



NSW Health

Information

Minister for Health and Minister for Regional Health

H23/80155

Transfer of St Joseph's Hospital to Western Sydney Local Health District

Analysis

St Vincent's Hospital Sydney Limited (**SVHS**) has determined to close St Joseph's Hospital (**SJH**) on 8 November 2023. SJH is a recognised establishment of SVHS under Schedule 3 of the *Health Services Act 1997* (**the Act**).

SVHS and Western Sydney Local Health District (**WSLHD**) have agreed that WSLHD will absorb the health services of SJH.

To enable this to occur, WSLHD has agreed to accept the transfer of certain assets, rights, and liabilities of SJH, including certain staff employed in relation to the transferring health services, by way of an order of the Governor under section 64(1)(a) of the Act. The date for transfer, subject to the approval of the Minister, is **8 November 2023**.

WSLHD, SVHS and the Ministry of Health (**Ministry**) are working with the Parliamentary Counsel's Office (**PCO**) to draft and finalise an order of the Governor under section 64(1)(a) of the Act (**Transfer Order**). The Transfer Order will transfer the services of SJH, along with specified staff, assets, rights and liabilities, from SVHS to WSLHD, and will remove SJH from Schedule 3 of the Act.

It is proposed that the Transfer Order is considered at the Executive Council meeting on **1 November 2023**. This requires the Transfer Order, Explanatory Note to the Governor, Executive Council Minute and PCO Opinion to be submitted to the Executive Council by **25 October 2023**. The Minister will be required to sign the Transfer Order and the Executive Council Minute before they can be submitted to the Executive Council Secretariat.

Due to competing priorities during Parliamentary sitting week, the PCO has advised the Ministry that the Transfer Order will not be finalised until late on 20 October 2023 at the earliest. As such, the purpose of this brief is to provide information to the Minister about the transfer process, and the documents which will urgently need to be signed by the Minister (subject to his approval) once received.

In addition to the Transfer Order, specific operational aspects of the transfer will also be dealt with by way of a Transfer Deed between SVHS and WSLHD.

The Minister will also be required to make a new Order under section 62B of the Act to re-declare St Vincent's Hospital Sydney Limited as a networked affiliated health organisation (the St Vincent's Health Network) for the purpose of the Act, but with SJH removed. The section 62B Order will be provided to the Minister for his signature along with the Transfer Order and Executive Council Minute.

The WSLHD and Ministry consider the transfer to be in the interests of ensuring continuity of services for the communities of Western Sydney.

For information

Noted by (signature)	Date

Key issues

Method of transfer and associated amendments

SJH is currently listed as a recognised establishment of SVHS (an affiliated health organisation) under Schedule 3 of the Act. Section 64(1)(a) of the Act allows for the transfer of a public hospital or health institution (which is a recognised establishment) of an affiliated health organisation to a local health district by Order of the Governor.

SVHS and WSLHD have agreed that a Transfer Order will be used to effect the transfer of SJH in respect of its staff, assets, rights and liabilities to WSLHD on 8 November 2023. The PCO are in the process of drafting this Transfer Order, on the instructions of the Ministry, SVHS and WSLHD.

The Transfer Order can only be made with the consent of SVHS. SVHS has consented to the transfer the subject of the Transfer Order (as required by section 64(2) of the Act) (**Tab A**).

It is proposed that the Transfer Order is considered at the Executive Council meeting on 1 November 2023, which requires the relevant documents to be submitted to the Executive Council by 25 October 2023.

The Transfer Order will also remove SJH from Schedule 3 of the Act from 8 November 2023.

In parallel with the Transfer Order, SVHS and WSLHD will also execute a Transfer Deed which will operationalise the transfer and includes a detailed list of the staff, assets and services being transferred (see further detail below).

Timing for the Transfer Order

The PCO has advised the Ministry that, due to competing priorities to Parliament, it will not be able to finalise the Transfer Order until, at the earliest, Friday 20 October 2023.

The Ministry will endeavour to provide the finalised Transfer Order and Executive Council Documents (Explanatory Note to the Governor, Executive Council Minute and PCO Opinion) to the Minister as soon as possible once received to enable the relevant documents to be approved by the Minister in time for the Executive Council meeting scheduled for 1 November 2023. The Minister will be required to sign the Transfer Order and the Executive Council Minute before they can be submitted to the Executive Council Secretariat.

