2 **9. Act amended**

3 This Part amends the *Health Services Act 2016*.

4 **10. Section 129 amended**

5 Delete section 129(1)(c) and insert:

6

- 7 (c) in the case of an executive to whom section 132
8 applies, any election by the executive to retain a
9 right of return as defined in section 132(1).

10

11 **11. Section 132 amended**

12 (1) In section 132(1) insert in alphabetical order:

13

14 ***HES place of employment***, in relation to an executive
15 who has an entitlement under subsection (4) to
16 employment, means —

- 17 (a) in the case of an executive other than a chief
18 executive — the health service provider in
19 which the executive was employed immediately
20 before the circumstances referred to in
21 subsection (4)(a) and (b) arose; or

- 22 (b) in the case of a chief executive — the
23 Department;

24

25 (2) In section 132(1) in the definition of ***right of return*** delete “a
26 department or organisation” and insert:

27

28 the executive’s HES place of employment

29

1 (3) After section 132(1) insert:

2

3 (1A) This section applies to an executive who —

4 (a) is appointed under section 108 or 121 on or
5 after the day on which the *Public and Health*
6 *Sector Legislation Amendment (Right of*
7 *Return) Act 2018* section 11 comes into
8 operation; and

9 (b) has not, at any time before that appointment,
10 been appointed under section 108 or 121.

11

12 (4) In section 132(2):

13 (a) after “executive” (1st occurrence) insert:

14

15 to whom this section applies

16

17 (b) delete “executive’s first appointment as an executive,”
18 and insert:

19

20 appointment referred to in subsection (1A)(a),

21

22 (c) in paragraph (a) delete “organisation (the *originating*
23 *place of employment*); or” and insert:

24

25 organisation; or

26

27 (d) in paragraph (b) delete “organisation (the *originating*
28 *place of employment*).” and insert:

29

30 organisation.

31

s. 11

- 1 (5) Delete section 132(3) and insert:
2
- 3 (3) An election referred to in subsection (2) —
4 (a) can only be made in the executive's first
5 contract of employment, being the contract
6 entered into upon the appointment referred to in
7 subsection (1A)(a); and
8 (b) may, by notice in writing delivered to the
9 executive's employing authority, be revoked by
10 the executive at any time before, as referred to
11 in subsection (4A), subsection (4) ceases to
12 apply to the executive; and
13 (c) if revoked as referred to in paragraph (b),
14 cannot be made again during the term of the
15 first contract of employment; and
16 (d) cannot be made in any subsequent contract of
17 employment for the same or another office in
18 the Health Executive Service.
- 19 (3A) Subsection (3)(d) applies whether the executive's first
20 contract of employment expired by effluxion of time or
21 was terminated under this Act before it so expired.
22
- 23 (6) In section 132(4) delete "An executive who has elected to retain
24 a right of return is entitled to employment in the executive's
25 originating" and insert:
26
- 27 Subject to subsection (4A), an executive who has elected under
28 subsection (2) to retain a right of return is entitled to
29 employment in the executive's HES
30

- 1 (7) After section 132(4) insert:
- 2
- 3 (4A) Subsection (4) ceases to apply to an executive —
- 4 (a) in the case of an executive appointed for a term
- 5 exceeding 2 years, on the earlier of the
- 6 following days —
- 7 (i) the day that is 2 years after the day on
- 8 which the executive is first appointed;
- 9 (ii) the day after the day on which the
- 10 executive's first contract of employment
- 11 is terminated;
- 12 or
- 13 (b) in the case of an executive appointed for a term
- 14 not exceeding 2 years, on the earlier of the
- 15 following days —
- 16 (i) the day after the day on which the
- 17 executive's first contract of employment
- 18 expires by effluxion of time;
- 19 (ii) the day after the day on which the
- 20 executive's first contract of employment
- 21 is terminated.
- 22 (4B) When subsection (4) ceases to apply to an executive —
- 23 (a) the election contained in the executive's first
- 24 contract of employment ceases to have any
- 25 effect; and
- 26 (b) the executive cannot, during the remainder (if
- 27 any) of the term of the first contract of
- 28 employment, make another election; and
- 29 (c) as referred to in subsection (3)(d), the executive
- 30 cannot, in any subsequent contract of
- 31 employment for the same or another office in
- 32 the Health Executive Service, elect to retain a
- 33 right of return.
- 34

