



Western Australia

# Health Services Act 2016

Incorporating the amendments proposed  
by the *Public and Health Sector Legislation  
Amendment (Right of Return) Bill 2018 Pt. 3*  
(Bill No. 86-1)

**Note:**

Pt. 2-8 (s. 10-102), Pt. 10-18 (s. 144-232) & Pt. 20-22 (s. 259-308) have  
been omitted as they are not amended by the Bill.



# Health Services Act 2016

## Contents

### Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Act binds the State	2
4.	Objects of this Act	2
5.	Medicare principles	3
6.	Terms used	3
7.	Meaning of health service and public health service	7
8.	Meaning of hospital and public hospital	8
9.	Application of Act to hospital where mentally ill treated	9

### Part 9 — Health service provider employment

#### Division 1 — Preliminary

103.	Term used: employing authority	10
104.	Application of PSM Act	10

#### Division 2 — Health Executive Service

##### Subdivision 1 — Composition

105.	Composition of Health Executive Service	11
------	---	----

##### Subdivision 2 — Chief executives

106.	Chief executive	11
107.	Functions and powers of chief executive	11
108.	Appointment of chief executive	12
109.	Procedure for appointment of chief executive	12
110.	Remuneration and leave entitlements	14
111.	Contract of employment	14
112.	Appointment of health service provider employee or public service officer	14
113.	Reappointment of chief executive	15
114.	Performance criteria for chief executive and review of performance	15
115.	Removal from office	16
116.	Transfer from office	16
117.	Acting chief executive	17
118.	Employment of chief executive cannot be litigated and is not an industrial matter	18
119.	Delegation	19
120.	Modification of PSM Act delegation provision	19

**Contents**

---

	<b>Subdivision 3 — Health executives</b>	
121.	Appointment of health executives	19
122.	Reappointment of health executive	20
123.	Transfer of health executives	20
124.	Performance assessment	21
125.	Termination of contract of employment by employing authority	21
	<b>Subdivision 4 — General provisions about chief executives and health executives</b>	
126.	Terms used	21
127.	Conditions of employment	22
128.	Employment of chief executives and health executives governed by contract of employment	22
129.	Content of contract of employment	22
130.	Termination of contract of employment by executive	23
131.	Notification or payment in lieu if executive is not reappointed	23
132.	Right of return for executives under first appointment	23
133.	Compensation if executive has no right of return	27
134.	Repayment of compensation	27
135.	Election to take compensation instead of right of return	28
136.	Secondment of executive	28
137.	Vacation of office of executive	29
138.	Operation of Division	29
	<b>Division 3 — Other staff</b>	
139.	Division does not apply to Health Executive Service	29
140.	Employees of health service provider	29
141.	Transfers between health service providers or between health services providers and the Department	30
142.	Secondment of employee	31
143.	Contracts for services	32
	<b>Part 19 — Transitional and savings matters</b>	
	<b>Division 1 — Interpretation</b>	
233.	Terms used	33
	<b>Division 2 — Boards and ministerial control</b>	
234.	Boards abolished and Minister ceases to control hospitals	34
235.	Immunity continues	34

	<b>Division 3 — Hospital boards' assets, rights and liabilities</b>	
236.	Division does not apply to land reserved under the <i>Queen Elizabeth II Medical Centre Act 1966</i>	34
237.	Transfer to health service provider or Ministerial Body	34
238.	Transfer orders	36
239.	Correction of errors in transfer orders	37
240.	Reserves	37
241.	Registration of documents	38
242.	Hospital boards to complete necessary transactions	38
243.	Exemption from State tax	39
244.	Operating accounts of hospital boards	40
	<b>Division 4 — Staff</b>	
245.	Employees of hospital boards	40
246.	Preservation of rights	41
	<b>Division 5 — Continuation of certain things</b>	
247.	Completion of things done	42
248.	Continuing effect of things done	42
249.	Agreements, instruments, proceedings and remedies generally	42
	<b>Division 6 — Quadriplegic Centre</b>	
250.	Terms used	43
251.	Quadriplegic Centre continued	43
252.	Quadriplegic Centre board members	43
253.	Staff members	44
254.	Preservation of rights	44
255.	Transfer of contracts for services	44
	<b>Division 7 — Other matters</b>	
256.	Transitional regulations	45
257.	Effect of other instruments, rights and obligations	46
258.	<i>Interpretation Act 1984</i> not affected	46
	<b>Division 8 — Public and Health Sector Legislation Amendment (Right of Return) Act 2018 Part 3</b>	
258A.	Terms used	46
258B.	Right of return for executives on initial contracts not exceeding 2 years	47
258C.	Right of return for executives on initial contracts exceeding 2 years	48
258D.	Right of return for executives on other contracts	49
258E.	Executives may elect to take compensation	50
258F.	No other right of return under s. 132 or contract for executives on existing contracts	50
258G.	Entitlements arising under s. 133 before commencement day	51

**Contents**

---

**Notes**

Compilation table	52
Provisions that have not come into operation	52



Western Australia

## Health Services Act 2016

An Act to —

- provide for health services in Western Australia;
- make consequential amendments to the *Hospitals and Health Services Act 1927* and other Acts;
- repeal various enactments.

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Health Services Act 2016*.

### **2. Commencement**

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

### **3. Act binds the State**

This Act binds the State and, so far as the legislative power of the State permits, the Crown in all its other capacities.

### **4. Objects of this Act**

The objects of this Act are as follows —

- (a) to promote and protect the health status of Western Australians;
- (b) to identify and respond to opportunities to reduce inequities in health status in the Western Australian community;
- (c) to provide access to safe, high quality, evidence-based health services;
- (d) to promote a patient-centred continuum of care, including patient engagement, in the provision of health services;
- (e) to coordinate the provision of an integrated system of health services and health policies in the WA health system;
- (f) to promote effectiveness, efficiency and innovation in the provision of health services and teaching, training, research and other services within the available financial and other resources;
- (g) to engage and support the health workforce in the planning and provision of health services and teaching, training, research and other services.

**5. Medicare principles**

The provision of health services through the public hospital system of the State is based on the Medicare principles set out in the National Health Agreement.

**6. Terms used**

In this Act, unless the contrary intention appears —

**assets** —

- (a) means any legal or equitable estates or interests (whether present or future, whether vested or contingent and whether personal or assignable) in property; and
- (b) includes money, securities, choses in action and documents;

**board** means a board constituted under section 71;

**board governed provider** means a health service provider specified under section 32(1)(d) to be a board governed provider;

**breach of discipline** means a breach of discipline referred to in section 161;

**chief executive**, in relation to a health service provider, means the person appointed as chief executive of the health service provider under section 108(1);

**chief executive governed provider** means a health service provider specified under section 32(1)(d) to be a chief executive governed provider;

**Commission CEO** has the meaning given in section 43;

**committee** means a committee appointed under section 92(1);

**contracted health entity** means a non-government entity that provides health services under a contract or other agreement entered into with the Department CEO on behalf of the State, a health service provider or the Minister;

**Department** means the department of the Public Service principally assisting the Minister in the administration of this Act;

**Department CEO** means the chief executive officer of the Department;

**Department CEO direction** means a direction issued by the Department CEO under section 28;

**s. 6**

---

***disciplinary action***, in relation to a breach of discipline by an employee, means any one or more of the following —

- (a) a reprimand;
- (b) the imposition of a fine not exceeding an amount equal to the amount of remuneration received by the employee in respect of the last 5 days during which the employee was at work as an employee before the day on which the finding of the breach of discipline was made;
- (c) transferring the employee to another health service provider with the consent of the employing authority of that health service provider;
- (d) if the employee is not a chief executive, transferring the employee to another office in the health service provider in which the employee is employed;
- (e) reduction in the monetary remuneration of the employee;
- (f) reduction in the level of classification of the employee;
- (g) alteration of the employee's scope of practice or duties, or both;
- (h) dismissal;

***employee*** means a person employed in a health service provider and includes —

- (a) the chief executive of the health service provider;
- (b) a health executive employed in the health service provider;
- (c) a person employed in the health service provider under section 140;
- (d) a person seconded to the health service provider under section 136 or 142;

***employing authority*** has the meaning given in section 103;

***health executive*** means a person holding an office referred to in section 105(1)(b) but does not include a chief executive;

***Health Executive Service*** means the Health Executive Service mentioned in section 105;

***health professional*** means a person who is —

- (a) a health practitioner registered under the *Health Practitioner Regulation National Law (Western Australia)*; or
- (b) in a class of persons prescribed for the purposes of this definition;

**health service** has the meaning given in section 7;

**health service area** means a health service area declared under section 32(1)(a);

**health service provider** means a health service provider established by an order made under section 32(1)(b);

**hospital** has the meaning given in section 8;

**improvement action**, in relation to an employee, means any one or more of the following actions by the employing authority of the employee for the purpose of improving the performance or conduct of the employee —