It is noted that 1 November 2023 is the final date on which the Transfer Order may be approved by the Governor before the transfer date. If the Transfer Order is not approved by the Governor by this date, this could jeopardise continuity of care for the current patients of SJH as it would delay the transfer date of 8 November 2023.

Matters to be transferred to WSLHD under the Transfer Order

SVHS and WSLHD have agreed to continue all of the clinical services provided at SJH at WSLHD (either Westmead Hospital or Auburn Hospital), alongside health support services:

- Inpatient services:
 - Huntington's Disease
 - Aged Care psychiatry/ Older Person Mental Health
 - Rehabilitation
 - Palliative care
- Outpatient services:
 - Rehabilitation
 - Motor neurone disease
 - Non admitted clinical services (**the Health Services**)

However, it is noted that the food services, security services and cleaning services provided at SJH will not be transferred to WSLHD.

To enable the continued operation of the Health Services, the Ministry, SVHS and WSLHD have agreed to transfer under the Transfer Order:

- Patient records for all current inpatients and patient records for all active patients of the Health Services, including records of any patients that have accessed SJH's services within the preceding three years from the transfer date.
- The value of the following two trust funds:
 - the Kamberra bequest trust fund (which had a value as at June 2023 of \$135,649.42), with those funds gifted to SJH on the basis that they be used for the Psychogeriatric Mental Health and Dementia service, (previously known as the Kamberra Group), which forms part of the Health Services; and
 - the MND fund (which had a value as at June 2023 of \$3,526.11), which funds represent donations from patients, carers or the community to the Motor Neurone Disease service, which forms part of the Health Services.
- Select equipment connected with the Health Services which WSLHD has deemed appropriate for transfer.
- Intellectual property in various documents used in connection with the Health Services including patient assessment forms and staff education resources.
- Select employees of SJH employed in connection with the Health Services which WSLHD has deemed appropriate for transfer (**Transferring Employees**).
- Accrued entitlements of the Transferring Employees, which will include entitlements to annual leave, long service leave and personal/carer's leave.
- Records relating to the Transferring Employees that are required under NSW industrial and related laws, including immunisation records and other records required under applicable NSW Health Service terms and conditions.

Staffing arrangements

Under clause 6 of Schedule 4 of the Act, staff transferred under the Transfer Order will be transferred to WSLHD on their existing statutory provisions, awards, agreements and determinations that would have applied to the person had the person not been transferred.

There are a number of SJH staff (approx. 40) for whom there is no equivalent role at WSLHD, for example, kitchen staff. These staff will be managed by SVHS, which may involve the staff being declared excess under the NSW Health Policy Directive 2012_021 *Managing Excess Staff of the New South Wales Health Service*. In addition, there are a small number of staff (approx. 4-5) that will be offered redeployment in WSLHD in a similar but not equivalent role.

On 13 October 2023, SVHS issued letters to all SJH staff confirming whether they would be transferred to WSLHD from the transfer date. On 17 October 2023, WSLHD issued letters of confirmation to all Transferring Employees, welcoming them to WSLHD and confirming that their role would be transferred to WSLHD on terms and conditions equivalent to their current employment with SVHS.

Matters separate to the Transfer Order

The proposed transfer of services from SJH to WSLHD also involves matters outside of the Transfer Order which mainly relate to the mechanics and operational details of transfer.

SVHS and WSLHD have agreed to address these outstanding matters under the Transfer Deed, which will be signed before the Transfer Order is escalated for approval. Importantly, the Transfer Deed includes:

- The finalised staff transfer list, which will specify the employees to be transferred under the Transfer Order and the employees that have otherwise been offered a position at WSLHD.
- The finalised asset list, which will specify the precise equipment to be transferred under the Transfer Order.

- A commitment to develop a transition plan, under which the parties will determine transport arrangements, patient preparations, on boarding of transferring employees to new work sites, etc.

SVHS and WSLHD have also agreed to terminate the Capital Works Funding Agreement between St Joseph's Hospital Limited (now SVHS), St Vincent's Healthcare Limited, WSLHD and the Health Administration Corporation entered into in or around September 2011. The negotiation and execution of the Deed of Termination for the Capital Works Funding Agreement will be completed on or before 8 November 2023, and does not need to be executed prior to the Transfer Order being considered at the Executive Council meeting on 1 November 2023.

