



**The Hon Brad Hazzard MP**  
Minister for Health  
Minister for Medical Research

H17/63350

Chief Executives  
Statutory Health Corporations

Dear Chief Executive

I am pleased to advise that new model by-laws have been developed for Board Governed Statutory Health Corporations.

The new model by-laws have been developed to exclude the clinical related requirements from the model by-laws applying to Local Health Districts and Speciality Health Networks, whilst still including core governance requirements, including the establishment of an Audit and Risk Committee and a Finance and Performance Committee.

A copy of the model by-laws is attached and will be effective from **1 October 2017**. Please note this is later than the original proposed commencement date of 1 September 2017. The new model by-laws includes some minor typographical and other changes from the version sent to you on 15 June 2017, however there are no changes of substance.

Changes in 2016 to the Health Services Act allow Statutory Health Corporations to adopt the model-by laws without seeking approval of the Minister. However, if a Statutory Health Corporation wishes to modify the model by-laws, the Minister's approval is required.

If you have any queries please contact Ms Gemma Broderick, Senior Legal Officer, at [gbrod@doh.health.nsw.gov.au](mailto:gbrod@doh.health.nsw.gov.au) or at 9391 9626.

Yours sincerely

**Brad Hazzard MP**

cc Board Chairs

18 SEP 2017

# HEALTH SERVICES ACT 1997

## ORDER AS TO MODEL BY-LAWS

### BOARD GOVERNED STATUTORY HEALTH CORPORATION – MODEL BY-LAWS

PURSUANT to section 60 of the *Health Services Act 1997*, I, Brad Hazzard MP, Minister for Health, do by this Order set out the terms of the Model By-laws to be used by Board Governed Statutory Health Corporations constituted under Chapter 4, Division 1, of the *Health Services Act 1997*.

Brad Hazzard MP, Minister for Health

Date 18 September 2017

#### **Part 1 – Preliminary** [Pts 1 and 2]

##### **1. Name of the By-laws** [cl. 1]

These By-laws may be cited as the [*name of statutory health corporation*] By-laws.

##### **2. Definitions** [cl. 2]

Expressions used in these By-laws are defined in the Dictionary at the end of the By-laws.

##### **3. Making and Amendment of By-laws** [cl. 4]

- (1) The Board may make, amend or repeal the corporation's By-laws in accordance with the Act.
- (2) Any motion to make, amend, replace or repeal a by-law must be considered at a meeting of the Board.
- (3) Written notice of the motion to make, amend or repeal a by-law must be provided to each member of the Board at least 21 calendar days before the date of the meeting.

**Explanatory Note:** The Model By-laws establish a set of core governance provisions. Changes to these core provisions require approval of the Health Secretary or delegate.

Clause 3 varies from the LHD Model by excluding a requirement to refer certain changes to the medical staff council or medical staff executive council (the Pillar Model By Law does not include provision for MSCs and MSECs)

##### **4. Availability of By-laws** [cl. 3]

- (1) The Chief Executive is to ensure that a current version of the By-laws, that incorporate all changes approved by the Board, is accessible to staff and the public.

- (2) If an amendment is made by the Board and approved by the Health Secretary, the Chief Executive is to ensure the amendment is promptly incorporated into the By-laws

**Part 2 - The seal** [Pt 3]

**5. The seal** [cl. 5]

- (1) The Chief Executive is to ensure the safe custody of the seal of the corporation.
- (2) The seal of the corporation is to be affixed only to documents on behalf of the corporation when the Board signs such documents and the signature and sealing of the document are formally witnessed.
- (3) The Chief Executive is to ensure:
- (a) the safe custody of the seal of the corporation; and
- (b) a Register is maintained, listing documents of the corporation to which the seal is affixed.

**Explanatory Note:** Clause 5 expands on the 2012 Model to add a requirement for a register to be kept of all documents signed under seal.

**Part 3 – Conduct of Board meetings** [Pt 4]

**6. Procedure – Board meetings** [cl. 6]

Procedures for meetings of the Board are set out in Part 3 of Schedule 4A of the Act.

**Explanatory Note:** Schedule 5 of the Health Services Act 1997 deals with the constitution and procedures for boards. Part 3 of Schedule 5 deals with the conduct of meetings, covering issues such as quorum, voting, attendance and presiding member. Part 3 of Schedule 5 takes precedence over the terms of the By-Laws.

**Part 4 – Conduct of meetings of Committees or sub-Committees established by the By-laws** [New Part]

**7. Application of this Part** [New]

The procedures set out in this Part 4 apply to any meeting, including a special meeting, of any Committee or sub-Committee provided for under these By-laws, and on this basis in this Part:

- (a) “Committee” means any such Committee or sub-Committee;
- (b) “participate” includes, in relation to a member, the right to vote.

**8. Attendance** [cls. 7,9]

Any person may be invited to attend a meeting of a Committee.

**9. Attendance from a remote location** [cl.7]

- (1) A Committee may approve a member or invitee participating from a location other than the place where the meeting is being held.

**19. Meetings [cl.18]**

A Committee is to meet as specified by the Board, subject to any corporate governance policy issued by the Ministry from time to time.

