

# Health Services Model By-Law

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for Area Health Services, Statutory  
Health Corporations and Affiliated  
Health Organisations

**NSW  HEALTH**

Better Health Good Health Care

## NSW HEALTH DEPARTMENT

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# Foreword

I am pleased to present this publication which comprises:

- Health Services Model By-Law – Guidelines;
- Model By-Law for Area Health Services, Statutory Health Corporations and Affiliated Health Organisations; and
- relevant clauses of the Health Services Regulation 1998 relating to Visiting Practitioners.

This publication is the result of a collaborative effort between the New South Wales Department of Health and the Medical Services Committee, with input from Area Health Services, Statutory Health Corporations and Affiliated Health Organisations. It creates a framework to enable Boards to effectively fulfil their governance role in managing public health organisations.

The new by-law provides a model for revising by-laws for all public health organisations. As such, it is intended to provide the general direction and minimum characteristics needed in Health Service by-laws. The model by-law is sufficiently flexible to be able to be adapted with relatively minor modification to the various circumstances of all public health organisations.

The guidelines identify and provide context to those areas in the model by-law which vary from the previously issued by-law. The guidelines are not intended to explain every single provision of the by-law.

The relevant clauses of the Health Services Regulation 1998 are included in this publication as they provide further information on the requirements for the appointment of visiting practitioners by public health organisations that complement the provisions in the model by-law.

The model by-law and accompanying guidelines, used in conjunction with *Corporate Governance In Health: Better Practice Guide*, will lead to better management and governance by Boards of public health organisations.



Michael Reid  
**Director-General**  
**NSW Department of Health**

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# Section 1

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## **Health Services Model By-Law Guidelines**

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# General Comments

A new model by-law for Health Services under the Health Services Act 1997 was recently approved by the Minister and was gazetted in the Government Gazette on 3 March 2000. The new model by-law replaces those that have previously been made under the Public Hospitals Act 1929 (gazetted in 1992) and under the Area Health Services Act 1986 (gazetted in 1989).

The Health Services Act ("the Act") provides the structure for Area Health Services, statutory health corporations (essentially only the New Children's Hospital and the Corrections Health Service) and affiliated hospitals (previously known as Third Schedule organisations). All of these bodies are generically referred to in the Act as "public health organisations".

The new by-law is intended to be a "model" for all of those organisations. Although the city and rural Area Health Services may be relatively homogenous and similar in terms of administration, the other public health organisations are diverse.

The new by-law is only a model for individual by-laws. As such, it is intended to provide the general direction and minimum character set for new by-laws. It is virtually impossible to write one model that will fit every possible set of circumstances. While the model by-law indicates the minimum content required, it is flexible enough to accommodate with relatively minor modification the various circumstances of all public health organisations. Variations from the model must reflect the spirit and intent of the model.

Each provision of the model by-law is reproduced in these "guidelines" with a short explanation where appropriate. The model by-law is generally self-explanatory to the reader and, in any case, does not generally depart from the tenor or content of the previously issued by-law.

Matters not specifically dealt with in the by-law are either dealt with in the Health Services Act or in the Health Services Regulation 1998. For instance, the Regulation deals with some general matters as to visiting medical officers, such as the requirement that appointments generally be advertised (except in certain situations), be made subject to written contract and be for a maximum term of 5 years.

Explanatory notes on the model by-law are set out below where appropriate.

## Part 1 - Preliminary

### 1. Name of the By-law

This By-law may be cited as the [name of public health organisation] By-law.

### 2. Definitions

Expressions used in this By-law are defined in the Dictionary at the end of the By-law.

#### Explanatory notes

For the first time in the by-law, and in line with current legislative drafting practice, certain words and phrases used in the by-law are 'defined' in the dictionary at the end of the document. These largely repeat those used in the Health Services Act so that the use of such words in the by-law is consistent with the Act.

## Part 2 - Procedure of the board

### 3. Presiding member

- (1) The chairperson (or, in the absence of the chairperson, another appointed member elected as chairperson for that meeting by the members present other than the chief executive officer) is to preside at a meeting of the board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

#### Explanatory notes

This provision allows for an alternative Board member (other than the chief executive officer) to be appointed as presiding member in the Chairperson's absence, and provides that the presiding member shall have the casting vote.

### 4. Conduct of meetings

- (1) The presiding member may determine the procedure for the conduct of the meetings. This procedure is to consider procedures set out in law and should not address procedures that are covered in the Act, the regulations or this By-law.
- (2) Any board meeting or meeting of any committee or council provided for under these by-laws may decide to allow any of its members or other invitees to participate or vote in the meeting from a location other than the place where the meeting is being held. Such participation may be by telephone, facsimile, video or other electronic medium as is appropriate to the circumstances or the business being transacted. A member of a board, committee or council participating from a remote location shall be regarded as being present at the meeting for the purposes of the calculation of a quorum or any other similar matter required under these by-laws.
- (3) The board, committee or council may determine a protocol or procedure for remote participation of members or other persons in its meetings.

### Explanatory notes

Clause 4 concerns the conduct of meetings. Clause 4(2) has been added to allow for "remote" participation by members of the Board, Committees or Councils or their invitees using "telephone, facsimile, video or other electronic medium". This is to give Areas more flexibility to overcome the issues of distance inherent in some of their operations. Clause 4(3) indicates that it is entirely up to individual Boards or Committees etc. to determine any protocols for permitting such participation. Organisations will be able to use these clauses to engage modern technology in a way that they consider appropriate to their organisation and which will also allow a greater degree of participation in their deliberations.

## 5. Ordinary meetings of the board

- (1) The board is to hold ordinary meetings at times and places determined by the board.
- (2) At least 6 ordinary meetings are to be held in any 12 month period and these meetings are to be held at regular intervals.
- (3) Written notice of an ordinary meeting of the board is to be given at least 7 days before the meeting.
- (4) Written notice is to be given by the chief executive officer, or by a person authorised by the board to give notice. Written notice is to be given to all members and persons invited to attend the meeting by the board.
- (5) The written notice to a member is to be accompanied by the following:
  - (a) a copy of the agenda for the meeting;
  - (b) a copy of the minutes of the previous ordinary meeting of the board if a copy has not previously been distributed to members;
  - (c) a copy of the minutes of any special meeting of the board held since the board's last ordinary meeting if a copy has not previously been distributed to members; and
  - (d) a copy of the minutes of any meeting of a committee of the board held since the board's last ordinary meeting, except if a copy has previously been distributed to members.
- (6) Written notice shall be provided to persons invited to attend the meeting and shall be accompanied by such of the material referred to in clause 5(5) as considered appropriate.
- (7) A member may indicate that he or she does not want to receive some or all of the documents referred to in clause 5(5) for a particular meeting or for all meetings.

### Explanatory notes

This provision sets a minimum requirement of six Board meetings per year but does not preclude Boards from deciding to meet more frequently.

Written notice of an ordinary Board meeting is required seven days in advance. This is to be accompanied by the agenda and minutes of the previous Board meeting, any special Board meeting and any Board committee meeting unless previously distributed.

There are only minor changes from the previous By-law.

## 6. Special meetings of the board

- (1) A special meeting of the board is to be called by the chief executive officer:
  - (a) at the direction of the chairperson; or
  - (b) within forty-eight hours of receipt by the chief executive officer of a written request for a special meeting signed by at least three members.

- (2) A special meeting is to be held not later than seven days after receipt by the chief executive officer of a request referred to in clause 6(1)(b).
- (3) The chief executive officer is to give at least 24 hours' notice of a special meeting to each member and each person invited to attend the meeting by the board.
- (4) Notice of a special meeting is to specify the business to be considered at that meeting.
- (5) Only business specified in the notice of a special meeting is to be considered at the special meeting.

### **Explanatory notes**

This provision sets out the procedures for calling and holding a special meeting of the Board. The chief executive officer must give at least 24 hours notice of a special meeting to each member and each person to be invited to the meeting. There has been no change to this provision from the previous By-law.

## **7. Attendance at board meetings**

- (1) The board is to invite:
  - (a) two\*\* representatives of the Medical Staff Executive Council or the Medical Staff Council (if only one council for the public health organisation), nominated by the council, provided that the council may also nominate an alternate for that representative who may attend board meetings in that person's place when that person is unable for whatever reason to attend; and
  - (b) at least one representative of the executive staff, to attend its ordinary meetings.