- (a) counselling;
- (b) training and development;
- (c) issuing a warning to the employee that certain conduct is unacceptable or that the employee's performance is not satisfactory;
- (d) any other action of a similar nature;

**liabilities** means any liabilities, duties or obligations, whether actual, contingent or prospective, liquidated or unliquidated or whether owed alone or jointly or jointly and severally with any other persons;

**member**, of a board, means a person appointed under section 71(1);

**Ministerial Body** means the Health Ministerial Body established by section 10;

**National Health Agreement** means —

- (a) the National Health Reform Agreement between the Commonwealth and the States that was agreed to by the Council of Australian Governments on 2 August 2011, as amended from time to time; or
- (b) any agreement that replaces or supersedes that agreement;

**patient** means a person who has been, is being, or will or may be provided with health treatment or care;

**personal information** has the meaning given in the *Freedom of Information Act 1992* in the Glossary clause 1;

**policy framework** means a policy framework issued under section 26;

**prescribed** means prescribed by regulations made under this Act;

**s. 6**

---

**property** means property of every kind, whether real or personal, tangible or intangible, corporeal or incorporeal, and any interest in property;

**provide** includes supply or carry out;

**PSM Act** means the *Public Sector Management Act 1994*;

**public authority** means any of these persons or bodies —

- (a) a department of the Public Service;
- (b) a State agency or instrumentality;
- (c) a local government, regional local government or regional subsidiary;
- (d) a body (whether corporate or unincorporate), or the holder of an office, post or position, established or continued for a public purpose under a written law;
- (e) a person or body, or a person or body within a class of persons or bodies, prescribed for the purposes of this paragraph;

**public health service** has the meaning given in section 7(3);

**public health service facility** means a facility at which public health services are provided;

**public hospital** has the meaning given in section 8(6);

**relevant lands official** means —

- (a) the Minister for Lands; or
- (b) the Registrar of Titles; or
- (c) the Registrar of Deeds and Transfers; or
- (d) any other person authorised by a written law to record and give effect to the registration of documents relating to transaction affecting any estate or interest in land;

**rights** means any rights, powers, privileges or immunities, whether actual, contingent or prospective;

**service agreement** has the meaning given in section 43;

**staff member**, of a health service provider, means —

- (a) an employee in the health service provider;
- (b) a person engaged under a contract for services by the health service provider;

**State tax** includes —

- (a) duty chargeable under the *Duties Act 2008*; and
- (b) any other tax, duty, fee, levy or charge under a law of the State;

**WA health system** has the meaning given in section 19(1);

**WA health system-wide plan** means a plan developed by the Department CEO for the purposes of the WA health system.

*[Section 6 amended by No. 26 of 2016 s. 60.]*

**7. Meaning of health service and public health service**

- (1) A **health service** is a service for maintaining, improving, restoring or managing people's physical and mental health and wellbeing.
- (2) Without limiting subsection (1), a health service includes —
  - (a) a service mentioned in subsection (1) that is provided to a person at a hospital or any other place;
  - (b) a service dealing with public health, including a programme or activity for —
    - (i) the prevention and control of disease or sickness; or
    - (ii) the prevention of injury; or
    - (iii) the protection and promotion of health;
  - (c) a support service for a service mentioned in subsection (1);
  - (d) the provision of goods for a service mentioned in subsection (1).
- (3) A **public health service** is a health service provided by —
  - (a) a health service provider; or
  - (b) the Department CEO; or
  - (c) a contracted health entity under a contract or other agreement entered into with the Department CEO on behalf of the State, a health service provider or the Minister.
- (4) A public health service —
  - (a) includes a health service declared under a regulation to be a public health service; and
  - (b) does not include a health service declared under a regulation not to be a public health service.

**s. 8**

---

**8. Meaning of hospital and public hospital**

- (1) In this section —
- day hospital facility** means premises that are not attached to, or are set apart from, premises mentioned in subsection (4)(a), being premises at which —
- (a) persons are provided with a health service determined by the Minister under subsection (2); and
  - (b) overnight accommodation is not provided;
- nursing post** means a place at which a nurse is stationed and at which facilities exist for medical attention but which is not normally used for overnight accommodation of patients.
- (2) The Minister may by written notice determine any health service for the purposes of the definition of **day hospital facility** in subsection (1).
- (3) A determination under subsection (2) may be made —
- (a) generally; or
  - (b) in relation to specified health services or health services in a specified class; or
  - (c) by reference to a declaration or determination made under any law of the State or the Commonwealth.
- (4) Each of the following premises is a **hospital** for the purposes of this Act —
- (a) premises where medical, surgical or dental treatment, or nursing care, is provided for ill or injured persons and at which overnight accommodation may be provided; and
  - (b) a day hospital facility; and
  - (c) a nursing post.
- (5) In subsection (4) an ill person includes a person who has a mental illness (as defined in the *Mental Health Act 2014* section 4) but this section does not affect any requirements under that Act that a person be detained at an authorised hospital (as defined in section 4 of that Act) or at another place.
- (6) Subject to any order made under subsection (8), each of the following premises is a public hospital for the purposes of this Act —
- (a) a hospital controlled or managed by a health service provider or the Department CEO; or

- (b) a hospital declared to be a public hospital under subsection (7).
- (7) The Minister may by order published in the *Gazette* declare any hospital to be a public hospital for the purposes of this Act.
- (8) The Minister may by order published in the *Gazette* declare that any hospital is not a public hospital for the purposes of this Act or the *Private Hospitals and Health Services Act 1927*.

**9. Application of Act to hospital where mentally ill treated**

Where a public hospital or part of a public hospital is an authorised hospital under the *Mental Health Act 2014*, this Act has effect in relation to the hospital or part of the hospital, and persons received or admitted into it, subject to the provisions of that Act.

## **Part 9 — Health service provider employment**

### **Division 1 — Preliminary**

#### **103. Term used: employing authority**

- (1) In this Part —

*employing authority* means —

- (a) in relation to a chief executive — the Department CEO;
  - (b) in relation to a health executive employed in a health service provider —
    - (i) if the health service provider is a board governed provider — the board;
    - (ii) if the health service provider is a chief executive governed provider — the chief executive;
  - (c) in relation to a health service provider or an employee (other than a chief executive or a health executive) in the health service provider, the chief executive or board on whom the power to employ or engage employees is conferred.
- (2) For the purposes of paragraph (b) of the definition of *employing authority* in the PSM Act section 5(1), the Department CEO is the employer of the chief executive.

#### **104. Application of PSM Act**

- (1) Unless otherwise specified in this Act or by the regulations, the PSM Act applies to administration and management, human resource management and conduct of health service providers and employees under this Act.
- (2) For the purposes of subsection (1) the PSM Act applies as if —
  - (a) a reference in that Act to an employee were a reference to an employee as defined in section 6;
  - (b) a reference in that Act to an employing authority were a reference to an employing authority as defined in section 103.
- (3) The PSM Act Part 3 does not apply to employees.

## **Division 2 — Health Executive Service**

### **Subdivision 1 — Composition**

#### **105. Composition of Health Executive Service**

- (1) The Health Executive Service comprises —
  - (a) the chief executives of health service providers; and
  - (b) the persons holding offices that are for the time being the subject of a determination under subsection (2).
- (2) The Department CEO may make a written determination that an office in a health service provider is an executive office.
- (3) The Department CEO may revoke or amend a determination made under subsection (2).

### **Subdivision 2 — Chief executives**

#### **106. Chief executive**

- (1) Each health service provider must have a chief executive.
- (2) A chief executive of a health service provider is the chief employee of the health service provider for the purposes of the PSM Act.

#### **107. Functions and powers of chief executive**

- (1) Subject to Department CEO directions and, in the case of a board governed provider, the control of the board, a chief executive has —
  - (a) the functions and powers conferred on a chief employee under the PSM Act; and
  - (b) the functions and powers mentioned in subsections (2) and (3).
- (2) The chief executive of a health service provider has the following functions —
  - (a) to manage the day-to-day operations of the health service provider;
  - (b) in the case of a board governed provider, to advise the board in relation to the functions of the provider under this Act and other written laws;

**Health Services Act 2016**

**Part 9** Health service provider employment

**Division 2** Health Executive Service

**s. 108**

---

- (c) to ensure that advice and information is available to the health service provider so that informed decisions can be made;
  - (d) to cause health service provider decisions to be implemented;
  - (e) to be responsible for the employment, management, supervision, transfer, direction and dismissal of other employees of the health service provider;
  - (f) to perform any other function specified or delegated by the health service provider or imposed under this Act or any other written law as a function to be performed by the chief executive.
- (3) Subject to Department CEO directions and, in the case of a board governed provider, to the control of the board, a chief executive may do all things that are necessary or convenient to be done for or in connection with the performance of the functions of a chief executive.
- (4) In performing the functions of a chief executive of a health service provider, the chief executive must use best endeavours to attain performance objectives agreed with the Department CEO and, in the case of a board governed provider, the board.