Section 62B Order of the Minister

Section 62B of the Act allows the Minister to, by order published in the Gazette, declare that one or more affiliated health organisations are to be treated as a network for the purposes of the National Health Reform Agreement in respect of some or all of their recognised establishments or recognised services. In 2013 an order was made by the Minister pursuant to this section declaring that St Vincent's Hospital Sydney Limited was to be recognised as the St Vincent's Health Network in respect of its then establishments and services, being St Vincent's Hospital, Darlinghurst, Sacred Heart Health Service and SJH.

As SJH will be decommissioned from 8 November 2023, SVHS will need to be re-declared as a network affiliated health organisation in respect of its ongoing establishments and services only (the Sacred Heart Health Service and St Vincent's Hospital, Darlinghurst).

An Order has been prepared to effect this declaration, and will be escalated for the Minister's approval alongside the Transfer Order and Executive Council Minute. Once signed, section 62B of the Act requires the Declaration to be published in the NSW Gazette, which the Ministry will arrange.

Section 62B(5) of the Act states that an order cannot be made under section 62B except with the concurrence of the affiliated health organisation. SVHS has provided this consent (**Tab B**).

Context

Reasons for the transfer

On 14 June 2023, SVHS wrote to the Minister advising it had determined to decommission SJH with effect from 18 September 2023. SVHS initially indicated it would absorb the health services provided at SJH into St Vincent's Hospital, Darlinghurst. However, in conjunction with WSLHD and the Ministry, it was determined that the health services should transfer to WSLHD to preserve the services in the community of Western Sydney.

Since then, SVHS, WSLHD and the Ministry have worked closely to determine the staff, assets, rights and liabilities to be transferred to WSLHD. The SVHS, WSLHD and Ministry also agreed to delay the transfer date to 8 November 2023.

Business continuity

There is a risk that, if the Transfer Order is not signed by the Governor by the transfer date, there will be a significant disruption to the Health Services currently provided by SJH. This is because the transition planning to date has been centred on a transfer date of 8 November 2023.

To mitigate this risk, the Transfer Order will need to be approved and signed by the Minister as soon as possible on receipt, to enable the Transfer Order to be approved by the Governor on 1 November 2023.

Risk of industrial action

A risk has been identified that some staff transferred under the Transfer Order may decide they do not wish to work for WSLHD. Voluntary redundancies may not be available to these staff members, as they have been offered an equivalent position with WSLHD. There are also up to 40 staff members who will not transfer to WSLHD. These staff members may potentially be deemed 'excess' by SVHS, triggering a redundancy process.

WSLHD and SVHS consider that there is a risk of industrial action arising in respect of these staff members.

The Union Specific Consultative Committee had been held on a fortnightly basis between WSLHD, SVHS and all the respective unions to maintain open dialogue and communication around the transfer. It is noted that the Health Services Union has been highly active at SJH since the decision to decommission SJH was announced.

To mitigate the risk to NSW Health, WSLHD has held individual meetings with all staff members, to determine whether they should be transferred to WSLHD. WSLHD have also undertaken a detailed mapping exercise to ensure that all transferring staff are transferred to WSLHD on the same terms and conditions as their existing employment arrangements with SVHS.


The Transfer Deed will also require SVHS to give an indemnity to WSLHD in favour of any liabilities that arise from the employment of Transferring Employees prior to the transfer date.

Contact

Name	Position	Phone and email
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Amelia Parsonage	Legal Officer, NSW Ministry of Health	02 9461 7750 amelia.parsonage@health.nsw.gov.au
Dominika Nambiar	Industrial and Employee Relations Director, WSLHD	0409 924 684 Dominika.nambiar@health.nsw.gov.au

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Approval

Name	Position	Date
Susan Pearce AM	Secretary	 20/10/2023
Deb Willcox AM	Deputy Secretary, Health System Strategy and Patient Experience	19/10/2023
Phil Minns	Deputy Secretary, People, Culture and Governance	19/10/2023
Jo Blackwell	Executive Director, Workplace Relations	19/10/2023
Graeme Loy	Chief Executive, WSLHD	19/10/2023
Leanne O'Shannessy	General Counsel and Executive Director, Legal and Regulatory Services	19/10/2023