*NOTE: \*\* It has been agreed with the Medical Services Committee that organisations may still submit this clause for approval with wording in clause 7(1)(a) in the form of "at least one..." (medical representatives), if there are considered to be specific local circumstances which justify such a variation.*

- (2) The board may invite any person to attend any meeting of the board, including both ordinary and special meetings.
- (3) Written notice shall be provided to persons invited to attend the meeting and shall be accompanied by such of the material referred to in clause 5(5) as the board considers appropriate.
- (4) The board may exclude any person (other than a member or a person nominated by the chief executive officer to attend on his or her behalf) from attending any meeting or part of a meeting.
- (5) The board may exclude the chief executive officer, or his or her nominee, from attending any ordinary or special meeting, or part of a meeting, where the business under consideration relates to the conduct or performance of the chief executive officer.

### **Explanatory notes**

Clause 7 now provides that two representatives of the Medical Staff Council or Medical Staff Executive Council shall be invited to all ordinary Board meetings (it previously required "at least one"). The note to clause 7(1) indicates that the Medical Services Committee will consider the wording "at least one" in lieu of the definite requirement of "two" in particular circumstances. That Committee has indicated that these circumstances could include those of time and distance as may be encountered in some rural Areas. The intention of the clause is to ensure a constant and balanced input from medical staff. The use of alternate attendees is also permitted by the clause.

The Board is entitled to invite any person to either an ordinary or special Board meeting and provide them with such background material as the Board considers appropriate.

Although Board members are not generally to be excluded from parts of a meeting, clause 7(5) allows the Board to exclude the Chief Executive Officer or nominee when the meeting is considering that person's conduct or performance.

## 8. Annual public meeting

- (1) An annual public meeting of the board is to be held between 1 July and 31 December each year.
- (2) The board is to prepare and present at each annual public meeting a report of the affairs of the public health organisation since the last annual public meeting, including audited financial statements of the public health organisation.
- (3) The presiding member is to determine the procedure for the conduct of business at an annual public meeting. This procedure should not be inconsistent with the Act, the regulations and this By-law.
- (4) Any person is entitled to attend and seek leave to address that meeting.
- (5) The holding of the annual public meeting is to be advertised in at least one newspaper circulating generally in the area serviced by the public health organisation.
- (6) The provisions of this By-law relating to the calling and conduct of ordinary and special meetings of the board do not apply to the calling and conduct of the annual public meeting.

### Explanatory notes

This provision details the requirements for an annual public meeting of the Board each calendar year. There have only been minor changes from the previous By-law.

## 9. Office bearers

- (1) The chief executive officer is to conduct any election for a presiding member, other than the chairperson, at a meeting of the Board.
- (2) The presiding member is to conduct any election for office bearers, other than the chairperson or the presiding member, at a meeting of the board.
- (3) Office bearers are elected for a period determined by the board.

### Explanatory notes

The By-law gives total flexibility to the Board to nominate office bearers. There is no requirement to appoint the traditional vice chairperson, treasurer, etc.

## 10. Minutes

- (1) The chief executive officer is to ensure that minutes are kept of all meetings of the board.
- (2) A motion for the confirmation of minutes of a meeting is to be put to the next ordinary meeting.
- (3) No business is to be transacted until the minutes of the previous meeting have been confirmed or otherwise disposed of.

### Explanatory notes

This provision ensures that Board minutes are kept and ratified. There has been no change to this provision.

## 11. Decisions of the board

- (1) The board is to make available to staff of the public health organisation information concerning the decisions of the board except where the board considers that it is inappropriate to disclose that information.
- (2) The board may make available to the public information concerning the decisions of the board.

### **Explanatory notes**

The By-law requires that information on decisions of the Board is to be made available to staff unless the Board considers it inappropriate. It does not require the minutes of meetings to be made generally available although certain Boards will choose to make Board minutes available. It also allows the Board to make information about decisions publicly available, but does not require it to do so.

## **12. Voting**

- (1) Any matter put to the vote at any meeting of the board is to be decided by a show of hands or by secret ballot if requested by a member attending the meeting.
- (2) A decision supported by a majority of the votes cast at a meeting of the board at which a quorum is present is the decision of the board.

### **Explanatory notes**

At meetings of the Board only Board members are entitled to vote. Any other persons present as invitees of the Board may not vote. Clause 12(2) clarifies the voting requirements for a valid decision of the Board.

## **13. Rescission**

- (1) The board may at any ordinary or special meeting vary or rescind any resolution carried at any previous meeting of the board only if the motion to vary or rescind the resolution has been included in or with the notice of the meeting.
- (2) If a motion to vary or rescind a resolution is considered at a meeting of the board and is not carried, the motion is not to be reconsidered by the board during a period of three months from the date of that meeting.

### **Explanatory notes**

This provision outlines the procedures for rescinding or varying previous resolutions of the Board. It is identical to the provision in the previous By-law.

# **Part 3 - Procedure relating to By-laws**

## **14. Amendments to By-laws**

- (1) Each member is to be informed in writing of a motion to make, amend or rescind any By-law.
- (2) The notice is to be received at least three weeks prior to considering the motion.

## **15. Availability of By-laws**

The board is to ensure that copies of the current By-laws for the public health organisation are available to staff of the public health organisation and the public.

### **Explanatory notes**

Board members must be informed in writing of motions to make, amend or rescind any By-law at least 3 weeks before it is to be considered. The Board is to ensure that the current By-laws are available to the staff and public, however they no longer need to be exhibited.

## Part 4 - The seal

### 16. The seal

- (1) The seal of the public health organisation is to be affixed to a document only:
  - (a) in the presence of at least 2 members of the board authorised to act on behalf of the board; and
  - (b) witnessed by the signatures of those members that the official seal was affixed.
- (2) The chief executive officer is to ensure the safe custody of the seal.

#### Explanatory notes

Part 4 sets out the procedures for using the seal of the public health organisation.

## Part 5 - Committees of the Board

### 17. Definitions

In Part 5, **committee** means a committee referred to in clause 18. A **committee member** means members of the board and other people on the committee.

### 18. Board committees

The board is to establish committees to provide advice or other assistance to enable it to perform its duties under the Act. The committees are to include:

- (a) audit;
- (b) finance;
- (c) health care quality; and
- (d) other committees as determined by the board, such as governance and risk management.

#### Explanatory notes

The areas for which Boards may establish committees are intended to be flexible, other than the minimum set of audit, finance and health care quality.

### 19. Functions of committees

- (1) A committee is to provide advice or other assistance on issues as requested by the board.
- (2) These issues may include:
  - (a) efficient and economic operation of :
    - (i) the public health organisation;
    - (ii) industrial relations;
    - (iii) human resources;
    - (iv) financial and asset management;
  - (b) adequate standards of patient care and services;
  - (c) health needs of the community serviced by the public health organisation;
  - (d) community involvement in the planning of health services;

- (e) strategies to ensure an appropriate balance in the provision and use of resources for health protection, health promotion, health education and treatment services;
- (f) effective communication with other health services and health service providers;
- (g) adequate arrangements for effective communication and cooperation between medical practitioners, including general practitioners, providing medical services within the geographic area of the Area Health Service.

### **Explanatory notes**

The functions of committees are to be determined by the Board. It should be noted that the general functions listed in clause 19(2) are based on the functions of the various types of public health organisations set out in sections 10, 12 and 14 of the Health Services Act and are not intended to be exclusive. Communication and cooperation with local services, providers or practitioners is particularly encouraged.

## **20. Committee membership**

- (1) Each committee is to include at least one member elected by the board.
- (2) The chairperson of the audit committee is not to be the chairperson of the finance committee (or a similar committee).
- (3) The audit committee is to comprise at least three members of the board. No chief executive officer or other employee is to be a member of the audit committee.
- (4) The board is to appoint at least one representative of the executive staff of the public health organisation to any committee (other than the audit committee).
- (5) The board is to appoint such medical practitioner representation as it considers appropriate to each Board subcommittee, other than the audit and finance committees.
- (6) The board may appoint any other person as a committee member as it thinks fit.
- (7) The board may remove any committee member as it thinks fit.

### **Explanatory notes**

Clause 20 sets out detailed provisions concerning committee membership. Each committee must include a Board member. Clauses 20(2) and 20(3) ensure the integrity of the audit committee. Under 20(4) all committees other than the audit committee are to include a representative of the executive staff. It is left to the Board to decide under clause 20(5) the appropriate level of representation of the organisation's medical community on these committees.

## **21. Election to committees**

Elections of committee members are to be held at least once each calendar year.

## **22. Term of office**

- (1) Any member elected to a committee by the board holds office until the next election is held or until the office is otherwise vacated, whichever occurs first.
- (2) Any other person appointed to a committee by the board holds office for such period as the board may determine or until the office is otherwise vacated, whichever occurs first.

## **23. Casual vacancies**

If the position of a member of a committee becomes vacant between elections, the board is to elect a member to fill that vacancy for the remainder of the member's unexpired term of office, or any lesser period determined by the board.