**108. Appointment of chief executive**

- (1) Each chief executive is to be appointed by the Department CEO for and on behalf of the State.
- (2) The term for which a person is appointed to be the chief executive of a health service provider must be fixed in the instrument of appointment and must not be longer than 5 years.
- (3) The appointment must be to the level of classification determined by the Department CEO —
  - (a) in accordance with the relevant policy framework; and
  - (b) as being appropriate to the functions to be performed by the person appointed.

**109. Procedure for appointment of chief executive**

- (1) If —
  - (a) there is a vacancy or an impending vacancy in the office of a chief executive of a health service provider; and
  - (b) it is not intended to fill the vacancy by transferring a chief executive to that office under section 116, or

temporarily by directing an employee to act in the office under section 117,

the Department CEO must act under this section to enable the filling of the vacancy or impending vacancy.

- (2) In the case of a vacancy or impending vacancy in the office of a chief executive of a board governed provider, the Department CEO must, for the purposes of subsection (1), invite the board of the provider to inform the Department CEO of any matters that it wishes the Department CEO to take into account in recommending a person for appointment to the office referred to in subsection (1).
- (3) The Department CEO must give notice of the vacancy or impending vacancy in the manner the Department CEO thinks sufficient to enable suitably qualified persons to apply for the office.
- (4) The Department CEO must cause applicants for the office to be examined, but nothing in this section requires the examination of all the applicants.
- (5) The Department CEO —
  - (a) may seek advice from such sources as the Department CEO considers relevant; and
  - (b) if the appointment is to the office of chief executive of a board governed provider, may invite the chairperson of the board to assist the Department CEO to decide on the person or persons suitable for appointment to the office; and
  - (c) may invite any other persons the Department CEO thinks fit to assist the Department CEO to decide on the person or persons suitable for appointment to the office.
- (6) Any person invited to assist the Department CEO may take part in the examination of applicants or in the deliberations of the Department CEO on the matter or in both.
- (7) In deciding on a person to be appointed as a chief executive of a health service provider, the Department CEO must have regard to the need for the appointment of a person who —
  - (a) is able to discharge the specific responsibilities placed on the chief executive; and
  - (b) will foster a spirit of service to the community in staff members of the health service provider; and

**Health Services Act 2016**

**Part 9** Health service provider employment

**Division 2** Health Executive Service

**s. 110**

---

- (c) will promote effectiveness and efficiency in the health service provider; and
- (d) will be a responsible manager of the health service provider; and
- (e) will maintain appropriate standards of conduct and integrity among staff members of the health service provider.

**110. Remuneration and leave entitlements**

- (1) The remuneration and allowances of a chief executive are to be determined by the Department CEO on the recommendation of the Public Sector Commissioner.
- (2) Subsection (1) has effect subject to the *Salaries and Allowances Act 1975* if that Act applies to the chief executive.

**111. Contract of employment**

Subject to this Act, the employment of a chief executive appointed under section 108 or reappointed under section 113 is governed by a contract of employment referred to in section 128.

**112. Appointment of health service provider employee or public service officer**

- (1) If a person was —
  - (a) an employee in a health service provider; or
  - (b) a public service officer,immediately before appointment as a chief executive, the person retains all existing and accrued rights on appointment as if service as the chief executive were a continuation of service as that employee or officer.
- (2) If a person was a chief executive immediately before appointment as a public service officer, the person retains all existing and accrued rights on appointment as if service as a public service officer were a continuation of service as a chief executive.

**113. Reappointment of chief executive**

- (1) If the contract of employment of a chief executive of a health service provider is about to expire and the chief executive has notified the Department CEO that the chief executive wishes to be reappointed, the Department CEO must —
  - (a) reappoint the chief executive to the relevant office for and on behalf of the State; or
  - (b) notify the chief executive that the chief executive will not be reappointed.
- (2) Before making a decision under subsection (1) in relation to the chief executive of a board governed provider, the Department CEO must invite the board of the provider to inform the Department CEO of any matters that it wishes the Department CEO to take into account in making the decision.
- (3) The term for which a person is reappointed to be the chief executive of a health service provider must be fixed in the instrument of appointment and must not be longer than 5 years.
- (4) If the Department CEO notifies the chief executive that the chief executive will not be reappointed, the vacancy or impending vacancy must be filled in accordance with section 108.

**114. Performance criteria for chief executive and review of performance**

- (1) The chief executive of a health service provider must enter into an agreement with the Department CEO and, in the case of a board governed provider, the chairperson of the board concerning the performance criteria to be met by the chief executive during the period to which the agreement relates.
- (2) The agreement must be entered into —
  - (a) on appointment under section 108(1); and
  - (b) at any time when required to do so under a Department CEO direction.
- (3) The performance agreement is not legally enforceable.
- (4) The performance of the chief executive of a health service provider must be reviewed, at least annually, by the Department CEO and, in the case of the chief executive of a board governed provider, the chairperson of the board.

- (5) The review must have regard to the agreed performance criteria for the office and any other relevant matter.

**115. Removal from office**

- (1) The Department CEO may at any time remove a chief executive of a health service provider from the office of chief executive.
- (2) If the health service provider is a board governed provider, the Department CEO must consult with the board before acting under subsection (1).

**116. Transfer from office**

- (1) The Department CEO may at any time transfer a chief executive from —
  - (a) the office of chief executive to —
    - (i) another office of chief executive that is vacant and that is at the same level of classification as, or at a lower level of classification than, the first-mentioned office; or
    - (ii) the performance of other functions in a health service provider;
  - or
  - (b) the performance of other functions in a health service provider to an office of chief executive that is vacant and that is at the same level of classification as, or at a lower level of classification than, the office from which the chief executive was transferred to the performance of those functions.
- (2) Before transferring a chief executive the Department CEO must consult —
  - (a) if the chief executive to whom the proposed transfer relates is located in a board governed provider — with the board; and
  - (b) if the provider of destination is a board governed provider — with the board; and
  - (c) with the chief executive to whom the proposed transfer relates.
- (3) In subsection (2)(b) —  
***provider of destination*** means —
  - (a) the health service provider to an office in which the chief executive is proposed to be transferred; or

- (b) the health service provider to the performance of other functions in which the chief executive is proposed to be transferred.
- (4) Subject to the provisions of this Act relating to the management of the redeployment and redundancy of employees, a chief executive who is transferred under subsection (1) retains for the remainder of the term of the chief executive's contract of employment a level of classification equal to the highest level of classification of any office previously occupied by the chief executive during that period.
- (5) The transfer of a chief executive under this section does not affect the term of the chief executive's contract of employment.

**117. Acting chief executive**

- (1) The Department CEO may direct an employee to act in the office of a chief executive —
  - (a) during a vacancy in the office; or
  - (b) during a period when the person holding the office is, or is expected to be absent or for any reason unable to perform the functions of the office.
- (2) The Department CEO must specify in the direction the period, not exceeding 12 months, for which the employee can act.
- (3) The Department CEO may cancel the direction at any time.
- (4) Before giving a direction under subsection (1) in respect of the office of a chief executive of a board governed provider, the Department CEO must consult with the board.
- (5) An employee directed under subsection (1) to act in an office —
  - (a) must comply with the direction; and
  - (b) has, while acting in the office, all the powers and functions of the office.
- (6) The validity of anything done by or in relation to a person purporting to act under this section cannot be called into question on the ground that —
  - (a) the occasion for the person to act had not arisen or had ceased; or
  - (b) there is a defect or irregularity in the direction.

**118. Employment of chief executive cannot be litigated and is not an industrial matter**

- (1) In this section, a reference to the employment of a chief executive is a reference to —
  - (a) the appointment of, or failure to appoint, a person to a vacant office of chief executive; or
  - (b) the removal, retirement, termination of employment or other cessation of office of a chief executive; or
  - (c) any disciplinary proceedings or action taken under Part 10 or 11 against a chief executive; or
  - (d) the remuneration or terms and conditions of employment of a chief executive.
- (2) The employment of a chief executive, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the *Industrial Relations Act 1979*.
- (3) Subsection (2) applies whether or not any person has been appointed to a vacant office of chief executive.
- (4) An award, order or industrial agreement under the *Industrial Relations Act 1979*, whether made or registered, as the case requires, before or after the commencement of this section, does not have effect insofar as it relates to the employment of a chief executive.
- (5) Subsection (4) does not prevent a contract of employment of a chief executive from applying any provision of an award, order or industrial agreement under the *Industrial Relations Act 1979* to the employment of the chief executive.
- (6) An appeal does not lie under the *Industrial Relations Act 1979* in relation to the employment of a chief executive.
- (7) No proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief lie in respect of —
  - (a) the appointment of, or failure to appoint, a person to a vacant office of chief executive; or
  - (b) the reappointment of, or failure to reappoint, a chief executive; or
  - (c) the entitlement or non-entitlement of a person to be so appointed or reappointed.