s. 12

- 1 Note: The heading to amended section 132 is to read:
2 **Right of return for executives under first appointment**
- 3 **12. Section 133 amended**
- 4 (1) In section 133(1)(b) delete “within the meaning of section 132.”
5 and insert:
6
7 as defined in section 132(1).
8
- 9 (2) In section 133(3) and (4) delete “remuneration” and insert:
10
11 salary
12
- 13 **13. Part 19 Division 8 inserted**
- 14 At the end of Part 19 insert:
15
- 16 **Division 8 — Public and Health Sector Legislation**
17 **Amendment (Right of Return) Act 2018 Part 3**
- 18 **258A. Terms used**
- 19 In this Division —
- 20 **commencement day** means the day on which the
21 *Public and Health Sector Legislation Amendment*
22 *(Right of Return) Act 2018* section 13 comes into
23 operation;
- 24 **contract of employment** means a contract of
25 employment referred to in section 128;
- 26 **executive** has the meaning given in section 126;
- 27 **existing contract**, in relation to an executive, means the
28 contract of employment under which the executive is
29 employed immediately before commencement day;

1 **new section 132** means section 132 as amended by the
2 *Public and Health Sector Legislation Amendment*
3 *(Right of Return) Act 2018* section 11;

4 **new section 133** means section 133 as amended by the
5 *Public and Health Sector Legislation Amendment*
6 *(Right of Return) Act 2018* section 12;

7 **old section 132** means section 132 as in force
8 immediately before the day on which the *Public and*
9 *Health Sector Legislation Amendment (Right of*
10 *Return) Act 2018* section 11 comes into operation;

11 **old section 133** means section 133 as in force
12 immediately before the day on which the *Public and*
13 *Health Sector Legislation Amendment (Right of*
14 *Return) Act 2018* section 12 comes into operation.

15 **258B. Right of return for executives on initial contracts**
16 **not exceeding 2 years**

- 17 (1) This section applies to an executive if —
18 (a) the executive's existing contract —
19 (i) is the executive's first contract of
20 employment, being the contract entered
21 into upon the executive's first
22 appointment as an executive; and
23 (ii) is for a term not exceeding 2 years;
24 and
25 (b) the existing contract contains an election made
26 by the executive under old section 132(2) to
27 retain a right of return; and
28 (c) immediately before commencement day, the
29 election has not been revoked by the executive
30 as referred to in old section 132(3)(c).

- 31 (2) An executive to whom this section applies is entitled to
32 employment in accordance with new section 132(1)
33 and (4) to (8) as if a reference to an executive in those

s. 13

- 1 provisions were a reference to an executive to whom
2 this section applies.
- 3 (3) For the purposes of new section 133(1)(b), an
4 executive who has an entitlement to employment under
5 subsection (2) is taken to be a person who has a right of
6 return as defined in new section 132(1).
- 7 **258C. Right of return for executives on initial contracts**
8 **exceeding 2 years**
- 9 (1) This section applies to an executive if —
10 (a) the executive's existing contract —
11 (i) is the executive's first contract of
12 employment, being the contract entered
13 into upon the executive's first
14 appointment as an executive; and
15 (ii) is for a term exceeding 2 years;
16 and
17 (b) the existing contract contains an election made
18 by the executive under old section 132(2) to
19 retain a right of return; and
20 (c) immediately before commencement day, the
21 election has not been revoked by the executive
22 as referred to in old section 132(3)(c).
- 23 (2) In the case of an executive who was appointed less
24 than 2 years before commencement day, this section
25 ceases to apply to the executive —
26 (a) on the later of the following days —
27 (i) the day that is 2 years after the day on
28 which the executive was appointed;
29 (ii) the day that is 6 months after
30 commencement day;
31 or

