



New South Wales

# Health Legislation Amendment Bill 1999

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are as follows:

- (a) to repeal the *Pathology Laboratories Accreditation Act 1981*,
- (b) to amend the *Public Health Act 1991* to prohibit the sale of herbal cigarettes and other non-tobacco smoking products to minors and to give environmental health officers the power to enter and inspect premises that are being used for skin penetration procedures,
- (c) to amend the *Poisons and Therapeutic Goods Act 1966* to remove the requirement for the Director-General of the Department of Health to obtain a recommendation from the Medical Committee before authorising a medical practitioner to prescribe or supply a drug of addiction to a drug dependent person and to make consequential cross-vesting amendments,

- (d) to amend the *Dental Technicians Registration Act 1975*, the *Nurses Act 1991*, the *Optometrists Act 1930*, the *Physiotherapists Registration Act 1945* and the *Pharmacy Act 1964* to enable the governing bodies of the professions regulated by those Acts to grant exemptions from, waive or wholly or partially refund, fees payable under those Acts and certain regulations under those Acts,
- (e) to amend the *Pharmacy Act 1964* to allow pharmacists to carry on the business of a pharmacist in a pharmacy, or have a direct or indirect interest in the business of a pharmacist carried on in a pharmacy, as a member of up to three partnerships,
- (f) to amend the *Human Tissue Act 1983* to remove the requirement for a medical practitioner's advice to be obtained prior to blood donations by persons aged 16 or 17 years of age and to clarify that the consent of a parent or guardian to such a blood donation is ongoing unless withdrawn,
- (g) to amend the *Health Services Act 1997* to provide that any arbitrator required to make a determination regarding the terms and conditions of visiting officers' service contracts is to be appointed by the Minister for Health on the nomination of the President of the Industrial Relations Commission and to amend the financial provisions of that Act to improve flexibility and ensure consistency with current financial management practices.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the Acts set out in Schedules 1 to 10.

**Clause 4** repeals the *Pathology Laboratories Accreditation Act 1981*.

## **Schedule 1   Amendment of Public Health Act 1991 No 10**

**Schedule 1 [2]** inserts proposed section 51 into the Act to enable an environmental health officer to enter and inspect premises where the officer believes on reasonable grounds that the premises are being used for the carrying on of skin penetration procedures (such as acupuncture, tattooing and ear piercing). **Schedule 1 [5]** inserts

proposed section 59 (1A) into the Act to make it an offence to sell non-tobacco smoking products (such as herbal cigarettes) to persons under the age of 18 years. This offence will carry a penalty of 50 penalty units (currently \$ 5,500). **Schedule 1 [4]** amends section 53 of the Act to define *non-tobacco smoking product* to mean any product (other than a tobacco product) that is intended to be smoked including herbal cigarettes. **Schedule 1 [1], [3], [6]–[9]** make consequential amendments.

## **Schedule 2 Amendment of Poisons and Therapeutic Goods Act 1966 No 31**

**Schedule 2 [2], [3]** and **[4]** amend the Act to replace the term “addict” with the term “drug dependent person”. **Schedule 2 [5]** replaces section 29 (2) of the Act to remove the requirement for the Director-General of the Department of Health to obtain a recommendation from the Medical Committee before authorising a medical practitioner to prescribe or supply a drug of addiction to a drug dependent person. The Director-General still may refer such an application for authorisation to the Medical Committee for its recommendation, but will no longer be mandatorily required to do so. **Schedule 2 [1], [6]** and **[7]** make amendments consequent on the High Court decision regarding the vesting of State jurisdiction in federal courts.

### **Schedules 3–6 and Schedule 7 [2]**

**Schedules 3–6** and **Schedule 7 [2]** give effect to the object outlined in paragraph (d) above.

## **Schedule 7 Amendment of Pharmacy Act 1964 No 48**

**Schedule 7 [1]** amends section 26 (2) of the *Pharmacy Act 1964* to allow a pharmacist to carry on the business of a pharmacist in a pharmacy, or to have a direct or indirect interest in the business of a pharmacist carried on in a pharmacy, as a member of up to three partnerships. Currently pharmacists are restricted to one partnership.

## **Schedule 8 Amendment of Human Tissue Act 1983 No 164**

**Schedule 8 [1]** amends section 20 of the Act to make it clear that the advice of a medical practitioner that a blood donation is not likely to be prejudicial to the health of the child concerned only applies to children under the age of 16 years. **Schedule 8 [2]** inserts proposed section 20 (2) into the Act to provide that where a parent or guardian has given consent to blood donation in relation to a child aged 16 or 17 years of age that consent is ongoing (unless given for a blood donation on a particular occasion only) but the consent can be withdrawn either by the parent or guardian who gave it or by the child ceasing to be in agreement with the blood donation.