- (8) Nothing in this section prevents a person from raising with the Department CEO a complaint concerning the employment of a chief executive.

**119. Delegation**

- (1) A chief executive of a health service provider may delegate any function of the chief executive under another provision of this Act to —
- (a) a staff member in the health service provider or another health service provider;
  - (b) an employee or person engaged in the Department.
- (2) A delegation under this section must be in writing signed by the chief executive.
- (3) A person to whom a function is delegated under this section cannot delegate that function.
- (4) A person exercising or performing a function that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the chief executive to perform a function through an officer or agent.

**120. Modification of PSM Act delegation provision**

For the purpose of the exercise of a chief executive's powers under the PSM Act section 33, that section is to be read as if any reference in that section to the Commissioner were a reference to the Department CEO.

**Subdivision 3 — Health executives**

**121. Appointment of health executives**

- (1) The employing authority of a health service provider may for and on behalf of the State appoint a person to an office of health executive in the health service provider.
- (2) An appointment under subsection (1) is subject to any binding award, order or industrial agreement under the *Industrial Relations Act 1979*.
- (3) The term for which a person is appointed to be a health executive must be fixed in the instrument of appointment and must not be longer than 5 years.

- (4) The appointment must be governed by a contract of employment referred to in section 128.
- (5) The appointment must be to the level of classification determined by the employing authority of the health executive —
  - (a) in accordance with the relevant policy framework; and
  - (b) as being appropriate to the functions to be performed by the person appointed.

**122. Reappointment of health executive**

On the expiry of the term of a health executive in a health service provider, the health executive is eligible for reappointment under section 121(1) on the basis of terms and conditions agreed between the health executive and the health executive's employing authority.

**123. Transfer of health executives**

- (1) The employing authority of a health service provider may at any time transfer a health executive of the health service provider from the health executive's office, or the performance of any functions in the Health Executive Service, to —
  - (a) another office of health executive that is vacant; or
  - (b) the performance of other functions in a health service provider.
- (2) An employing authority must, before transferring a health executive under subsection (1) from one health service provider to another health service provider —
  - (a) obtain the consent of the employing authority of the health service provider to which the health executive is proposed to be transferred; and
  - (b) consult with the health executive proposed to be transferred.
- (3) Subject to the provisions of this Act relating to the management of the redeployment and redundancy of employees, a health executive may only be transferred under subsection (1) at the level of classification which the health executive had immediately before the transfer.
- (4) If the office to which a health executive is transferred under subsection (1)(a) is an office, or the functions to the performance of which a health executive is transferred under

subsection (1)(b) are functions, in a different health service provider, the employing authority of that health service provider becomes the employing authority of the health executive.

- (5) On the transfer of a health executive under subsection (1), the employing authority of the health service provider to which that transfer takes place is substituted for the employing authority of the health service provider from which that transfer takes place as a party to the contract of employment of the health executive.
- (6) The transfer of a health executive under subsection (1) does not affect the term of the health executive's contract of employment.

**124. Performance assessment**

- (1) The performance of a health executive must be reviewed, at least annually, by the employing authority of the health executive.
- (2) The review must have regard to the agreed performance criteria for the office and any other relevant matter.

**125. Termination of contract of employment by employing authority**

- (1) A health executive's contract of employment may be terminated before its expiry on the expiry of not less than 4 weeks' notice of termination given to the health executive by the health executive's employing authority.
- (2) An employing authority may, in lieu of 4 weeks' notice of termination, pay the health executive a prescribed amount.

**Subdivision 4 — General provisions about chief executives and health executives**

**126. Terms used**

In this Subdivision —

***department*** has the meaning given in the PSM Act section 3(1);

***executive*** means a chief executive or a health executive;

***organisation*** has the meaning given in the PSM Act section 3(1) and includes a health service provider.

**127. Conditions of employment**

An executive's employment is governed by —

- (a) this Act and other applicable written laws; and
- (b) the executive's contract of employment.

**128. Employment of chief executives and health executives governed by contract of employment**

- (1) The contract of employment of an executive must —
  - (a) be in writing; and
  - (b) be signed by or on behalf of the parties to the contract.
- (2) The contract of employment expires on the day on which the term of appointment of the executive concerned expires or is terminated.
- (3) The contract of employment (the *original contract*) may be varied at any time by a further contract between the parties but the term of the original contract cannot be extended to a total period of more than 5 years after the day on which the original contract of employment came into force.
- (4) The employing authority of an executive acts for and on behalf of the State in any contract of employment between that employing authority and the executive.

**129. Content of contract of employment**

- (1) The matters to be dealt with in a contract of employment between an executive and the executive's employing authority include —
  - (a) the functions of the office of the executive, including performance criteria for the purpose of reviews of the member's performance; and
  - (b) the remuneration for the executive; and
  - (c) in the case of an executive to whom section 132 applies, any election by the executive to retain a right of return as defined in section 132(1).
  - ~~(c) any election by the executive to retain a right of return within the meaning of section 132.~~
- (2) Subsection (1) has effect subject to the *Salaries and Allowances Act 1975*, if that Act applies to the executive.

[Section 129 amended by the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018 cl. 10.]

**130. Termination of contract of employment by executive**

- (1) An executive's contract of employment may be terminated before its expiry on the expiry of not less than 4 weeks' notice of termination given to the executive's employing authority by the executive.
- (2) An employing authority may agree to an executive giving the employing authority less than 4 weeks' notice of termination.

**131. Notification or payment in lieu if executive is not reappointed**

If the employing authority of an executive does not propose to reappoint the executive, the employing authority must —

- (a) notify the executive of that fact not less than 4 weeks before the expiry of the executive's contract of employment; or
- (b) pay the executive in lieu of that period of notice an amount —
  - (i) not exceeding the maximum amount prescribed; and
  - (ii) not less than the minimum amount prescribed for each day by which that period of notice falls short of 4 weeks.

**132. Right of return for executives under first appointment**  
**~~Right of return for certain executives~~**

- (1) In this section —

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

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

**right of return** means the entitlement of an executive to employment in the executive's HES place of employment~~a department or organisation~~ in accordance with this section;

**statutory office** means an office, post or position that is established under an Act by which the right to appoint to that office, post or position is vested in the Governor or a Minister.

**Health Services Act 2016**

**Part 9** Health service provider employment

**Division 2** Health Executive Service

**s. 132**

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

- (a) is appointed under section 108 or 121 on or after the day on which the *Public and Health Sector Legislation Amendment (Right of Return) Act 2018* section 11 comes into operation; and
- (b) has not, at any time before that appointment, been appointed under section 108 or 121.

(2) An executive to whom this section applies may elect to retain a right of return if, for a continuous period of not less than 6 months ending immediately before the appointment referred to in subsection (1A)(a), ~~executive's first appointment as an executive~~, the executive —

- (a) was employed for an indefinite period in a department or organisation; ~~or organisation (the originating place of employment); or~~
- (b) held a statutory office or a series of statutory offices on a full-time basis and, before holding the statutory office or any of those statutory offices, was employed for an indefinite period in a department or organisation. ~~organisation (the originating place of employment).~~

(3) An election referred to in subsection (2) —

- (a) can only be made in the executive's first contract of employment, being the contract entered into upon the appointment referred to in subsection (1A)(a); and
- (b) may, by notice in writing delivered to the executive's employing authority, be revoked by the executive at any time before, as referred to in subsection (4A), subsection (4) ceases to apply to the executive; and
- (c) if revoked as referred to in paragraph (b), cannot be made again during the term of the first contract of employment; and
- (d) cannot be made in any subsequent contract of employment for the same or another office in the Health Executive Service.

(3A) Subsection (3)(d) applies whether the executive's first contract of employment expired by effluxion of time or was terminated under this Act before it so expired.

~~(3) An election referred to in subsection (2) —~~

- ~~(a) may be made in the first contract of employment entered into by the executive, but, unless made in that contract,~~

~~cannot be made in any subsequent contract of employment for the same or another office in the Health Executive Service; and~~

~~(b) is revoked if that election is not again made by the executive in a subsequent contract of employment; and~~

~~(c) may be revoked by the executive by notice in writing delivered to the executive's employing authority; and~~

~~(d) if revoked, cannot be made again.~~

(4) Subject to subsection (4A), an executive who has elected under subsection (2) to retain a right of return is entitled to employment in the executive's HES. ~~An executive who has elected to retain a right of return is entitled to employment in the executive's originating~~ place of employment at the same level of classification as the executive held immediately before ceasing to be employed for an indefinite period within the meaning of subsection (2)(a) or (b), as the case requires, if the executive —

(a) ceases to be an executive otherwise than by reason of the revocation of a determination under section 105(3); and

(b) in the case of —

(i) a chief executive, is not reappointed to the same or another office of chief executive or to the performance of other functions in the Health Executive Service; or

(ii) a health executive, is not reappointed to the same or another office of health executive or to the performance of other functions in a health service provider.