**Explanatory Notes**

Clauses 21 to 23 determine the procedures for the election and appointment of committee members. Members elected to a committee by the Board hold office until the next election unless the office is otherwise vacated. When the Board appoints a person to a committee it determines the period of appointment. The Board is to elect a member to fill a vacancy between elections for either the remainder of the term or a lesser period determined by the Board.

**24. Committee quorum**

The quorum for a meeting of a committee is a majority of the committee members.

**25. Attendance**

A committee may invite any person to attend a committee meeting.

**26. Committee voting**

A decision supported by a majority of the votes cast at a meeting of a committee at which a quorum is present is to be the decision of the committee.

**27. Notice of meetings**

The chairperson of a committee, or a person authorised by the chairperson to do so, is to give written notice of a meeting to each committee member at least 7 days prior to the meeting.

**28. Secretary to committees**

The secretary of a committee is to be the chief executive officer or another person appointed by the board.

**29. Meetings**

- (1) A committee established by the board to provide advice or assistance to it on audit or finance is to meet at regular intervals and at times and places determined by the committee.
- (2) Any other committee is to meet as specified by the board.

**Explanatory Notes**

The audit and finance committees are to determine how often, when and where they meet, but they must meet at regular intervals. Other committees are to meet as specified by the Board.

**Part 6 - Councils representing medical staff****30. Definition**

In Part 6, **member** means a member of a council.

**31. Establishment of medical staff councils**

- (1) The board is to establish either:
  - (a) a Medical Staff Council; or

- (b) a Medical Staff Executive Council and at least two medical staff councils.
- (2) Medical staff councils are to be composed of all visiting practitioners, staff specialists, career medical officers and dentists appointed to the public health organisation.
- (3) Sufficient medical staff councils should be established to ensure that all visiting practitioners, staff specialists, career medical officers and dentists of the public health organisation are members.

*Note: For medical staff councils with five members or less refer to the special provisions under clause 40.*

### **Explanatory Notes**

The model by-law provides that there is to be either one Medical Staff Council, or an Executive Council and at least two Medical Staff Councils. This allows multiple Staff Councils to be set up as necessary, whether at a facility level or otherwise. For the first time, career medical officers may form part of a Staff Council in addition to visiting practitioners, staff specialists and dentists.

## **32. Medical Staff Executive Council**

- (1) An Medical Staff Executive Council shall be composed of representatives of the Medical Staff Councils for the hospitals under the control of the Area Health Service.
- (2) Subject to clause 32(4), each Medical Staff Council shall nominate as its representative or representatives on the Medical Staff Executive Council -
  - (a) if the Medical Staff Council has 50 members or less, one member of that Council; and
  - (b) if the Medical Staff Council has more than 50 members, one member of that Council for every 50 members or part thereof.
- (3) For the purposes of clause 32(2), the number of members of a Medical Staff Council shall be determined as at 1 January in the relevant year.
- (4) The number of representatives of any Medical Staff Council on a Medical Staff Executive Council shall not exceed the total number of representatives of all other Medical Staff Councils on the Medical Staff Executive Council.

### **Explanatory Notes**

Clause 32 sets out the composition of the Medical Staff Executive Council. Under clause 32(2), individual Medical Staff Councils are to be represented on the Executive Council in the ratio of one representative for each 50 or less members i.e. a 98 member Staff Council would have two representatives on the Executive Council. Clause 32(4) is intended to ensure that no single Staff Council is to dominate the Executive Council.

## **33. Functions of council**

The Medical Staff Executive Council or the Medical Staff Council (if there is only one council for the public health organisation) is to provide advice to the board on medical matters.

### **Explanatory Notes**

The By-law provides for the Medical Staff Executive Council or single Medical Staff Council to provide advice on medical matters. Although no other functions are prescribed, individual Councils can still initiate other functions such as continuing education. Medical matters have not been defined but should generally be interpreted as any matter affecting the medical staff or the services which they provide eg the construction of a new kitchen would not normally be considered a medical matter.

### 34. Voting at meetings of councils

- (1) Any matter put to the vote at any meeting of a council is to be decided by a show of hands, or by secret ballot if requested by a member present at that meeting.
- (2) A decision supported by a majority of the votes cast at a meeting of members at which a quorum is present is to be the decision of the council.

#### Explanatory Notes

Any member of the Council present at the meeting may request that a vote be taken by a secret ballot, however normally voting should be by a show of hands. A decision of the Council is that taken by a majority of votes when a quorum is present.

### 35. Office bearers of councils

- (1) A council is to elect a chairperson of the council and other office bearers it considers necessary from among the members.
- (2) Such elections are to be held at an ordinary meeting of a council once each calendar year.
- (3) An office bearer is to hold office until vacation of the office or until the next election, whichever occurs first.
- (4) An office bearer shall be eligible for re-election to the same office, provided that no more than three (3) consecutive terms are served, unless there are special circumstances and a further consecutive term has been approved by the board.
- (5) The chairperson of a council is to hold office from the time of his or her election as chairperson until vacation of the office or until the next election, whichever occurs first.
- (6) If an office becomes vacant between elections, the vacancy is to be filled by an election at a special meeting of the council. The special meeting is to be held within 30 days of the vacancy occurring.

#### Explanatory Notes

This clause concerns the election of office bearers of the Council. The only mandatory office bearer is the chairperson, however the Council may choose to elect other office bearers. Elections are to be held once a year at an ordinary meeting, except where a vacancy occurs between elections in which case an election for the vacancy is to be held within 30 days at a special meeting. An office bearer can only serve three consecutive terms unless there are special circumstances and the Board approves an additional term (this is a new provision in the By-law).

### 36. Ordinary meetings of councils

- (1) Ordinary meetings of a council are to be held at times and places determined by the council.
- (2) The chairperson of a council, or other office bearer of the council authorised by the chairperson to do so, is to provide written notice to each member, at least 7 days prior to an ordinary meeting.
- (3) The medical administrator of the public health organisation (however designated) is to be invited to attend all meetings of the council (unless already a member). However the council may exclude the medical administrator from any meeting, or part of a meeting, where the business under consideration relates to the conduct or performance of the medical administrator in that position.
- (4) A council may invite any other person, including any staff member of the public health organisation, to attend any of its meetings.
- (5) The council may exclude any invitee from any meeting, or part of a meeting.

### **Explanatory Notes**

The Council can determine when and where it will hold its meetings. Written notice is to be provided to each member 7 days prior to the meeting by the Chairperson. Clause 36(3) is a new provision in the By-law that makes it mandatory for the Council to invite the medical administrator to each meeting of the Council. However the Council can exclude the medical administrator from a meeting or part of a meeting if the matter being discussed concerns the conduct or performance of the medical administrator.

## **37. Special meetings of councils**

- (1) A special meeting of a council may be called by the chairperson of the council.
- (2) A special meeting of a council is to be called by the chairperson within forty-eight hours after the chairperson of the council receives:
  - (a) for a council with 6 to 20 members, a written request signed by a majority of the members of the council;
  - (b) for a council with more than 20 members, a written request signed by at least 11 members of the council.
- (3) The chairperson of a council is to give at least 24 hours notice of a special meeting of the council to all members.
- (4) Notice of a special meeting of a council is to specify the business to be considered at the meeting.
- (5) Only business specified in the notice is to be considered at a meeting.

### **Explanatory Notes**

Clause 37 sets out the procedures for calling a special meeting. The Chairperson can call a special meeting at any time and must call a special meeting after receiving a written request signed by the requisite number of members in 37(2). The numbers required for such a request have been simplified. Notice of a special meeting must be given to all members 24 hours in advance and must specify the business to be considered. No other business can be considered at the meeting.

## **38. Quorum**

The quorum for a meeting of a council is:

- (a) for a Medical Staff Executive Council, a majority of the members;
- (b) for a medical staff council with 6 to 20 members, a majority of the members of the council;
- (c) for a medical staff council with more than 20 members, one tenth of the members or 11 members of the council, whichever is the greater number.

### **Explanatory Notes**

The quorum for a Medical Staff Executive Council regardless of size is a majority of council members. For medical staff councils, the procedure for determining quorum depends on the size of the Council.

## **39. Minutes**

The chairperson of a council, or an office bearer of the council authorised by the chairperson to do so, is to ensure that minutes are kept of all meetings of the council.