**20. Notice of meetings and special meetings [cl.19]**

- (1) 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.
- (2) When the chairperson of a Committee considers that a matter is of such urgency that a special meeting of a Committee should be held within a period of not less than 48 hours of such a request, the chairperson may request the Board Chair to give written approval to the conduct of such a special meeting. The written approval of the Board Chair may determine, subject to this clause and the Regulations, the business and conduct of such a special meeting.
- (3) A copy of the Board Chair's approval under 20(2) is to be provided to the members of the Board.
- (4) A special meeting shall be held, if approved, not later than seven days after receipt by the Chief Executive of such a request.
- (5) The chairperson of a Committee is to ensure that at least 24 hours' notice is given of a special meeting to each member and each person invited to attend the meeting.
- (6) Notice of a special meeting is to specify the business to be considered at that meeting.
- (7) Only business specified in the notice of a special meeting is to be considered at the special meeting.
- (8) Each provision of this clause shall be subject to any corporate governance policy issued by the Ministry from time to time.

**Part 6 – Rules [Pt. 11]****21. Rules [cl.61]**

The Board may make rules for the proper functioning of the Corporation. These rules should not be inconsistent with the Act, the Regulation and these By-laws.

**DICTIONARY**

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

**Chief Executive** means the chief executive of the statutory health corporation.

**Corporation** means the *[insert name of board governed corporation]*.

**Board** means the Board appointed under section 49 of the Act.

**Ministry** means the NSW Ministry of Health.

**Notice** in respect of giving notice to a meeting includes a notice communicated by electronic means including email and electronic messaging.

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

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

**Explanatory Note:** 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.

- (2) Participation from another location may be by telephone, video or other electronic medium as is appropriate to the circumstances or the business being transacted.
- (3) A member participating from a remote location shall be regarded as being present at the meeting for the purposes of the calculation of a quorum, voting or any other similar matter required under these By-laws.
- (4) A Committee may determine a protocol or procedure for remote participation of members or other persons in its meetings.

#### **10. Quorum** [cl. 8]

The quorum for any meeting is a majority of the appointed number of the members.

#### **11. Voting** [cl.10]

- (1) Only members of a Committee may vote at a meeting.
- (2) A decision supported by a majority of the votes cast at a meeting at which a quorum is present is to be the decision of the Committee.

#### **12. Minutes** [cl.10]

The member presiding at a meeting of a Committee is to ensure that minutes are kept of all meetings of the Committee.

**Explanatory Note:** Part 4 sets out machinery provisions for all committees and other bodies established under the By-Laws. These provisions remain effectively the same as those under the 2012 Model, with minor changes to simplify and update language and establish a distinction between procedures for committees/councils/bodies established by the By-Laws (set out in this Part) and procedures for Board meetings (which are set out in the Health Services Act).

### **Part 5 – Committees of the Corporation**

#### **13. Establishment of Committees generally** [cl.12]

- (1) The Board is to establish the following Committees:
  - (a) Audit and Risk Management; and
  - (b) Finance and Performance.
- (2) The Board may establish such other Committees as it determines appropriate to provide advice or other assistance to enable the Corporation to perform its functions under the Act.

**Explanatory Note:** The 2012 Model and the new LHD Model also requires a “quality and safety” committee to be established. Given the Pillars do not provide direct health services to patients this requirement has been removed from the Pillar Model By-Law. The Board retains the right under clause 13(2) to establish any other committees it considers appropriate.

#### 14. Audit and Risk Management Committee [cl.13,16]

- (1) The Audit and Risk Committee is to comprise at least three, and no more than five, members
- (2) Members of the Committee are to be independent of the Corporation and appointed in accordance with relevant NSW Government and NSW Health Policy Directives, as amended from time to time.
- (3) The Chairperson of the Audit and Risk Committee may not to be the chairperson of the Finance and Performance Committee (or other similar committee).
- (4) In the event of inconsistency between this clause 14 and Part 5, this clause applies to the extent of the inconsistency.

**Explanatory Note:** Clause 14 revises the 2012 Model provision to be consistent with NSW Treasury Policy TPP15-03 *Internal Audit and Risk Management Policy for the NSW Public Sector* and NSW Health Policy Directive 2016\_051 *Internal Audit*. Clause 3.1.5 of TPP15-03 lists the criteria for an “independent member” and requires them to be selected from the pre-qualified panel held by the Department of Finance and Services. Clause 3.1.6 of TPP15-03 also recognises that governing board members are eligible for appointment as chairs/members of the ARC, provided they are not employees and otherwise meet the independence requirements of 3.1.5

#### 15. Committee chairpersons and secretaries of Board Committees [cl.14]

The Board is to appoint:

- (a) a chairperson of each Committee established under Part 5
- (b) in consultation with the Chief Executive, a person to act as the secretary of each Committee.  
The same person may act as secretary for more than one Committee.

#### 16. Functions of Committees [cl.15]

A Committee is to provide advice or other assistance on issues as requested by the Board.

#### 17. Committee membership [cl.16]

- (1) The Board may appoint such Committee members as they think fit, such members may also include a member of the Board.
- (2) The Board is to appoint at least one representative of the executive staff of the Corporation to each Committee.
- (3) The Board is to appoint such clinician representation as they consider appropriate to each Committee (other than the Finance and Performance committee).
- (4) The Board may remove any Committee member as they think fit, subject to any corporate governance policy issued by the Ministry from time to time.

#### 18. Term of office [cl.17]

Any person nominated to a Committee holds office for such period as the Board may determine, subject to any corporate governance policy issued by the Ministry from time to time.