(4A) Subsection (4) ceases to apply to an executive —

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

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

(ii) the day after the day on which the executive's first contract of employment is terminated;

or

**Health Services Act 2016**

**Part 9** Health service provider employment

**Division 2** Health Executive Service

**s. 132**

---

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

(i) the day after the day on which the executive's first contract of employment expires by effluxion of time;

(ii) the day after the day on which the executive's first contract of employment is terminated.

(4B) When subsection (4) ceases to apply to an executive —

(a) the election contained in the executive's first contract of employment ceases to have any effect; and

(b) the executive cannot, during the remainder (if any) of the term of the first contract of employment, make another election; and

(c) as referred to in subsection (3)(d), the executive cannot, in any subsequent contract of employment for the same or another office in the Health Executive Service, elect to retain a right of return.

- (5) A person is not entitled to a right of return if the person's employment in the Public Sector was terminated, or the person was dismissed, under this Act for substandard performance or breach of discipline.
- (6) An employee dismissed under Part 10 is, for the purposes of subsection (5), to be taken to have been dismissed for breach of discipline.
- (7) This section does not prevent the application of the provisions of this Act relating to the management of the redeployment and redundancy of employees to a person who is employed in a health service provider, department or organisation under a right of return.
- (8) Nothing in this section affects the entitlement of any executive under another written law to employment in a department or organisation in accordance with that written law.

[Section 132 amended by the Public and Health Sector  
Legislation Amendment (Right of Return) Bill 2018 cl. 11.]

**133. Compensation if executive has no right of return**

- (1) This section applies to a person —
  - (a) who ceases to be an executive, otherwise than by reason of —
    - (i) the revocation of a determination under section 105(3); or
    - (ii) termination of employment in the Public Sector, or dismissal, under this Act for substandard performance or breach of discipline,  
before the executive's contract of employment expires by effluxion of time; and
  - (b) who does not have a right of return [as defined in section 132\(1\)](#). ~~within the meaning of section 132.~~
- (2) An employee dismissed under Part 10 is, for the purposes of subsection (1)(a)(ii), to be taken to have been dismissed for breach of discipline.
- (3) A person to whom this section applies is entitled to such compensation, if any, as the Department CEO determines by reference to the [salary remuneration](#) to which that person is entitled for a particular period ending immediately before the day referred to in subsection (4).
- (4) The maximum compensation payable to a person under this section is an amount equal to the [salary remuneration](#) to which the person is entitled for the period of one year ending immediately before the day on which the person ceased to be an executive in the manner specified in subsection (1)(a).

---

*[Section 133 amended by the Public and Health Sector  
Legislation Amendment (Right of Return) Bill 2018 cl. 12.]*

**134. Repayment of compensation**

- (1) In this section —  
***prescribed period*** means a period prescribed for the purposes of this section that commences on the payment of compensation to a person under section 133.
- (2) This section applies to a person if the person —
  - (a) is paid compensation under section 133; and
  - (b) is subsequently —
    - (i) employed in a department or organisation; or

- (ii) engaged by an employing authority within the meaning of this Act or the PSM Act under a contract for services.
- (3) A person employed or engaged as mentioned in subsection (2)(b) before the expiry of the prescribed period in relation to that person must refund to the Treasurer an amount that bears to the amount of the compensation the same proportion as the unexpired portion of that period bears to that period.
- (4) If a person who is required to comply with subsection (3) does not do so, the amount unrefunded may be recovered by the Treasurer in a court of competent jurisdiction as a debt owed by that person to the State.

**135. Election to take compensation instead of right of return**

- (1) An executive who has an entitlement under section 132(4) to employment may elect in writing to take compensation under section 133 instead of exercising that entitlement.
- (2) On an election under subsection (1) taking effect, the executive concerned —
  - (a) ceases to have an entitlement under section 132(4); and
  - (b) becomes entitled to compensation under section 133.

**136. Secondment of executive**

- (1) In this section —  
*relevant employer* means —
  - (a) the employing authority of a department or organisation;  
or
  - (b) an employer outside the Public Sector.
- (2) The employing authority of an executive may enter into an arrangement in writing with a relevant employer for the secondment of the executive to perform functions or services for, or duties in the service of, the relevant employer during the period specified in the arrangement.
- (3) An employing authority must not act under subsection (2) unless —
  - (a) the employing authority considers it to be in the public interest to do so; and
  - (b) the executive concerned consents.

**137.      Vacation of office of executive**

- (1) The office of an executive becomes vacant if —
- (a) the executive dies; or
  - (b) in the case of a chief executive, the chief executive is removed from the office under section 115; or
  - (c) the executive completes a term and is not reappointed; or
  - (d) the executive is dismissed, or retires, under this Act; or
  - (e) the employment of the executive is terminated under this Act; or
  - (f) the executive resigns by written resignation given —
    - (i) in the case of a chief executive, to the Department CEO; or
    - (ii) in the case of a health executive, to the employing authority of the executive's health service provider,and the Department CEO or that employing authority, as the case requires, accepts that resignation; or
  - (g) the executive is appointed or transferred under this Part to another office (unless it is an appointment and the Department CEO authorises the offices being held concurrently by the executive).
- (2) The vacation of an office under subsection (1)(a), (b), (c), (d), (e) or (f) terminates the contract of employment of the executive concerned.

**138.      Operation of Division**

This Division prevails over any inconsistent provision of any other written law or of the terms of appointment of or contract with a person.

**Division 3 — Other staff**

**139.      Division does not apply to Health Executive Service**

This Division does not apply to employees employed in the Health Executive Service.

**140.      Employees of health service provider**

- (1) A health service provider may employ and manage employees for and on behalf of the State.

- (2) Employees employed under subsection (1) are in addition to employees employed as health executives in the Health Executive Service.
- (3) Subject to any relevant award, order or industrial agreement under the *Industrial Relations Act 1979*, the terms and conditions of employment of employees employed under subsection (1) are the terms and conditions the health service provider determines.

**141. Transfers between health service providers or between health services providers and the Department**

- (1) If the employing authority of a health service provider considers it to be in the best interests of the health service provider or the WA health system to do so, the employing authority may —
  - (a) transfer an employee in the health service provider from one office in the health service provider to another office in that health service provider; or
  - (b) transfer an employee in the health service provider from an office in the health service provider to an office in another health service provider.
- (2) If the employing authority of the Department and the employing authority of a health service provider consider it to be in the best interests of the WA health system to do so —
  - (a) the employing authority of the Department may transfer an employee in the Department from an office in the Department to an office in the health service provider; and
  - (b) the employing authority of the health service provider may transfer an employee in the health service provider from an office in the health service provider to an office in the Department.
- (3) A transfer under subsection (1) or (2) must be —
  - (a) at the same or equivalent level of classification; and
  - (b) to an office —
    - (i) for which the employee possesses requisite qualifications; and
    - (ii) the functions of which are appropriate to the employee's level of classification.

- (4) An employing authority cannot transfer an employee under subsection (1)(b) or (2) unless —
  - (a) the transfer complies with the relevant policy framework; and
  - (b) the employing authority of the health service provider to which the employee is to be transferred or, if the employee is to be transferred to the Department, the Department CEO, has approved the transfer; and
  - (c) the employee to be transferred has been consulted.
- (5) On the transfer of an employee under subsection (1)(b) or (2) —
  - (a) the office from which the employee was transferred becomes vacant; and
  - (b) the employing authority of the health service provider to which the employee was transferred or, if the employee was transferred to the Department, the Department CEO —
    - (i) becomes the employing authority of the employee; and
    - (ii) is substituted for the employing authority of the health service provider from which the employee was transferred as a party to any contract of employment of the employee.
- (6) If the employee is employed on contract, the transfer has effect despite anything in the contract under which the employee is transferred.

**142. Secondment of employee**

- (1) In subsection (3) —  
**relevant employer** means —
  - (a) the employing authority of a department or organisation; or
  - (b) an employer outside the Public Sector.
- (2) A chief executive of a health service provider may arrange with another employer for an employee of that other employer to perform duties in the service of the health service provider for the purposes of this Act.
- (3) A chief executive of a health service provider may enter into an arrangement with a relevant employer for the secondment of an employee in the health service provider to perform functions or

**Health Services Act 2016**

**Part 9** Health service provider employment

**Division 3** Other staff

**s. 143**

---

services for, or duties in the service of, the relevant employer during the period specified in the arrangement.