## 40. Smaller medical staff councils

For a council with five members or less:

- (a) clauses 36-39 of the By-law do not apply;
- (b) the chief executive officer, or a person authorised on his or her behalf, is to call a meeting of the council not later than seven days after receiving a written request for such a meeting from a member of the council;
- (c) the chief executive officer, or a person authorised on his or her behalf, is to give written notice of a meeting of the council to all members and to the medical administrator of the public health organisation (however designated);
- (d) the medical administrator of the public health organisation (however designated) is to be invited to attend all duly convened meetings of the council. However the council may exclude the medical administrator from any meeting, or part of a meeting, where the business under consideration relates to the conduct or performance of the medical administrator in that position;
- (e) the council may invite any other person to attend any meeting of the council;
- (f) the council is to ensure that minutes of a meeting of the council are kept;
- (g) the quorum for a meeting of the council is a majority of its members.

### Explanatory Notes

Clause 40 sets out special procedures for a medical staff council of five members or less. For a small medical staff council, the clauses relating to ordinary meetings, special meetings, quorum and minutes (36-39) do not apply. Instead the Chief Executive Officer, or a person authorised on his or her behalf, is to call a meeting within seven days of receiving a request from a member of the council and is to give written notice of the meeting to all members and the medical administrator. Any person can be invited to the meeting, however the medical administrator must be invited. However the medical administrator can be excluded if the matter being discussed relates to their conduct or performance.

## Part 7 - Medical and Dental Appointments Advisory Committee

### 41. Establishment of Medical and Dental Appointments Advisory Committee

- (1) The board is to establish a committee of the board called the Medical and Dental Appointments Advisory Committee which will:
  - (a) provide advice, and where appropriate, make recommendations with reasons, to the board concerning matters relating to the appointment or proposed appointment of visiting practitioners or staff specialists;
  - (b) consider any application that has been referred to the Committee by the board for:
    - (i) appointment of a visiting practitioner or staff specialist; or
    - (ii) proposal to appoint a person as a visiting practitioner or staff specialist.
  - (c) provide advice, and where appropriate, make recommendations with reasons, to the board concerning the clinical privileges which should be allowed to visiting practitioners, staff specialists and other dentists.

- (2) Where the Board has delegated such a function to that position, the medical administrator of the public health organisation (however designated) may appoint a visiting practitioner or staff specialist to an available position for a single period not exceeding three (3) months. However any exercise of this delegation shall be considered by the next ordinary meeting of the board and shall be subject to the advice of the relevant Medical and Dental Appointments Advisory Committee, if the advice or recommendation of that Committee is required for that position.
- (3) The Committee may form sub-committees, whether at a hospital or otherwise, to provide advice or other assistance to enable it to perform its duties referred to in clause 41(1).

### **Explanatory Notes**

The Medical and Dental Appointments Advisory Committee is a committee of the Board to advise and make recommendations on the appointment of visiting practitioners and staff specialists and their clinical privileges. When providing advice on appointments the MDAAC must apply the merit principle. The merit principle ensures that the person selected has the abilities, qualifications, experience, standard of work performance and personal qualities that best matches the position requirements. However where the Board has specifically delegated this function to the medical administrator, clause 41(2) of the model by-law now provides that the medical administrator may appoint a visiting practitioner or staff specialist to a position for a single maximum period of 3 months, again subject to the merit principle. Such a decision is still subject to the advice of the MDAAC and must be brought to the Board's attention at the first available meeting.

## **42. Composition of Medical and Dental Appointments Advisory Committee**

The Medical and Dental Appointments Advisory Committee shall be composed of:

- (a) two members of the board (at least one of whom is not a medical practitioner), one of whom is to be nominated by the board as chairperson of the Committee;
- (b) two representatives of the Council nominated by the Council to be on the Committee;
- (c) the chief executive officer of the public health organisation or her/his nominee;
- (d) the medical administrator of the public health organisation (however designated) or her/his nominee;
- (e) such of the following persons (being medical practitioners or dentists) appointed by the board as are necessary, in the board's opinion, to the proper consideration of a matter or class of matters referred to the Committee:
  - (i) one representative of the public health organisation, having regard to the matter under consideration;
  - (ii) one representative of an appropriate professional medical college or body whose discipline is relevant to the matter under consideration and who is not a member of the Council of the public health organisation;
  - (iii) one representative of each university affiliated with the public health organisation for the purposes of the training of medical practitioners or dentists;
- (f) where a matter or class of matters referred to the Committee concerns an appointment of a person as a visiting practitioner or staff specialist to a hospital or hospitals under the control of an area health service, a representative of the Medical Staff Council, if any, for each hospital to which the appointment relates and who is nominated by that Council; and
- (g) where a matter or class of matters referred to the Committee concerns the clinical privileges of a visiting practitioner or staff specialist, a representative of the Medical Staff Council, if any, for each hospital to which the appointment relates and who is nominated by that Council.

### Explanatory Notes

The composition of the MDAAC is to be representative of the Board, the Council (Medical Staff Executive Council or Medical Staff Council as appropriate), the public health organisation, the medical staff, any relevant appropriate medical professional college or body, any affiliated universities and the Medical Staff Council of the relevant hospitals. It is intended to be flexible so that appropriate persons with particular expertise may be appointed to the MDAAC for the consideration of a particular appointment or class of appointments.

## 43. Term of office

- (1) A member of the Medical and Dental Appointments Advisory Committee who is a member of the board holds office for a period as determined by the board.
- (2) A member of the Medical and Dental Appointments Advisory Committee who is a representative of the Council, is to hold office for such period as the board determines.
- (3) Where a member has been appointed to, or is nominated to be on, the Medical and Dental Appointments Advisory Committee for the purpose of considering a particular matter or matters, he or she is a member only for the period or periods during which that matter or matters is under consideration by the Committee.
- (4) A member of the Medical and Dental Appointments Advisory Committee shall absent themselves from the meeting during any discussion by the Committee of the appointment or clinical privileges of that member.

### Explanatory Notes

The Board is to determine the period of office for Board or Council representative members of the MDAAC. Where a member of MDAAC has been appointed specifically to consider particular matters, they will only be a member of MDAAC for the period or periods while the matters are under consideration by the MDAAC. MDAAC members are now specifically required to leave a meeting at which their own appointment or privileges are being discussed.

## 44. Committee meetings

Clauses 4, 24, 25, 26 and 27 apply to meetings of the Medical and Dental Appointments Advisory Committee.

### Explanatory Notes

Clauses 4, 24, 25, 26 and 27 cover the conduct of meetings, committee quorum, attendance, committee voting and notice of meetings.

# Part 8 - Credentials (Clinical Privileges) Subcommittee

## 45. Credentials (Clinical Privileges) Subcommittee

- (1) The Medical and Dental Appointments Advisory Committee is to establish at least one subcommittee called the Credentials (Clinical Privileges) Subcommittee (in this part called the "**credentials subcommittee**") to provide advice to the Medical and Dental Appointments Advisory Committee on all matters concerning the clinical privileges of visiting practitioners or staff specialists, including the following:

- (a) the clinical privileges to be allowed to an applicant or person proposed for appointment as a visiting practitioner;
  - (b) the clinical privileges to be allowed to a staff specialist on appointment;
  - (c) the review of the clinical privileges of a visiting practitioner or staff specialist at the request of the visiting practitioner or staff specialist; and
  - (d) the review of the clinical privileges of a visiting practitioner or staff specialist at the request of the public health organisation.
- (2) Any matter concerning the clinical privileges of any person:
- (a) who is appointed as a staff specialist or a visiting practitioner, or
  - (b) who the Medical and Dental Appointments Advisory Committee is considering recommending for appointment as a staff specialist or a visiting practitioner
- is to be referred to the credentials subcommittee for advice.
- (3) In considering all matters concerning clinical privileges the credentials subcommittee is to have regard to the delineated role of the relevant health facility approved by the Department.

### **Explanatory Notes**

The title of this Committee has been modified to reflect its true role in determining and reviewing clinical privileges. The By-law also makes clear that this Committee is to be a sub-committee of the MDAAC. The By-law also states that there is to be "*at least one* sub-committee" (emphasis added). This language has been intentionally used so that there are no restrictions on how many of these sub-committees can be established by the MDAAC. Therefore there can be a sub-committee at each facility within an Area, or even multiple sub-committees at each facility, which can each provide specialist advice on particular appointments or classes of appointment. This will allow the best use of personnel and resources.

## **46. Composition of the credentials subcommittee**

- (1) The credentials subcommittee is to consist of:
  - (a) at least two members of the Medical and Dental Appointments Advisory Committee who are medical practitioners or dentists, nominated by the Medical and Dental Appointments Advisory Committee; and
  - (b) any other medical practitioners or dentists appointed by the Medical and Dental Appointments Advisory Committee who that Committee considers are necessary to consider the matter or matters referred to the credentials subcommittee for advice.
- (2) The Medical and Dental Appointments Advisory Committee is to nominate one of the persons under clause 46(1)(a) as chairperson of the credentials subcommittee.
- (3) In appointing members of the credentials subcommittee under clause 46(1)(b), the Medical and Dental Appointments Advisory Committee is to ensure that the appointments are consistent with any Departmental guidelines or circulars relating to the delineation of clinical privileges and/or the composition of the credentials subcommittee.