- 1 (b) if the executive's existing contract expires by
2 effluxion of time before the later of the days
3 referred to in paragraph (a), on the day after the
4 expiry; or
- 5 (c) if the executive's existing contract is terminated
6 before the later of the days referred to in
7 paragraph (a), on the day after the termination.
- 8 (3) In the case of an executive who was appointed 2 years
9 or more before commencement day, this section ceases
10 to apply to the executive on the earlier of the following
11 days —
- 12 (a) the day that is 6 months after commencement
13 day;
- 14 (b) the day after the day on which the executive's
15 existing contract expires by effluxion of time;
- 16 (c) the day after the day on which the executive's
17 existing contract is terminated.
- 18 (4) An executive to whom this section applies is entitled to
19 employment in accordance with new section 132(1),
20 (4) and (5) to (8) as if —
- 21 (a) a reference to an executive in those provisions
22 were a reference to an executive to whom this
23 section applies; and
- 24 (b) the words "Subject to subsection (4A)," at the
25 beginning of new section 132(4) were omitted.
- 26 (5) For the purposes of new section 133(1)(b), an
27 executive who has an entitlement to employment under
28 subsection (4) is taken to be a person who has a right of
29 return as defined in new section 132(1).

s. 13

258D. Right of return for executives on other contracts

- (1) This section applies to an executive if —
- (a) the executive's existing contract is not a contract of the kind referred to in section 258B(1)(a) or 258C(1)(a); and
 - (b) the existing contract contains an election made by the executive under old section 132(2) to retain a right of return; and
 - (c) immediately before commencement day, the election has not been revoked by the executive as referred to in old section 132(3)(c).
- (2) This section ceases to apply to an executive on the earlier of the following days —
- (a) the day that is 6 months after commencement day;
 - (b) the day after the day on which the executive's existing contract expires by effluxion of time;
 - (c) the day after the day on which the executive's existing contract is terminated.
- (3) An executive to whom this section applies is entitled to employment in accordance with new section 132(1), (4) and (5) to (8) as if —
- (a) a reference to an executive in those provisions were a reference to an executive to whom this section applies; and
 - (b) the words "Subject to subsection (4A)," at the beginning of new section 132(4) were omitted.
- (4) For the purposes of new section 133(1)(b), an executive who has an entitlement to employment under subsection (3) is taken to be a person who has a right of return as defined in new section 132(1).

1 **258E. Executives may elect to take compensation**

- 2 (1) An executive who has an entitlement to employment
3 by reason of section 258B(2), 258C(4) or 258D(3) may
4 elect in writing given to the Department CEO to take
5 compensation under new section 133 instead of
6 exercising the entitlement to employment.
- 7 (2) On an election under subsection (1) taking effect, the
8 executive concerned —
- 9 (a) ceases to have the entitlement to employment;
10 and
11 (b) becomes entitled to compensation under new
12 section 133.

13 **258F. No other right of return under s. 132 or contract for**
14 **executives on existing contracts**

- 15 (1) No executive employed under an existing contract has
16 a right of return under old section 132.
- 17 (2) Except as provided by sections 258B, 258C and 258D,
18 no executive employed under an existing contract has a
19 right of return under new section 132.
- 20 (3) When, as referred to in section 258C(2), (3) or 258D(2)
21 (as the case requires), section 258C or 258D ceases to
22 apply to an executive —
- 23 (a) the election contained in the executive's
24 existing contract ceases to have any effect; and
25 (b) the executive cannot, during the remainder (if
26 any) of the term of the existing contract, make
27 another election; and
28 (c) the executive cannot, in any subsequent
29 contract of employment for the same or another
30 office in the Health Executive Service, elect to
31 retain a right of return.

s. 13

- 1 **258G. Entitlements arising under s. 133 before**
2 **commencement day**
- 3 (1) This section applies if, immediately before
4 commencement day —
- 5 (a) an executive is entitled to compensation under
6 old section 133, whether by reason of old
7 section 133(1) or section 135(2)(b); but
- 8 (b) the Department CEO has not determined under
9 old section 133 the compensation (if any) to
10 which the executive is entitled.
- 11 (2) The Department CEO is to determine the compensation
12 (if any) to which the executive is entitled under new
13 section 133.
- 14

15