- (4) A chief executive must not act under subsection (3) unless —
- (a) the chief executive considers it to be in the public interest to do so; and
  - (b) the employee concerned consents.

**143. Contracts for services**

- (1) The employing authority of a health service provider may, in accordance with any relevant policy framework, engage a person under a contract for services on the terms and conditions (including as to remuneration) that the employing authority determines.
- (2) This section does not detract from the power that the PSM Act section 100 gives the employing authority of a health service provider to engage a person under a contract for services or appoint a person on a casual employment basis.

## Part 19 — Transitional and savings matters

### Division 1 — Interpretation

#### 233.      **Terms used**

In this Part unless the contrary intention appears —

***hospital board*** —

- (a) means a board constituted under the HHS Act section 15; and
- (b) except in Division 2, includes the Minister in relation to any public hospital controlled by the Minister under the HHS Act section 7;

***HHS Act*** means the *Hospitals and Health Services Act 1927* as in force immediately before transition day;

***LA Act*** means the *Land Administration Act 1997*;

***Minister for Lands*** means the Minister as defined in the LA Act section 3(1);

***operating account*** means an agency special purpose account established under the *Financial Management Act 2006* section 16;

***relevant successor*** means —

- (a) in relation to a function of a hospital board that becomes a function of a health service provider on transition day — the health service provider;
- (b) in relation to a function of a hospital board that becomes a function of the Department CEO on transition day — the Department CEO;
- (c) in relation to assets and liabilities assigned to a health service provider by section 237 — the health service provider;
- (d) in relation to assets and liabilities assigned to the Ministerial Body by section 237 — the Ministerial Body;

***statutory transition*** —

- (a) means the transition from the provisions of the HHS Act to this Act; and
- (b) includes the transition from hospital boards to a relevant successor;

***this Part*** includes regulations made under section 256;

*transfer order* means an order made under section 238;

*transition day* means the day on which section 234 comes into operation.

### **Division 2 — Boards and ministerial control**

#### **234. Boards abolished and Minister ceases to control hospitals**

On transition day —

- (a) each hospital board constituted under the HHS Act section 15 is abolished and the members of each hospital board go out of office; and
- (b) the Minister ceases to have management and control of any hospital under the HHS Act section 7.

#### **235. Immunity continues**

Despite the abolition of the hospital boards, and removal of ministerial control and management, by section 234, if a hospital board or the Minister had the benefit of any immunity in respect of an act, matter or thing done or omitted before transition day, that immunity continues on and after transition day in that respect for the benefit of a relevant successor so far as the act, matter or thing is within the relevant successor's functions.

### **Division 3 — Hospital boards' assets, rights and liabilities**

#### **236. Division does not apply to land reserved under the *Queen Elizabeth II Medical Centre Act 1966***

Nothing in this Division applies to land that forms part of the reserve under the *Queen Elizabeth II Medical Centre Act 1966*.

#### **237. Transfer to health service provider or Ministerial Body**

(1) On transition day —

- (a) the assets of a hospital board specified in a transfer order are assigned to and become assets of the health service provider specified in the order; and
- (b) the rest of the assets of each hospital board are assigned to and become assets of the Ministerial Body.

- (2) On transition day —
  - (a) the liabilities of a hospital board specified in a transfer order are assigned to and become liabilities of the health service provider specified in the order; and
  - (b) the rest of the liabilities of each hospital board are assigned to and become liabilities of the Ministerial Body.
- (3) On transition day the Ministerial Body is substituted for the hospital board as a party to any proceedings specified in a transfer order.
- (4) On and after transition day, any agreement or instrument specified in a transfer order has effect as if references to the Ministerial Body were substituted, in accordance with the order, for references to a hospital board.
- (5) On and after transition day, any proceedings or remedy that might have been commenced by or against, or might have been available to or against, a hospital board in relation to the assets and liabilities assigned by subsections (1) and (2) may be commenced by or against, or are available to or against —
  - (a) a health service provider in the case of assets and liabilities assigned to the health service provider by subsections (1)(a) and (2)(a); and
  - (b) the Ministerial Body in the case of assets and liabilities assigned by subsections (1)(b) and (2)(b).
- (6) On and after transition day, an act or omission done or omitted in relation to the assets and liabilities assigned by subsections (1) and (2) before the assignment by, to or in respect of a hospital board is, to the extent that the act or omission has any effect, to be taken to have been done or omitted by, to or in respect of —
  - (a) the health service provider in the case of the assets and liabilities assigned to the health service provider by subsections (1)(a) and (2)(a); and
  - (b) the Ministerial Body in the case of assets and liabilities assigned by subsections (1)(b) and (2)(b).
- (7) This section does not apply to —
  - (a) moneys standing to the credit of an operating account of a hospital board; or
  - (b) Crown land to which section 240 applies.

**238. Transfer orders**

- (1) To facilitate the statutory transition, the Minister may, by order published in the *Gazette* (a **transfer order**), specify all or any of the following —
  - (a) assets and liabilities of a hospital board that are to be assigned to a health service provider by operation of section 237;
  - (b) proceedings in which the Ministerial Body is to be substituted for a hospital board as a party by operation of section 237;
  - (c) agreements and instruments that, by operation of section 237, are to have effect as if references to the Ministerial Body were substituted, in accordance with the order, for references in the agreements and instruments to a hospital board.
- (2) A transfer order may also deal with any matter that is incidental or supplementary to a matter to which subsection (1) relates and the transfer order has effect accordingly.
- (3) A transfer order may specify things by reference to one or more schedules that —
  - (a) need not be published in the *Gazette*; but
  - (b) must be available for public inspection.
- (4) Anything specified in a schedule for a transfer order is to be taken to be specified in the transfer order.
- (5) A thing may be specified in a transfer order by describing the class to which it belongs.
- (6) Before a transfer order is made specifying anything by reference to a schedule, the Minister must consult with each relevant lands official about the form and content of the schedule.
- (7) To the extent to which a schedule for a transfer order relates to the functions of the Registrar of Titles, the schedule must be in a form that meets the requirements of the Registrar.
- (8) A thing done by, under or for the purposes of this Part is not invalid merely because subsection (6) or (7) was not complied with.
- (9) The fact that a previous transfer order has been made does not prevent a further transfer order from being made.

- (10) The Minister may, by order published in the *Gazette*, amend a transfer order or a schedule for a transfer order.
- (11) A transfer order, or an amendment to a transfer order or to a schedule for a transfer order, can only be made before transition day.

**239. Correction of errors in transfer orders**

- (1) The Minister may, by order published in the *Gazette*, make any provision that is necessary to correct any error in a transfer order or a schedule for a transfer order.
- (2) An order made under subsection (1) may have effect on and after transition day.
- (3) To the extent that an order made under subsection (1) has effect before the day of its publication in the *Gazette*, section 237 does not operate as a result of the order so as —
  - (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of its publication; or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted before the day of its publication.

**240. Reserves**

- (1) This section applies to —
  - (a) any Crown land that, immediately before transition day, was a reserve under the LA Act section 41 for which a hospital board was the management body under the LA Act section 46(1); and
  - (b) any Crown land that, immediately before transition day was a reserve for the endowment of a public hospital under the HHS Act section 12.
- (2) On transition day —
  - (a) Crown land to which this section applies is to be taken to be a reserve under the LA Act section 41 for the purposes of this Act; and
  - (b) the Ministerial Body is to be taken to be the management body of the reserve under the LA Act section 46(1).

**Health Services Act 2016**

**Part 19** Transitional and savings matters

**Division 3** Hospital boards' assets, rights and liabilities

**s. 241**

---

- (3) For the purposes of section 241 and the purposes of the LA Act —
- (a) subsection (2)(a) must be treated as if it were an order made under the LA Act section 51 changing the purpose of the reserve; and
  - (b) subsection (2)(b) must be treated as if it were —
    - (i) an order made under the LA Act section 50(1)(a) revoking the management order placing the care, control and management of the reserve with the hospital board and specifying that any interests that existed in, or any caveats that existed in respect of, the reserve immediately before transition day continue to exist in respect of the reserve on and after transition day; and
    - (ii) a management order made under the LA Act section 46(1) placing the care, control and management of the reserve with the Ministerial Body subject to any conditions (with the changes necessary to take account of differences as to the purpose and management body) to which the management order referred to in subparagraph (i) was subject immediately before transition day.

**241. Registration of documents**

- (1) The relevant lands officials —
- (a) must take notice of this Part and any transfer order, including any schedule for the transfer order; and
  - (b) must record and register in the appropriate manner the documents necessary to show the effect of this Part and any transfer order.
- (2) The Minister must give a copy of each transfer order and any schedule for it, and any amendment to a transfer order or to a schedule for a transfer order, to each relevant lands official.