### **Explanatory Notes**

The Credentials (Clinical Privileges) Subcommittee is comprised solely of medical practitioners or dentists because the Subcommittee considers matters relating to the appointment or privileges of a visiting practitioner or staff specialist. The MDAAC nominates two of its members to be part of the Subcommittee, one of whom is to be the chairperson, and appoints such other medical practitioners as are considered necessary to consider the matter.

## 47. Term of Office

A member appointed to or nominated to be on the credentials subcommittee, for the purpose of considering a particular matter or matters, is a member for the period or periods during which the matter or matters is considered by the subcommittee.

## 48. Committee meetings

Clauses 4, 24, 25, 26 and 27 apply to meetings of the credentials subcommittee.

### Explanatory Notes

Clause 47 clarifies that committee members hold office only during the consideration of a particular matter or matters. Clauses 4, 24, 25, 26 and 27 cover the conduct of meetings, committee quorum, attendance, committee voting and notice of meetings.

# Part 9 - Rules

## 49. Rules

The board may make rules for the proper functioning of the public health organisation. These rules should not be inconsistent with the Act, the associated regulations and this By-law.

# Dictionary

### Explanatory Notes

For the first time in the by-law, and in line with current legislative drafting practice, certain words and phrases used in the by-law are 'defined' in the dictionary. These largely repeat those used in the Health Services Act so that the use of such words in the by-law is consistent with the Act.

**Act** means the Health Services Act 1997.

**appointed member** means a member other than the chief executive officer.

**appointment** includes re-appointment.

**board** of a public health organisation means:

- (a) in relation to an area health service - the area health board of the service, or
- (b) in relation to a statutory health corporation - the health corporation board of the corporation, or
- (c) in relation to an affiliated health organisation - the governing body of the organisation.

**chief executive officer**

- (a) of an area health service - means the chief executive officer of that corporation, or
- (b) of a statutory health corporation - means the chief executive officer of that corporation, or
- (c) of an affiliated health organisation - means the person who is responsible to the governing body of the organisation for the management of its recognised establishments and recognised services.

**clinical privileges** means the kind of clinical work (subject to any restrictions) that the public health organisation determines the visiting practitioner or staff specialist is to be allowed to perform at any of its hospitals or health services.

**council** means a Medical Staff Executive Council or a medical staff council.

**dentist** means a person registered, or taken to be registered, as a dentist under the Dentists Act 1989.

**Department** means the Department of Health.

**executive staff** means the persons appointed by the public health organisation to its management structure and any persons appointed to act for the time being in those positions.

**health service** means any of the following

- (a) any hospital service,
- (b) any medical service,
- (c) any paramedical service,
- (d) any community health service,
- (e) any environmental health service,
- (f) any other service (including any service of a class or description prescribed by the regulations) relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or injury to persons.

**hospital** means an institution at which relief is given to sick or injured people through the provision of care or treatment.

**medical practitioner** means a person who is registered, or taken to be registered, under the Medical Practice Act 1992.

**member** means:

- (a) in relation to an area health board - a member of an area health board, or
- (b) in relation to a health corporation board - a member of a health corporation board.
- (c) in relation to an affiliated health organisation board - a member of a governing body of the organisation.

**public health organisation** means

- (a) an area health service, or
- (b) a statutory health corporation, or
- (c) an affiliated health organisation in respect of its recognised establishments and recognised services.

**public hospital** is

- (a) a hospital controlled by an area health service, or
- (b) a hospital controlled by a statutory health corporation, or
- (c) a hospital that is a recognised establishment of an affiliated health organisation, or
- (d) a hospital controlled by the Crown (including the Minister or the Health Administration Corporation).

**regulations** means the regulations made under the Act.

**staff specialist** means a medical practitioner employed by the public health organisation as a staff specialist under the Salaried Senior Medical Practitioners (State) Award.

**visiting practitioner** means a medical practitioner or dentist who is appointed by a public health organisation (otherwise than as an employee) to practise as a medical practitioner or dentist in accordance with the conditions of appointment at any of its public hospitals or health institutions, or in relation to any health service it provides, specified in the appointment.

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# Section 2

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## Health Services Model By-Law

# Health Services Act 1997 - Order

I, CRAIG JOHN KNOWLES, Minister for Health, pursuant to sections 39(2), 60(2) and 63(2) of the Health Services Act 1997, and after having received advice from the Medical Services Committee in relation to the substance of the model By-law, do, by this my Order, set out the following as the terms of a model By-law for area health services, statutory health corporations and affiliated health organisations.

Minister for Health

## **MODEL BY-LAW for AREA HEALTH SERVICES, STATUTORY HEALTH CORPORATIONS and AFFILIATED HEALTH ORGANISATIONS**

### **PART 1 - PRELIMINARY**

#### **1. Name of the By-law**

This By-law may be cited as the [name of public health organisation] By-law.

#### **2. Definitions**

Expressions used in this By-law are defined in the Dictionary at the end of the By-law.

### **PART 2 - PROCEDURE OF THE BOARD**

#### **3. Presiding member**

- (1) The chairperson (or, in the absence of the chairperson, another appointed member elected as chairperson for that meeting by the members present other than the chief executive officer) is to preside at a meeting of the board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

#### **4. Conduct of meetings**

- (1) The presiding member may determine the procedure for the conduct of the meetings. This procedure is to consider procedures set out in law and should not address procedures that are covered in the Act, the regulations or this By-law.

- (2) Any board meeting or meeting of any committee or council provided for under these by-laws may decide to allow any of its members or other invitees to participate or vote in the meeting from a location other than the place where the meeting is being held. Such participation may be by telephone, facsimile, video or other electronic medium as is appropriate to the circumstances or the business being transacted. A member of a board, committee or council participating from a remote location shall be regarded as being present at the meeting for the purposes of the calculation of a quorum or any other similar matter required under these by-laws.
- (3) The board, committee or council may determine a protocol or procedure for remote participation of members or other persons in its meetings.

## **5. Ordinary meetings of the board**

- (1) The board is to hold ordinary meetings at times and places determined by the board.
- (2) At least 6 ordinary meetings are to be held in any 12 month period and these meetings are to be held at regular intervals.
- (3) Written notice of an ordinary meeting of the board is to be given at least 7 days before the meeting.
- (4) Written notice is to be given by the chief executive officer, or by a person authorised by the board to give notice. Written notice is to be given to all members and persons invited to attend the meeting by the board.
- (5) The written notice to a member is to be accompanied by the following:
  - (a) a copy of the agenda for the meeting;
  - (b) a copy of the minutes of the previous ordinary meeting of the board if a copy has not previously been distributed to members;
  - (c) a copy of the minutes of any special meeting of the board held since the board's last ordinary meeting if a copy has not previously been distributed to members; and
  - (d) a copy of the minutes of any meeting of a committee of the board held since the board's last ordinary meeting, except if a copy has previously been distributed to members.
- (6) Written notice shall be provided to persons invited to attend the meeting and shall be accompanied by such of the material referred to in clause 5(5) as considered appropriate.
- (7) A member may indicate that he or she does not want to receive some or all of the documents referred to in clause 5(5) for a particular meeting or for all meetings.

## **6. Special meetings of the board**

- (1) A special meeting of the board is to be called by the chief executive officer:
  - (a) at the direction of the chairperson; or
  - (b) within forty-eight hours of receipt by the chief executive officer of a written request for a special meeting signed by at least three members.
- (2) A special meeting is to be held not later than seven days after receipt by the chief executive officer of a request referred to in clause 6(1)(b).
- (3) The chief executive officer is to give at least 24 hours' notice of a special meeting to each member and each person invited to attend the meeting by the board.
- (4) Notice of a special meeting is to specify the business to be considered at that meeting.
- (5) Only business specified in the notice of a special meeting is to be considered at the special meeting.

## 7. Attendance at board meetings

- (1) The board is to invite:
  - (a) two\*\* representatives of the Medical Staff Executive Council or the Medical Staff Council (if only one council for the public health organisation), nominated by the council, provided that the council may also nominate an alternate for that representative who may attend board meetings in that person's place when that person is unable for whatever reason to attend; and
  - (b) at least one representative of the executive staff,
 to attend its ordinary meetings.