## **Schedule 9 Amendment of Health Services Act 1997 No 154**

**Schedule 9 [1]** and **[2]** amend section 90 of the Act to make it clear that an arbitrator appointed to determine the terms and conditions of visiting officers' service contracts is to be a judicial member of the Industrial Relations Commission appointed by the Minister for Industrial Relations on the nomination of the President of that Commission. **Schedule 9 [3]** inserts proposed section 127 (3A) into the Act to give the Minister for Health the power to vary a determination of a subsidy to an area health service in such circumstances as the Minister considers appropriate. **Schedule 9 [4]** inserts proposed sections 127A and 127B into the Act. Proposed section 127A enables the Minister to determine that payment of the whole or any part of an amount of an area health services subsidy payable under section 127 of that Act in a financial year is to be deferred to a subsequent financial year. Proposed section 127B enables the Minister to loan, on such terms and conditions as the Minister determines, amounts of money to area health services, statutory health corporations and affiliated health organisations, out of money appropriated from the Consolidated Fund to the Minister. These loans must not result in expenditure in excess of forward estimates. **Schedule 9 [5]** amends Schedule 7 (Savings and transitional provisions) to the Act to allow the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act. **Schedule 9 [6]** inserts clause 55 into Schedule 7. Clause 55 validates any loan made by the Minister for Health, out of money appropriated from the Consolidated Fund to the Minister, to an area health service, statutory health corporation or affiliated health organisation before the commencement of the clause.

## **Schedule 10 Amendment of Public Finance and Audit Act 1983 No 152**

**Schedule 10** amends the *Public Finance and Audit Act 1983* to remove a reference to the Pathology Laboratories Accreditation Board. This amendment is consequential on the repeal of the *Pathology Laboratories Accreditation Act 1981* by clause 4 of this Bill.



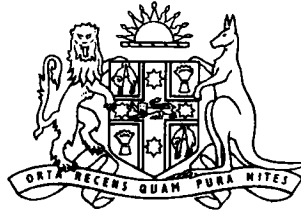
New South Wales

# Health Legislation Amendment Bill 1999

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New South Wales

# Health Legislation Amendment Bill 1999

No. , 1999

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## A Bill for

An Act to repeal the *Pathology Laboratories Accreditation Act 1981*; to make miscellaneous amendments to various Acts relating to health and associated matters; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Health Legislation Amendment Act 1999</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5 6
<b>3 Amendment of various Acts</b>	7
Each Act specified in Schedule 1–10 is amended as set out in those Schedules.	8 9
<b>4 Repeal of Pathology Laboratories Accreditation Act 1981</b>	10
The <i>Pathology Laboratories Accreditation Act 1981</i> is repealed.	11



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<b>Schedule 1</b>	<b>Amendment of Public Health Act 1991</b>	1
	<b>No 10</b>	2
	(Section 3)	3
<b>[1]</b>	<b>Part 5, heading</b>	4
	Omit the heading to Part 5. Insert instead:	5
	<b>Part 5 General health matters</b>	6
<b>[2]</b>	<b>Section 51</b>	7
	Insert after the heading to Part 5:	8
	<b>51 Skin penetration procedures—power of environmental health officers to enter and inspect premises</b>	9
	(1) An environmental health officer who believes on reasonable grounds that premises are used for the carrying on of skin penetration procedures may enter the premises and do any one or more of the following on those premises:	10
	(a) inspect the premises,	11
	(b) make inquiries of any person found on the premises,	12
	(c) examine, inspect or test any apparatus, equipment or works,	13
	(d) take and remove samples of any substance or other thing,	14
	(e) require the samples referred to in paragraph (d) to be taken and given to the environmental health officer or another person or to the Director-General,	15
	(f) take such photographs, films and audio, video and other recordings as the environmental health officer considers necessary,	16
	(g) require records to be produced for inspection,	17
	(h) examine, inspect and copy any records,	18

(i)	make such other examinations, inquiries and tests as the environmental health officer considers necessary.	1 2
(2)	Section 72 (Powers of entry) applies in relation to the exercise of powers conferred by this section.	3 4
(3)	In this section:	5
	<i>skin penetration procedure</i> means any of the following procedures:	6 7
(a)	acupuncture,	8
(b)	tattooing,	9
(c)	ear piercing,	10
(d)	hair removal,	11
(e)	any other procedure (whether medical or not) that involves skin penetration,	12 13
(f)	any other procedure prescribed by the regulations,	14
	but does not include:	15
(g)	a procedure carried out in the practice of medicine or dentistry by:	16 17
(i)	a medical practitioner registered under the <i>Medical Practice Act 1992</i> , or	18 19
(ii)	a dentist registered under the <i>Dentists Act 1989</i> , or	20 21
(iii)	a person acting under the direction or supervision of such a medical practitioner or dentist, or	22 23 24
(h)	any other procedure prescribed by the regulations.	25
<b>[3]</b>	<b>Part 6, heading</b>	26
	Omit the heading to Part 6. Insert instead:	27
	<b>Part 6 Tobacco and other smoking products</b>	28