**242. Hospital boards to complete necessary transactions**

- (1) If an asset or liability of a hospital board cannot be properly assigned to a health service provider or the Ministerial Body by the operation of this Division (whether because the matter is governed otherwise than by the law of the State or for any other reason) —
- (a) the hospital board is to be taken to continue to hold that asset or be liable for that liability until it is effectively

- assigned to a health service provider or the Ministerial Body in accordance with this Division; and
- (b) the hospital board must take all practicable steps for the purpose of ensuring that the asset or liability is effectively assigned to a health service provider or the Ministerial Body in accordance with this Division.
- (2) The fact that subsection (1)(a) applies to an asset or liability that is to be assigned to a health service provider or the Ministerial Body under this Division does not affect the duty of the accountable authority of the hospital board under the *Financial Management Act 2006*.
- (3) Despite section 234, a hospital board continues in existence as a corporate body for the purpose of performing the functions described in subsection (1).
- (4) The hospital board must perform those functions through a person appointed by the Minister.
- (5) The person holds office at the pleasure of the Minister and on such terms and conditions as the Minister determines.
- (6) The hospital boards as continued by this section have the powers that are necessary or convenient for the purposes of this section.

**243. Exemption from State tax**

- (1) State tax is not payable in relation to —
- (a) anything that occurs by operation of this Part; or
- (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.
- (2) The Minister may certify in writing that —
- (a) a specified thing occurred by operation of this Part; or
- (b) a specified thing was done under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.
- (3) For all purposes and in all proceedings, a certificate under subsection (2) is sufficient evidence of the matters it certifies unless the contrary is shown.

**244. Operating accounts of hospital boards**

- (1) In this section —  
*former account* means the operating account of a hospital board.
- (2) On transition day, moneys standing to the credit of a former account must be credited in amounts determined in writing by the Minister to either or both of the following accounts —
  - (a) an operating account of a specified health service provider;
  - (b) an operating account of the Department.
- (3) The former account must be closed after moneys are credited under subsection (2).
- (4) Moneys referred to in subsection (2) may be applied —
  - (a) in the payment of any liabilities of the former account arising before transition day; and
  - (b) for the purposes of the health service provider or the Department, as the case requires.
- (5) An operating account to which moneys are credited under subsection (2) must be credited as directed in writing by the Minister with any money payable to the former accounts before transition day that is paid on or after that day.
- (6) On and after transition day, any agreement, instrument or other document that contains a reference to any of the former accounts has effect as if the reference were to the relevant operating account to which moneys are credited under subsection (2).
- (7) If there is any doubt as to which is the relevant operating account for the purposes of subsection (6), the Minister will determine the relevant operating account.

**Division 4 — Staff**

**245. Employees of hospital boards**

- (1) In this section —  
*existing employee* means a person employed by a hospital board immediately before transition day.

- (2) The Department CEO must, before transition day —
  - (a) determine that an existing employee is to be employed in a specified health service provider on and from transition day; or
  - (b) determine that an existing employee is to be employed in the Department on and from transition day.
- (3) The Department CEO must notify each existing employee of the determination made in respect of the employee.
- (4) A notification under subsection (3) —
  - (a) if the determination changes the employment location or status of the existing employee — must be given in writing to the existing employee; or
  - (b) otherwise — may be given by notice in writing addressed to a class of existing employees.
- (5) An existing employee given a notice under subsection (3) is, on and after transition day, to be taken to be employed under this Act as an employee in the health service provider or employed under the PSM Act or under section 22 as an employee in the Department, as is specified in the notice.

**246. Preservation of rights**

- (1) This section applies in relation to an existing employee to whom section 245 applies.
- (2) Except as otherwise agreed by an employee, the change from employment by a hospital board to employment in a health service provider or the Department does not —
  - (a) affect the employee's pay as defined in the *Public Sector Management (Redeployment and Redundancy) Regulations 2014* regulation 3(1); or
  - (b) affect the employee's existing or accrued rights in respect of annual leave, long service leave, sick leave or any other leave; or
  - (c) affect any rights under a superannuation scheme; or
  - (d) interrupt the continuity of the employee's service.
- (3) For the purposes of subsection (2)(d), the person's service with the hospital board is to be taken to have been service in the health service provider or Department, as the case requires.

**Division 5 — Continuation of certain things**

**247. Completion of things done**

Anything commenced to be done by a hospital board before transition day may be continued on and after transition day by a relevant successor so far as the doing of the thing is within the relevant successor's functions.

**248. Continuing effect of things done**

- (1) This section applies in relation to an act or omission done or omitted before transition day by, to or in respect of a hospital board to the extent that the act or omission —
  - (a) has force or significance; and
  - (b) is not governed by another provision of this Part.
- (2) On and after transition day, the act or omission is to be taken to have been done or omitted by, to or in respect of a relevant successor so far as the act or omission relates to the relevant successor's functions.

**249. Agreements, instruments, proceedings and remedies generally**

- (1) Subsection (2) applies to any agreement or instrument to which section 237 does not apply.
- (2) On and after transition day, any agreement or instrument that contains a reference to a hospital board has effect as if the reference were to a relevant successor so far as the reference relates to the relevant successor's functions, unless the context otherwise requires.
- (3) Subsection (4) applies in relation to any proceedings or remedy to which section 237 does not apply.
- (4) On and after transition day, any proceedings or remedy that might have been commenced or continued by or against, or might have been available to or against, a hospital board may be commenced or continued by or against, or is available to or against, a relevant successor so far as the proceedings or remedy are in respect of an act, matter or thing that is within the relevant successor's functions.

## Division 6 — Quadriplegic Centre

### 250.      **Terms used**

In this section —

***new body corporate*** means the body corporate mentioned in section 251(2);

***old body corporate*** means the body corporate established by the corporate name the Quadriplegic Centre Board under the HHS Act section 15.

### 251.      **Quadriplegic Centre continued**

- (1) The public hospital known as the Quadriplegic Centre is to be taken to have been declared by order under section 32(1) to be a health service area.
- (2) A body corporate is to be taken to have been established by order under section 32(1) as a board governed provider for the Quadriplegic Centre and to have been assigned the corporate name Quadriplegic Centre.
- (3) The new body corporate is a continuation of, and the same legal entity as, the old body corporate.
- (4) Subsections (1) and (2) have effect and may be treated as if they were orders under section 32(1).
- (5) The assets, rights and liabilities of or in relation to the old body corporate continue as assets, rights and liabilities of or in relation to the new body corporate.
- (6) If in a written law or other document or instrument there is —
  - (a) a reference to the old body corporate; or
  - (b) a reference that is read and construed as a reference to the old body corporate,

the reference may, where the context so requires, be read as if it had been amended to be a reference to the new body corporate.

### 252.      **Quadriplegic Centre board members**

On and after transition day a person who was a member of the Quadriplegic Centre board, as constituted under the HHS Act section 15 immediately before transition day —

- (a) is to be taken to have been appointed as a member of the board of the Quadriplegic Centre under section 71(1);  
and

- (b) subject to this Act, holds that office for the remainder of the period for which the person was appointed to the Quadriplegic Centre board constituted under the HHS Act.

**253. Staff members**

- (1) In this section —

*existing employee* means a person employed under the HHS Act section 19 by the old body corporate immediately before transition day.

- (2) An existing employee is, on and after transition day, to be taken to be employed under this Act as an employee in the new body corporate.
- (3) A person who was engaged under the HHS Act section 19 by the old body corporate immediately before transition day is to be taken to be engaged by the new body corporate under this Act.

**254. Preservation of rights**

- (1) Except as otherwise agreed by an employee, the change from employment by the old body corporate to employment in the new body corporate does not —
  - (a) affect the employee's pay as defined in the *Public Sector Management (Redeployment and Redundancy) Regulations 2014* regulation 3(1); or
  - (b) affect the employee's existing or accrued rights in respect of annual leave, long service leave, sick leave or any other leave; or
  - (c) affect any rights under a superannuation scheme; or
  - (d) interrupt the continuity of the employee's service.
- (2) For the purposes of subsection (1)(d), the person's service with the old body corporate is to be taken to have been service in the new body corporate.

**255. Transfer of contracts for services**

A person engaged by the old body corporate under a contract for services that is in force immediately before transition day, is to be taken to have been engaged, on and from transition day, by the new body corporate on the same terms and conditions, for the remainder of the duration of the contract.