Attachments

Tab	Title
A	Letter dated 16.10.2023 indicating consent to section 64 Transfer Order
B	Letter dated 27.06.2023 indicating consent to section 62 and 62B Orders



**ST VINCENT'S
HOSPITAL**
SYDNEY

A FACILITY OF ST VINCENT'S HEALTH AUSTRALIA

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16 October 2023

Ms Deb Willcox AM
Deputy Secretary
Health System Strategy and Patient Experience NSW Ministry of Health
1 Reserve Road
ST LEONARDS NSW 1590

By email: Deborah.Willcox@health.nsw.gov.au

Dear Ms ~~Willcox~~ *Deb*

Re: Decommissioning of St Joseph's Hospital Auburn

Further to recent correspondence, I write regarding the decommissioning of St Joseph's Hospital (Auburn) (**St Joseph's**), a recognised establishment of an affiliated health organisation, St Vincent's Hospital Sydney Limited (**SVHS**) providing public hospital services in NSW.

As you know, planning is progressing, with the NSW Ministry of Health's support, for St Joseph's hospital and health services to transfer to Western Sydney Local Health District (**WSLHD**) on 8 November 2023. It is proposed that the majority of staff will transfer to WSLHD along with certain assets, rights and liabilities but excluding any real property.

It has been agreed that the above transfer from SVHS to WSLHD is to be effected under a transfer order made by the Governor under section 64(1) of the *Health Services Act 1997 (Act)*.

Under section 64(2) of the Act, the consent of the affiliated health organisation is required before such a transfer order can be made. I am pleased to confirm that at a meeting on 12 October 2023 the Board of St Vincent's Hospital Sydney consented to the transfer for the purposes of section 64(2).

If you have any questions, please contact Genevieve Wallace, Senior Legal Counsel at Genevieve.wallace@svha.org.au or on (02) 8382 3745.

Yours sincerely



Anna McFadgen
Chief Executive Officer

cc: Mr Chris Blake, Chief Executive Officer, St Vincent's Health Australia
Ms Patricia Marinovic, Principal Legal Officer, Legal & Regulatory Services, NSW MoH



**ST VINCENT'S
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27 June 2023

Ms Deb Willcox AM
Deputy Secretary
Health System Strategy and Patient Experience
NSW Ministry of Health
1 Reserve Road
ST LEONARDS NSW 1590
By email: Deborah.Willcox@health.nsw.gov.au

Dear Ms Willcox

Re: Decommissioning of St Joseph's Hospital Auburn

Thank you for your letter to Ms Sandra McPhee, Board Chair Delegate dated 22 June 2023 regarding regulatory changes associated with the decommissioning of St Joseph's Hospital (Auburn) (**St Joseph's**). St Vincent's appreciates the Ministry of Health's advice and support in facilitating the necessary amendments to the *Health Services Act 1997* NSW (**the Act**).

As my office discussed with Special Counsel Gemma Broderick on 23 June 2023, it is proposed that the following changes to the Act occur following the decommissioning of St Joseph's:

- amending Schedule 3 to remove St Joseph's from the list of recognised services or establishments of St Vincent's Hospital Sydney Limited under s62(2)(c) as advised in your letter; and
- redefining St Vincent's Health Network under s62B (i.e., new declaration providing for recognition of the St Vincent's Health Network in respect of Sacred Heart Health Service and St Vincent's Hospital, Darlinghurst only, omitting reference to St Joseph's. This seems necessary to replace the Order made by the Minister and published in the NSW Government Gazette on 7 June 2013¹).

I can confirm that the Board of St Vincent's Hospital Sydney Limited consented to these changes at their meeting on 8 June 2023.

¹ NSW Government Gazette No 67, Week 23/2013, p 2353

Our decommissioning planning is working towards closing the St Joseph's facility toward the end of September 2023. However, should there be any delay we will provide early notice and engage with the Ministry with a view to the relevant Orders taking effect only after full decommissioning.

Thank you again for your support with these amendments. If you have any questions, please contact Genevieve Wallace, Senior Legal Counsel at Genevieve.wallace@svha.org.au or on (02) 8382 3745.

Yours sincerely



Ms Anna McFadgen
Interim Chief Executive Officer

cc: Mr Chris Blake, Chief Executive Officer, St Vincent's Health Australia
Ms Gemma Broderick, Deputy General Counsel & Director Legal, NSW MoH