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<b>[4] Section 53 Definitions</b>	1
Insert in alphabetical order:	2
<i>non-tobacco smoking product</i> means any product (other than a tobacco product) that is intended to be smoked, and includes any product known or described as herbal cigarettes.	3 4 5
<b>[5] Section 59 Sale of tobacco and non-tobacco smoking products to minors</b>	6 7
Insert after section 59 (1):	8
(1A) A person who sells a non-tobacco smoking product to a person who is under the age of 18 years is guilty of an offence.	9 10
Maximum penalty: 50 penalty units.	11
<b>[6] Section 59 (2)</b>	12
Omit “subsection (1)”. Insert instead “this section”.	13
<b>[7] Section 59 (2) (a) and (b)</b>	14
Insert “or non-tobacco smoking product” after “tobacco product” wherever occurring.	15 16
<b>[8] Section 59 (4)</b>	17
Insert “or non-tobacco smoking products” after “tobacco products” wherever occurring.	18 19
<b>[9] Section 59 (5)</b>	20
Insert after section 59 (4):	21
(5) Section 61R does not apply to an offence under subsection (1A).	22 23

<b>Schedule 2</b>	<b>Amendment of Poisons and Therapeutic Goods Act 1966 No 31</b>	1
		2
	(Section 3)	3
<b>[1]</b>	<b>Section 4 Definitions</b>	4
	Omit paragraph (b) from the definition of <i>Commonwealth administrative laws</i> in section 4 (1).	5 6
<b>[2]</b>	<b>Section 27 Definitions</b>	7
	Omit the definition of <i>addict</i> .	8
<b>[3]</b>	<b>Section 27</b>	9
	Insert at the end of the section:	10
	<i>drug dependent person</i> means a person who has acquired, as a result of repeated administration of:	11 12
	(a) a drug of addiction, or	13
	(b) a prohibited drug within the meaning of the <i>Drug Misuse and Trafficking Act 1985</i> ,	14 15
	an overpowering desire for the continued administration of such a drug.	16 17
<b>[4]</b>	<b>Section 28 Prohibition on prescribing drugs of addiction in certain cases</b>	18 19
	Omit “an addict” from section 28 (b).	20
	Insert instead “a drug dependent person”.	21
<b>[5]</b>	<b>Section 29 Director-General may authorise prescription or supply of drugs of addiction</b>	22 23
	Omit section 29 (2). Insert instead:	24
	(2) Any such application may be referred by the Director-General to the Medical Committee.	25 26

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<b>[6] Section 33E Application of Commonwealth administrative laws to applied provisions</b>	1 2
Insert after section 33E (3):	3
(4) Any provision of a Commonwealth administrative law applying because of this section that purports to confer jurisdiction on a federal court is taken not to have that effect.	4 5 6
<b>[7] Section 33K Jurisdiction of courts</b>	7
Omit the section.	8

<b>Schedule 3</b>	<b>Amendment of Dental Technicians Registration Act 1975 No 40</b>	1 2
	(Section 3)	3
<b>Section 34AA</b>		4
Insert after section 34:		5
<b>34AA Board may waive fees</b>		6
	The board may, for any reason the board considers sufficient, exempt a person from the requirement to pay a fee, or waive or wholly or partly refund a fee, that would otherwise be payable or has been paid in accordance with this Act or the regulations.	7 8 9 10

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<b>Schedule 4</b>	<b>Amendment of Nurses Act 1991 No 9</b>	1
	(Section 3)	2
<b>Section 75A</b>		3
Insert after section 75:		4
<b>75A</b>	<b>Board may waive fees</b>	5
	The Board may, for any reason the Board considers sufficient,	6
	exempt a person from the requirement to pay a fee, or waive or	7
	wholly or partly refund a fee, that would otherwise be payable	8
	or has been paid in accordance with this Act or the regulations.	9

<b>Schedule 5</b>	<b>Amendment of Optometrists Act 1930</b>	1
	<b>No 20</b>	2
	(Section 3)	3
<b>Section 33A</b>		4
Insert after section 33:		5
<b>33A Board may waive fees</b>		6
	The board may, for any reason the board considers sufficient,	7
	exempt a person from the requirement to pay a fee, or waive or	8
	wholly or partly refund a fee, that would otherwise be payable	9
	or has been paid in accordance with this Act or the regulations.	10