### Division 7 — Other matters

#### 256. Transitional regulations

- (1) In this section —  
**publication day**, for regulations made under subsection (2), means the day on which those regulations are published in the *Gazette*;  
**specified** means specified or described in regulations made under subsection (2);  
**transitional matter** —
- (a) means a matter that needs to be dealt with for the purpose of effecting the statutory transition; and
  - (b) includes a saving or application matter.
- (2) If there is no sufficient provision in this Part or in a transfer order for dealing with a transitional matter, the Governor may make regulations prescribing matters —
- (a) required to be prescribed for the purpose of dealing with the transitional matter; or
  - (b) necessary or convenient to be prescribed for the purpose of dealing with the transitional matter.
- (3) Regulations made under subsection (2) may provide that specified provisions of this Act —
- (a) do not apply to or in relation to a specified matter; or
  - (b) apply with specified modifications to or in relation to a specified matter.
- (4) If regulations made under subsection (2) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and after a day that is earlier than publication day but not earlier than transition day, the regulations have effect according to their terms.
- (5) If regulations contain a provision referred to in subsection (4), the provision does not operate so as —
- (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before publication day for those regulations; or
  - (b) to impose liabilities on a person (other than the State or an authority of the State) in respect of an act done or

**Health Services Act 2016**

**Part 19** Transitional and savings matters

**Division 8** Public and Health Sector Legislation Amendment (Right of Return) Act 2018 Part 3

**s. 257**

---

omission made before publication day for those regulations.

- (6) Regulations can only be made under subsection (2) within 36 months after the day on which this Act receives the Royal Assent.

**257. Effect of other instruments, rights and obligations**

The operation of this Part or a transfer order must not be regarded —

- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information; or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any assets, rights or liabilities; or
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

**258. Interpretation Act 1984 not affected**

Except to the extent this Part expressly provides differently, the *Interpretation Act 1984* applies in relation to the repeal of an enactment by Part 20, 21 or 22.

**Division 8 — Public and Health Sector Legislation Amendment (Right of Return) Act 2018 Part 3**

*[Heading inserted by the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018 cl. 13.]*

**258A. Terms used**

In this Division —

*commencement day* means the day on which the *Public and Health Sector Legislation Amendment (Right of Return) Act 2018* section 13 comes into operation;

*contract of employment* means a contract of employment referred to in section 128;

*executive* has the meaning given in section 126;

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

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

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

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

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

*[Section 258A inserted by the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018 cl. 13.]*

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

(1) This section applies to an executive if —

(a) the executive's existing contract —

(i) is the executive's first contract of employment, being the contract entered into upon the executive's first appointment as an executive; and

(ii) is for a term not exceeding 2 years;

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) An executive to whom this section applies is entitled to employment in accordance with new section 132(1) and (4)

**Health Services Act 2016**

**Part 19** Transitional and savings matters

**Division 8** Public and Health Sector Legislation Amendment (Right of Return) Act 2018 Part 3

**s. 258C**

---

to (8) as if a reference to an executive in those provisions were a reference to an executive to whom this section applies.

- (3) For the purposes of new section 133(1)(b), an executive who has an entitlement to employment under subsection (2) is taken to be a person who has a right of return as defined in new section 132(1).

[Section 258B inserted by the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018 cl. 13.]

**258C. Right of return for executives on initial contracts exceeding 2 years**

- (1) This section applies to an executive if —

(a) the executive's existing contract —

- (i) is the executive's first contract of employment, being the contract entered into upon the executive's first appointment as an executive; and

(ii) is for a term exceeding 2 years;

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) In the case of an executive who was appointed less than 2 years before commencement day, this section ceases to apply to the executive —

(a) on the later of the following days —

(i) the day that is 2 years after the day on which the executive was appointed;

(ii) the day that is 6 months after commencement day;

or

(b) if the executive's existing contract expires by effluxion of time before the later of the days referred to in paragraph (a), on the day after the expiry; or

(c) if the executive's existing contract is terminated before the later of the days referred to in paragraph (a), on the day after the termination.

(3) In the case of an executive who was appointed 2 years or more before commencement day, this section ceases to apply to the 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.

(4) 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.

(5) For the purposes of new section 133(1)(b), an executive who has an entitlement to employment under subsection (4) is taken to be a person who has a right of return as defined in new section 132(1).

*[Section 258C inserted by the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018 cl. 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).

**Health Services Act 2016**

**Part 19** Transitional and savings matters

**Division 8** Public and Health Sector Legislation Amendment (Right of Return) Act 2018 Part 3

**s. 258E**

---

(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).

*[Section 258D inserted by the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018 cl. 13.]*

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

(1) An executive who has an entitlement to employment by reason of section 258B(2), 258C(4) or 258D(3) may elect in writing given to the Department CEO to take compensation under new section 133 instead of exercising the entitlement to employment.

(2) On an election under subsection (1) taking effect, the executive concerned —

(a) ceases to have the entitlement to employment; and

(b) becomes entitled to compensation under new section 133.

*[Section 258E inserted by the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018 cl. 13.]*

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

(1) No executive employed under an existing contract has a right of return under old section 132.

- (2) Except as provided by sections 258B, 258C and 258D, no executive employed under an existing contract has a right of return under new section 132.
- (3) When, as referred to in section 258C(2), (3) or 258D(2) (as the case requires), section 258C or 258D ceases to apply to an executive —
- (a) the election contained in the executive's existing contract ceases to have any effect; and
- (b) the executive cannot, during the remainder (if any) of the term of the existing contract, make another election; and
- (c) the executive cannot, in any subsequent contract of employment for the same or another office in the Health Executive Service, elect to retain a right of return.

*[Section 258F inserted by the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018 cl. 13.]*

**258G. Entitlements arising under s. 133 before commencement day**

- (1) This section applies if, immediately before commencement day —
- (a) an executive is entitled to compensation under old section 133, whether by reason of old section 133(1) or section 135(2)(b); but
- (b) the Department CEO has not determined under old section 133 the compensation (if any) to which the executive is entitled.
- (2) The Department CEO is to determine the compensation (if any) to which the executive is entitled under new section 133.

*[Section 258G inserted by the Public and Health Sector Legislation Amendment (Right of Return) Bill 2018 cl. 13.]*

=====

## Notes

- <sup>1</sup> This is a compilation of the *Health Services Act 2016* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Health Services Act 2016</i>	11 of 2016	26 May 2016	s. 1 and 2: 26 May 2016 (see s. 2(a)); s. 6, 7, 32, 238, 244 and 245: 15 Jun 2016 (see s. 2(b) and <i>Gazette</i> 14 Jun 2016 p. 1819); Act other than s. 1, 2, 6, 7, 32, 238, 244, 245, 301(2), (3), (6) and (7) and 307(j): 1 Jul 2016 (see s. 2(b) and <i>Gazette</i> 24 Jun 2016 p. 2291)
<i>Local Government Legislation Amendment Act 2016</i> Pt. 3 Div. 17	26 of 2016	21 Sep 2016	21 Jan 2017 (see s. 2(b) and <i>Gazette</i> 20 Jan 2017 p. 648)
<a href="#"><i>Public and Health Sector Legislation Amendment (Right of Return) Bill 2018</i> Pt. 3</a>	<a href="#">Current Bill No. 86-1</a>		

- <sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Health Services Act 2016</i> s. 301(2), (3), (6) and (7) and 307(j) <sup>2</sup>	11 of 2016	26 May 2016	To be proclaimed (see s. 2(b))

- <sup>2</sup> On the date as at which this compilation was prepared, the *Health Services Act 2016* s. 301(2), (3), (6) and (7) and 307(j) had not come into operation. They read as follows:

**301. Queen Elizabeth II Medical Centre Act 1966 amended**

(2) Delete section 13(2e) and insert:

- (2e) While a setting aside and delegation under subsection (2a) are in force, the delegate, for the purposes for which the site was set aside, has all the powers delegated to the delegate under subsection (2a) in respect of the site as if those powers had been conferred on the delegate by this Act.

(3) Delete section 13(2g)(b)(i) and insert:

(i) to the delegate under the regulations; or

(6) In section 20(1) and (1a) delete “Trust may, with the approval of the Governor, make by-laws” and insert:

Governor may make regulations

(7) In the provisions listed in the Table:

(a) delete “by-laws” (each occurrence) and insert:

regulations

(b) delete “by-law” (each occurrence) and insert:

regulation

**Table**

s. 20(1a)(i), (k), (m), (n), (p), (q), (r), (s) and (t)	s. 20(1b) def. of <i>specified</i>
s. 20(1c)	s. 20(1d)
s. 20(1e)	s. 20(2)
s. 20(3)	s. 20(4)

Note: The heading to amended section 20 is to read:  
**Regulations**

## **Part 22 — By-laws, regulations and determinations repealed or revoked**

### **307. By-laws and regulations repealed**

These by-laws and regulations are repealed:

(j) *Queen Elizabeth II Medical Centre (Delegated Site)  
By-laws 1986;*