*NOTE: \*\* It has been agreed with the Medical Services Committee that organisations may still submit this clause for approval with wording in clause 7(1)(a) in the form of "at least one..." (medical representatives), if there are considered to be specific local circumstances which justify such a variation.*

- (2) The board may invite any person to attend any meeting of the board, including both ordinary and special meetings.
- (3) Written notice shall be provided to persons invited to attend the meeting and shall be accompanied by such of the material referred to in clause 5(5) as the board considers appropriate.
- (4) The board may exclude any person (other than a member or a person nominated by the chief executive officer to attend on his or her behalf) from attending any meeting or part of a meeting.
- (5) The board may exclude the chief executive officer, or his or her nominee, from attending any ordinary or special meeting, or part of a meeting, where the business under consideration relates to the conduct or performance of the chief executive officer.

## 8. Annual public meeting

- (1) An annual public meeting of the board is to be held between 1 July and 31 December each year.
- (2) The board is to prepare and present at each annual public meeting a report of the affairs of the public health organisation since the last annual public meeting, including audited financial statements of the public health organisation.
- (3) The presiding member is to determine the procedure for the conduct of business at an annual public meeting. This procedure should not be inconsistent with the Act, the regulations and this By-law.
- (4) Any person is entitled to attend and seek leave to address that meeting.
- (5) The holding of the annual public meeting is to be advertised in at least one newspaper circulating generally in the area serviced by the public health organisation.
- (6) The provisions of this By-law relating to the calling and conduct of ordinary and special meetings of the board do not apply to the calling and conduct of the annual public meeting.

## 9. Office bearers

- (1) The chief executive officer is to conduct any election for a presiding member, other than the chairperson, at a meeting of the Board.
- (2) The presiding member is to conduct any election for office bearers, other than the chairperson or the presiding member, at a meeting of the board.
- (3) Office bearers are elected for a period determined by the board.

## 10. Minutes

- (1) The chief executive officer is to ensure that minutes are kept of all meetings of the board.
- (2) A motion for the confirmation of minutes of a meeting is to be put to the next ordinary meeting.
- (3) No business is to be transacted until the minutes of the previous meeting have been confirmed or otherwise disposed of.

## **11. Decisions of the board**

- (1) The board is to make available to staff of the public health organisation information concerning the decisions of the board except where the board considers that it is inappropriate to disclose that information.
- (2) The board may make available to the public information concerning the decisions of the board.

## **12. Voting**

- (1) Any matter put to the vote at any meeting of the board is to be decided by a show of hands or by secret ballot if requested by a member attending the meeting.
- (2) A decision supported by a majority of the votes cast at a meeting of the board at which a quorum is present is the decision of the board.

## **13. Rescission**

- (1) The board may at any ordinary or special meeting vary or rescind any resolution carried at any previous meeting of the board only if the motion to vary or rescind the resolution has been included in or with the notice of the meeting.
- (2) If a motion to vary or rescind a resolution is considered at a meeting of the board and is not carried, the motion is not to be reconsidered by the board during a period of three months from the date of that meeting.

# **PART 3 - PROCEDURE RELATING TO BY-LAWS**

## **14. Amendments to By-laws**

- (1) Each member is to be informed in writing of a motion to make, amend or rescind any By-law.
- (2) The notice is to be received at least three weeks prior to considering the motion.

## **15. Availability of By-laws**

The board is to ensure that copies of the current By-laws for the public health organisation are available to staff of the public health organisation and the public.

# **PART 4 - THE SEAL**

## **16. The seal**

- (1) The seal of the public health organisation is to be affixed to a document only:
  - (a) in the presence of at least 2 members of the board authorised to act on behalf of the board; and
  - (b) witnessed by the signatures of those members that the official seal was affixed.
- (2) The chief executive officer is to ensure the safe custody of the seal.

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## PART 5 - COMMITTEES OF THE BOARD

### 17. Definitions

In Part 5, **committee** means a committee referred to in clause 18. A **committee member** means members of the board and other people on the committee.

### 18. Board committees

The board is to establish committees to provide advice or other assistance to enable it to perform its duties under the Act. The committees are to include:

- (a) audit;
- (b) finance;
- (c) health care quality; and
- (d) other committees as determined by the board, such as governance and risk management.

### 19. Functions of committees

- (1) A committee is to provide advice or other assistance on issues as requested by the board.
- (2) These issues may include:
  - (a) efficient and economic operation of :
    - (i) the public health organisation;
    - (ii) industrial relations;
    - (iii) human resources;
    - (iv) financial and asset management;
  - (b) adequate standards of patient care and services;
  - (c) health needs of the community serviced by the public health organisation;
  - (d) community involvement in the planning of health services;
  - (e) strategies to ensure an appropriate balance in the provision and use of resources for health protection, health promotion, health education and treatment services;
  - (f) effective communication with other health services and health service providers;
  - (g) adequate arrangements for effective communication and cooperation between medical practitioners, including general practitioners, providing medical services within the geographic area of the Area Health Service.

### 20. Committee membership

- (1) Each committee is to include at least one member elected by the board.
- (2) The chairperson of the audit committee is not to be the chairperson of the finance committee (or a similar committee).
- (3) The audit committee is to comprise at least three members of the board. No chief executive officer or other employee is to be a member of the audit committee.
- (4) The board is to appoint at least one representative of the executive staff of the public health organisation to any committee (other than the audit committee).
- (5) The board is to appoint such medical practitioner representation as it considers appropriate to each Board subcommittee, other than the audit and finance committees.

- (6) The board may appoint any other person as a committee member as it thinks fit.
- (7) The board may remove any committee member as it thinks fit.

## **21. Election to committees**

Elections of committee members are to be held at least once each calendar year.

## **22. Term of office**

- (1) Any member elected to a committee by the board holds office until the next election is held or until the office is otherwise vacated, whichever occurs first.
- (2) Any other person appointed to a committee by the board holds office for such period as the board may determine or until the office is otherwise vacated, whichever occurs first.

## **23. Casual vacancies**

If the position of a member of a committee becomes vacant between elections, the board is to elect a member to fill that vacancy for the remainder of the member's unexpired term of office, or any lesser period determined by the board.

## **24. Committee quorum**

The quorum for a meeting of a committee is a majority of the committee members.

## **25. Attendance**

A committee may invite any person to attend a committee meeting.

## **26. Committee voting**

A decision supported by a majority of the votes cast at a meeting of a committee at which a quorum is present is to be the decision of the committee.

## **27. Notice of meetings**

The chairperson of a committee, or a person authorised by the chairperson to do so, is to give written notice of a meeting to each committee member at least 7 days prior to the meeting.

## **28. Secretary to committees**

The secretary of a committee is to be the chief executive officer or another person appointed by the board.

## **29. Meetings**

- (1) A committee established by the board to provide advice or assistance to it on audit or finance is to meet at regular intervals and at times and places determined by the committee.
- (2) Any other committee is to meet as specified by the board.

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# PART 6 - COUNCILS REPRESENTING MEDICAL STAFF

## 30. Definition

In Part 6, **member** means a member of a council.

## 31. Establishment of medical staff councils

- (1) The board is to establish either:
  - (a) a Medical Staff Council; or
  - (b) a Medical Staff Executive Council and at least two medical staff councils.
- (2) Medical staff councils are to be composed of all visiting practitioners, staff specialists, career medical officers and dentists appointed to the public health organisation.
- (3) Sufficient medical staff councils should be established to ensure that all visiting practitioners, staff specialists, career medical officers and dentists of the public health organisation are members.

*Note: For medical staff councils with five members or less refer to the special provisions under clause 40.*

## 32. Medical Staff Executive Council

- (1) An Medical Staff Executive Council shall be composed of representatives of the Medical Staff Councils for the hospitals under the control of the Area Health Service.
- (2) Subject to clause 32(4), each Medical Staff Council shall nominate as its representative or representatives on the Medical Staff Executive Council -
  - (a) if the Medical Staff Council has 50 members or less, one member of that Council; and
  - (b) if the Medical Staff Council has more than 50 members, one member of that Council for every 50 members or part thereof.
- (3) For the purposes of clause 32(2), the number of members of a Medical Staff Council shall be determined as at 1 January in the relevant year.
- (4) The number of representatives of any Medical Staff Council on a Medical Staff Executive Council shall not exceed the total number of representatives of all other Medical Staff Councils on the Medical Staff Executive Council.

## 33. Functions of council

The Medical Staff Executive Council or the Medical Staff Council (if there is only one council for the public health organisation) is to provide advice to the board on medical matters.

## 34. Voting at meetings of councils

- (1) Any matter put to the vote at any meeting of a council is to be decided by a show of hands, or by secret ballot if requested by a member present at that meeting.
- (2) A decision supported by a majority of the votes cast at a meeting of members at which a quorum is present is to be the decision of the council.