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<b>Schedule 6</b>	<b>Amendment of Physiotherapists Registration Act 1945 No 9</b>	1 2
	(Section 3)	3
	<b>Section 32AA</b>	4
	Insert after section 32:	5
	<b>32AA Board may waive fees</b>	6
	The Board may, for any reason the Board considers sufficient, exempt a person from the requirement to pay a fee, or waive or wholly or partly refund a fee, that would otherwise be payable or has been paid in accordance with this Act or the regulations.	7 8 9 10

<b>Schedule 7 Amendment of Pharmacy Act 1964 No 48</b>	1
(Section 3)	2
<b>[1] Section 26 Restrictions on carrying on business of a pharmacist in pharmacies</b>	3 4
Omit “one partnership” from section 26 (2).	5
Insert instead “3 partnerships”.	6
<b>[2] Section 36 Fees</b>	7
Insert after section 36 (6):	8
(7) The Board may, for any reason the Board considers sufficient, exempt a person from the requirement to pay a fee, or waive or wholly or partly refund a fee, that would otherwise be payable or has been paid in accordance with this Act.	9 10 11 12

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<b>Schedule 8</b>	<b>Amendment of Human Tissue Act 1983</b>	1
	<b>No 164</b>	2
	(Section 3)	3
<b>[1]</b>	<b>Section 20 Consents to removal of blood from children</b>	4
	Omit section 20 (a) and (b). Insert instead:	5
	(a) the child is in agreement with the removal of blood from the child's body, and	6
		7
	(b) in the case of a child who is under 16 years of age, a medical practitioner advises the parent or guardian that the removal of blood is not likely to be prejudicial to the health of the child.	8
		9
		10
		11
<b>[2]</b>	<b>Section 20 (2)</b>	12
	Insert at the end of section 20:	13
	(2) Such a consent given in relation to a child aged 16 or 17 years of age (unless given for the removal of blood on a particular occasion only) is ongoing but can be withdrawn either by the parent or guardian who gave it or by the child ceasing to be in agreement.	14
		15
		16
		17
		18

<b>Schedule 9</b>	<b>Amendment of Health Services Act 1997</b>	1
	<b>No 154</b>	2
	(Section 3)	3
<b>[1]</b>	<b>Section 90 Appointment of arbitrator by relevant Minister</b>	4
	Omit “the President or”.	5
<b>[2]</b>	<b>Section 90</b>	6
	Insert “nominated by the President of the Commission” after “Industrial Relations Commission”.	7 8
<b>[3]</b>	<b>Section 127 Determination of subsidies</b>	9
	Insert after section 127 (3):	10
	(3A) The Minister may vary a determination under subsection (3) in such circumstances as the Minister considers appropriate.	11 12
<b>[4]</b>	<b>Sections 127A and 127B</b>	13
	Insert after section 127:	14
<b>127A</b>	<b>Deferral of payment of subsidy</b>	15
	The Minister may determine that payment of the whole or any part of an amount payable under section 127 in a financial year is to be deferred until a subsequent financial year. Payment is deferred in accordance with such a determination.	16 17 18 19
<b>127B</b>	<b>Loans to public health organisations</b>	20
	(1) The Minister may determine that an amount of money is to be lent to an area health service, statutory health corporation or affiliated health organisation, out of money appropriated from the Consolidated Fund to the Minister.	21 22 23 24
	(2) Any such amount is to be lent in accordance with that determination and on such terms and conditions as the Minister determines.	25 26 27

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(3) The loans made pursuant to subsection (1) must not result in expenditure in excess of forward estimates.	1 2
(4) The <i>Public Authorities (Financial Arrangements) Act 1987</i> does not apply to a loan made under this section.	3 4
<b>[5] Schedule 7 Savings and transitional provisions</b>	5
Insert at the end of clause 1 (1):	6
<i>Health Legislation Amendment Act 1999</i>	7
<b>[6] Schedule 7, Part 3</b>	8
Insert at the end of Schedule 7:	9
<b>Part 3 Provisions consequent on the enactment of the Health Legislation Amendment Act 1999</b>	10 11
<b>55 Validation of loans to public health organisations</b>	12
Any loan made before the commencement of this clause to an area health service, statutory health corporation or affiliated health organisation out of money appropriated from the Consolidated Fund to the Minister for Health is validated.	13 14 15 16

Health Legislation Amendment Bill 1999

Schedule 10 Amendment of Public Finance and Audit Act 1983 No 152

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<b>Schedule 10 Amendment of Public Finance and Audit Act 1983 No 152</b>	1
	2
(Section 3)	3
<b>Schedule 2 Statutory bodies</b>	4
Omit "Pathology Laboratories Accreditation Board".	5