### **35. Office bearers of councils**

- (1) A council is to elect a chairperson of the council and other office bearers it considers necessary from among the members.
- (2) Such elections are to be held at an ordinary meeting of a council once each calendar year.
- (3) An office bearer is to hold office until vacation of the office or until the next election, whichever occurs first.
- (4) An office bearer shall be eligible for re-election to the same office, provided that no more than three (3) consecutive terms are served, unless there are special circumstances and a further consecutive term has been approved by the board.
- (5) The chairperson of a council is to hold office from the time of his or her election as chairperson until vacation of the office or until the next election, whichever occurs first.
- (6) If an office becomes vacant between elections, the vacancy is to be filled by an election at a special meeting of the council. The special meeting is to be held within 30 days of the vacancy occurring.

### **36. Ordinary meetings of councils**

- (1) Ordinary meetings of a council are to be held at times and places determined by the council.
- (2) The chairperson of a council, or other office bearer of the council authorised by the chairperson to do so, is to provide written notice to each member, at least 7 days prior to an ordinary meeting.
- (3) The medical administrator of the public health organisation (however designated) is to be invited to attend all meetings of the council (unless already a member). However the council may exclude the medical administrator from any meeting, or part of a meeting, where the business under consideration relates to the conduct or performance of the medical administrator in that position.
- (4) A council may invite any other person, including any staff member of the public health organisation, to attend any of its meetings.
- (5) The council may exclude any invitee from any meeting, or part of a meeting.

### **37. Special meetings of councils**

- (1) A special meeting of a council may be called by the chairperson of the council.
- (2) A special meeting of a council is to be called by the chairperson within forty-eight hours after the chairperson of the council receives:
  - (a) for a council with 6 to 20 members, a written request signed by a majority of the members of the council;
  - (b) for a council with more than 20 members, a written request signed by at least 11 members of the council.
- (3) The chairperson of a council is to give at least 24 hours notice of a special meeting of the council to all members.
- (4) Notice of a special meeting of a council is to specify the business to be considered at the meeting.
- (5) Only business specified in the notice is to be considered at a meeting.

## 38. Quorum

The quorum for a meeting of a council is:

- (a) for a Medical Staff Executive Council, a majority of the members;
- (b) for a medical staff council with 6 to 20 members, a majority of the members of the council;
- (c) for a medical staff council with more than 20 members, one tenth of the members or 11 members of the council, whichever is the greater number.

## 39. Minutes

The chairperson of a council, or an office bearer of the council authorised by the chairperson to do so, is to ensure that minutes are kept of all meetings of the council.

## 40. Smaller medical staff councils

For a council with five members or less:

- (a) clauses 36-39 of the By-law do not apply;
- (b) the chief executive officer, or a person authorised on his or her behalf, is to call a meeting of the council not later than seven days after receiving a written request for such a meeting from a member of the council;
- (c) the chief executive officer, or a person authorised on his or her behalf, is to give written notice of a meeting of the council to all members and to the medical administrator of the public health organisation (however designated);
- (d) the medical administrator of the public health organisation (however designated) is to be invited to attend all duly convened meetings of the council. However the council may exclude the medical administrator from any meeting, or part of a meeting, where the business under consideration relates to the conduct or performance of the medical administrator in that position;
- (e) the council may invite any other person to attend any meeting of the council;
- (f) the council is to ensure that minutes of a meeting of the council are kept;
- (g) the quorum for a meeting of the council is a majority of its members.

# PART 7 - MEDICAL AND DENTAL APPOINTMENTS ADVISORY COMMITTEE

## 41. Establishment of Medical and Dental Appointments Advisory Committee

- (1) The board is to establish a committee of the board called the Medical and Dental Appointments Advisory Committee which will:
  - (a) provide advice, and where appropriate, make recommendations with reasons, to the board concerning matters relating to the appointment or proposed appointment of visiting practitioners or staff specialists;
  - (b) consider any application that has been referred to the Committee by the board for:
    - (i) appointment of a visiting practitioner or staff specialist; or
    - (ii) proposal to appoint a person as a visiting practitioner or staff specialist.

- (c) provide advice, and where appropriate, make recommendations with reasons, to the board concerning the clinical privileges which should be allowed to visiting practitioners, staff specialists and other dentists.
- (2) Where the Board has delegated such a function to that position, the medical administrator of the public health organisation (however designated) may appoint a visiting practitioner or staff specialist to an available position for a single period not exceeding three (3) months. However any exercise of this delegation shall be considered by the next ordinary meeting of the board and shall be subject to the advice of the relevant Medical and Dental Appointments Advisory Committee, if the advice or recommendation of that Committee is required for that position.
- (3) The Committee may form sub-committees, whether at a hospital or otherwise, to provide advice or other assistance to enable it to perform its duties referred to in clause 41(1).

## **42. Composition of Medical and Dental Appointments Advisory Committee**

The Medical and Dental Appointments Advisory Committee shall be composed of:

- (a) two members of the board (at least one of whom is not a medical practitioner), one of whom is to be nominated by the board as chairperson of the Committee;
- (b) two representatives of the Council nominated by the Council to be on the Committee;
- (c) the chief executive officer of the public health organisation or her/his nominee;
- (d) the medical administrator of the public health organisation (however designated) or her/his nominee;
- (e) such of the following persons (being medical practitioners or dentists) appointed by the board as are necessary, in the board's opinion, to the proper consideration of a matter or class of matters referred to the Committee:
  - (i) one representative of the public health organisation, having regard to the matter under consideration;
  - (ii) one representative of an appropriate professional medical college or body whose discipline is relevant to the matter under consideration and who is not a member of the Council of the public health organisation;
  - (iii) one representative of each university affiliated with the public health organisation for the purposes of the training of medical practitioners or dentists;
- (f) where a matter or class of matters referred to the Committee concerns an appointment of a person as a visiting practitioner or staff specialist to a hospital or hospitals under the control of an area health service, a representative of the Medical Staff Council, if any, for each hospital to which the appointment relates and who is nominated by that Council; and
- (g) where a matter or class of matters referred to the Committee concerns the clinical privileges of a visiting practitioner or staff specialist, a representative of the Medical Staff Council, if any, for each hospital to which the appointment relates and who is nominated by that Council.

## **43. Term of office**

- (1) A member of the Medical and Dental Appointments Advisory Committee who is a member of the board holds office for a period as determined by the board.
- (2) A member of the Medical and Dental Appointments Advisory Committee who is a representative of the Council, is to hold office for such period as the board determines.

- (3) Where a member has been appointed to, or is nominated to be on, the Medical and Dental Appointments Advisory Committee for the purpose of considering a particular matter or matters, he or she is a member only for the period or periods during which that matter or matters is under consideration by the Committee.
- (4) A member of the Medical and Dental Appointments Advisory Committee shall absent themselves from the meeting during any discussion by the Committee of the appointment or clinical privileges of that member.

#### **44. Committee meetings**

Clauses 4, 24, 25, 26 and 27 apply to meetings of the Medical and Dental Appointments Advisory Committee.

## **PART 8 - CREDENTIALS (CLINICAL PRIVILEGES) SUBCOMMITTEE**

#### **45. Credentials (Clinical Privileges) Subcommittee**

- (1) The Medical and Dental Appointments Advisory Committee is to establish at least one subcommittee called the Credentials (Clinical Privileges) Subcommittee (in this part called the "**credentials subcommittee**") to provide advice to the Medical and Dental Appointments Advisory Committee on all matters concerning the clinical privileges of visiting practitioners or staff specialists, including the following:
  - (a) the clinical privileges to be allowed to an applicant or person proposed for appointment as a visiting practitioner;
  - (b) the clinical privileges to be allowed to a staff specialist on appointment;
  - (c) the review of the clinical privileges of a visiting practitioner or staff specialist at the request of the visiting practitioner or staff specialist; and
  - (d) the review of the clinical privileges of a visiting practitioner or staff specialist at the request of the public health organisation.
- (2) Any matter concerning the clinical privileges of any person:
  - (a) who is appointed as a staff specialist or a visiting practitioner, or
  - (b) who the Medical and Dental Appointments Advisory Committee is considering recommending for appointment as a staff specialist or a visiting practitioner
 is to be referred to the credentials subcommittee for advice.
- (3) In considering all matters concerning clinical privileges the credentials subcommittee is to have regard to the delineated role of the relevant health facility approved by the Department.

#### **46. Composition of the credentials subcommittee**

- (1) The credentials subcommittee is to consist of:
  - (a) at least two members of the Medical and Dental Appointments Advisory Committee who are medical practitioners or dentists, nominated by the Medical and Dental Appointments Advisory Committee; and
  - (b) any other medical practitioners or dentists appointed by the Medical and Dental Appointments Advisory Committee who that Committee considers are necessary to consider the matter or matters referred to the credentials subcommittee for advice.

- (2) The Medical and Dental Appointments Advisory Committee is to nominate one of the persons under clause 46(1)(a) as chairperson of the credentials subcommittee.
- (3) In appointing members of the credentials subcommittee under clause 46(1)(b), the Medical and Dental Appointments Advisory Committee is to ensure that the appointments are consistent with any Departmental guidelines or circulars relating to the delineation of clinical privileges and/or the composition of the credentials subcommittee.

## 47. Term of Office

A member appointed to or nominated to be on the credentials subcommittee, for the purpose of considering a particular matter or matters, is a member for the period or periods during which the matter or matters is considered by the subcommittee.

## 48. Committee meetings

Clauses 4, 24, 25, 26 and 27 apply to meetings of the credentials subcommittee.

# PART 9 - RULES

## 49. Rules

The board may make rules for the proper functioning of the public health organisation. These rules should not be inconsistent with the Act, the associated regulations and this By-law.

# DICTIONARY

**Act** means the Health Services Act 1997.

**appointed member** means a member other than the chief executive officer.

**appointment** includes re-appointment.

**board** of a public health organisation means:

- (a) in relation to an area health service - the area health board of the service, or
- (b) in relation to a statutory health corporation - the health corporation board of the corporation, or
- (c) in relation to an affiliated health organisation - the governing body of the organisation.

**chief executive officer**

- (a) of an area health service - means the chief executive officer of that corporation, or
- (b) of a statutory health corporation - means the chief executive officer of that corporation, or
- (c) of an affiliated health organisation - means the person who is responsible to the governing body of the organisation for the management of its recognised establishments and recognised services.

**clinical privileges** means the kind of clinical work (subject to any restrictions) that the public health organisation determines the visiting practitioner or staff specialist is to be allowed to perform at any of its hospitals or health services.

**council** means a Medical Staff Executive Council or a medical staff council.

**dentist** means a person registered, or taken to be registered, as a dentist under the Dentists Act 1989.

**Department** means the Department of Health.

**executive staff** means the persons appointed by the public health organisation to its management structure and any persons appointed to act for the time being in those positions.

**health service** means any of the following

- (a) any hospital service,
- (b) any medical service,
- (c) any paramedical service,
- (d) any community health service,
- (e) any environmental health service,
- (g) any other service (including any service of a class or description prescribed by the regulations) relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or injury to persons.

**hospital** means an institution at which relief is given to sick or injured people through the provision of care or treatment.

**medical practitioner** means a person who is registered, or taken to be registered, under the Medical Practice Act 1992.

**member** means:

- (a) in relation to an area health board - a member of an area health board, or
- (b) in relation to a health corporation board - a member of a health corporation board.
- (c) in relation to an affiliated health organisation board - a member of a governing body of the organisation.

**public health organisation** means

- (a) an area health service, or
- (b) a statutory health corporation, or
- (c) an affiliated health organisation in respect of its recognised establishments and recognised services.

**public hospital** is

- (a) a hospital controlled by an area health service, or
- (b) a hospital controlled by a statutory health corporation, or
- (c) a hospital that is a recognised establishment of an affiliated health organisation, or
- (d) a hospital controlled by the Crown (including the Minister or the Health Administration Corporation).

**regulations** means the regulations made under the Act.

**staff specialist** means a medical practitioner employed by the public health organisation as a staff specialist under the Salaried Senior Medical Practitioners (State) Award.

**visiting practitioner** means a medical practitioner or dentist who is appointed by a public health organisation (otherwise than as an employee) to practise as a medical practitioner or dentist in accordance with the conditions of appointment at any of its public hospitals or health institutions, or in relation to any health service it provides, specified in the appointment.

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# Section 3

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## **Health Services Regulation 1998 Extract**

# Health Services Regulation 1998

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the Health Services Regulation 1998.

### 2 Commencement

This Regulation commences on 1 July 1998.

### 3 Definitions

In this Regulation:

**casual employee** of a public health organisation means an employee of the organisation who is employed on a casual basis, but does not include a person employed full-time or part-time (whether for a limited term or otherwise).

**clinical privileges** has the same meaning as it has in section 105 (2) of the Act.

*Note.* Section 105 (2) of the Act defines **clinical privileges** to mean the kind of clinical work (subject to any restrictions) that the public health organisation determines a visiting practitioner is to be allowed to perform at any of its hospitals.

**close of nominations** means the time and date for the close of nominations for an election that have been fixed under this Regulation by the notice of the election or, if that close has been postponed, the time and date to which that close has been postponed.

**close of the ballot** means the time and date for the close of any ballot for an election that have been fixed under this Regulation by the notice of the election or, if that close has been postponed, the time and date to which that close has been postponed.

**Department** means the Department of Health.

**medical appointments advisory committee**, in relation to a public health organisation, means a committee:

- (a) established by the board of the public health organisation, and
- (b) having the function of advising the board in relation to the appointment of persons as visiting practitioners to the public health organisation and the clinical privileges that should be allowed to those persons.

**the Act** means the Health Services Act 1997.

*Note.* Terms defined in the Dictionary at the end of the Act include **appoint**, **board** of a public health organisation, **chief executive officer** of a public health organisation, **Director-General** and **visiting practitioner**.

### 4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

## Part 2 Visiting practitioners

### 5 Advertising of available appointments as visiting practitioners

- (1) A board of a public health organisation that decides to make available an appointment as a visiting practitioner must advertise the availability of the appointment in at least one newspaper circulating generally in New South Wales. The board may, in addition, advertise the availability in other ways.
- (2) An application for appointment as a visiting practitioner is to be made in writing to the board of the public health organisation concerned and is to include:
  - (a) a statement setting out the clinical privileges sought by the applicant, and
  - (b) an authority for the medical appointments advisory committee of the public health organisation to obtain information as to the applicant's past performance as a medical practitioner or dentist, as the case may be.
- (3) On receipt of the application, the board is to refer the application to that committee for advice.
- (4) Subclauses (1)–(3) do not apply:
  - (a) to an appointment as a visiting practitioner that is to be held as part of the duties of a person who is to be or has been appointed to a teaching position at a tertiary institution, or
  - (b) to an appointment as a visiting practitioner that is to be held by a person for a period of not more than 3 months, or
  - (c) to any appointment as a visiting practitioner, to the extent that the Director-General determines that the provisions of those subclauses are not to apply.
- (5) A determination under subclause (4)(c):
  - (a) may be made in respect of a particular appointment or in respect of appointments of any specified kind or description, and
  - (b) must be made in writing, and
  - (c) must not be made except on the recommendation of the medical appointments advisory committee of the public health organisation concerned and at the request of the board of the public health organisation.

### 6 Appointment and conditions to be in written agreement

- (1) A person is to be appointed as a visiting practitioner to a public health organisation by written agreement between the person and the public health organisation.
- (2) The written agreement must specify the conditions to which the appointment is subject, including the clinical privileges of the visiting practitioner.
- (3) However, subclause (2) does not require conditions prescribed by or under the Act to be included in the written agreement.

### 7 Term of appointment

- (1) The period for which a person may be appointed as a visiting practitioner is such period (not exceeding 5 years) as the board of the public health organisation determines.
- (2) A person is, if otherwise qualified, eligible for re-appointment from time to time.
- (3) Despite subclause (1), a person may be appointed as a visiting practitioner for the duration of the person's appointment to a teaching position at a tertiary institution (or for such lesser period as the board may determine) if the board has first obtained the advice of the medical appointments advisory committee about the length of the appointment.

## **8 Resignation**

- (1) A person may resign an appointment as a visiting practitioner by giving 3 months' written notice of resignation to the board of the public health organisation concerned.
- (2) However, a board of a public health organisation may waive that requirement for notice or accept a lesser period of time for the giving of such notice if, in the opinion of the board, it is reasonable to do so.

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## **HEALTH SERVICES ACT 1997 - ORDER**

I, CRAIG JOHN KNOWLES, Minister for Health, pursuant to section 63(2) of the Health Services Act 1997 do, by this my Order, amend the terms of the Order made under the Health Services Act 1997 and entitled "Model By-law for area health services, statutory health corporations and affiliated health organisations" ("the Model By-law"), published in the Government Gazette no. 32 of 3 March 2000 at pages 1739 to 1746, in the manner set out in the Schedule below.

Signed at Sydney this first day of September 2002.

CRAIG KNOWLES, M.P.  
**Minister for Health**

### **SCHEDULE**

The Model By-law is amended such that the provisions of Part 2 (Procedure of the Board), (with the exception of clauses 7, 8 and 11), clause 14 of Part 3 (Procedure Relating to By-laws) and Part 4 (The Seal) do not apply to affiliated health organisations.