



New South Wales

Health Legislation Amendment Bill 2005

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 amend the *Health Administration Act 1982* so that the provisions requiring the appointment of a root cause analysis team in certain circumstances apply to the Ambulance Service of New South Wales,
- (b) to amend the *Human Tissue Act 1983* to clarify that a reference to a parent includes a reference to the Minister for Community Services if the Minister has sole parental responsibility for the child and to make further provision with regard to:
 - (i) the removal of tissue from children in certain circumstances, and
 - (ii) conditions relating to the medical practitioners who may certify death prior to the removal of tissue from a deceased person's body, and
 - (iii) the persons (in addition to medical practitioners) who may remove musculoskeletal tissue from a deceased person for certain purposes, and
 - (iv) the use of small samples of tissue for quality assurance and related purposes,

- (c) to amend the *Podiatrists Act 2003* to allow regulations to be made in relation to infection control standards to be followed by podiatrists,
- (d) to amend the *Poisons and Therapeutic Goods Act 1966* and the *Poisons and Therapeutic Goods Regulation 2002* to limit the types of drugs of addiction that may be prescribed for continuous therapeutic use only with the authority of the Director-General of the Department of Health,
- (e) to amend the *Poisons and Therapeutic Goods Act 1966* to allow the Director-General of the Department of Health a discretion in respect of whether certain information (in relation to the maximum quantity of a drug and the time period during which it may be prescribed or supplied) is contained in an authority to prescribe or supply drugs,
- (f) to amend the *Public Health Act 1991* to provide that a registered nurse may carry out surgical debridement of hypertrophic tissue of the foot using a sharp instrument in certain circumstances.

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 with a specified exception.

Clause 3 is a formal provision that gives effect to the amendments to the Acts and regulation set out in Schedules 1–6.

Schedule 1 Amendment of Health Administration Act 1982 No 135

Schedule 1 amends the *Health Administration Act 1982*, so that the provisions of that Act requiring the appointment of a root cause analysis team in certain circumstances apply to the Ambulance Service of New South Wales.

Schedule 2 Amendment of Human Tissue Act 1983 No 164

Schedule 2 [1] amends the *Human Tissue Act 1983* to clarify that a reference to a parent includes a reference to the Minister administering the *Children and Young Persons (Care and Protection) Act 1998* if the Minister has sole parental responsibility (unless otherwise indicated). **Schedule 2 [2] and [9]** contain consequential amendments.

Schedule 2 [3] inserts proposed section 11A into the *Human Tissue Act 1983* to make provision for the removal of regenerative tissue from the body of a child who is not capable of understanding the nature and effect of such removal and the intended effect of its proposed transplantation in certain circumstances where the risk to the child is minimal and the sibling of the child is likely to die or suffer serious and

irreversible damage to his or her health unless the tissue is used in his or her treatment. **Schedule 2 [2], [4] and [6]–[8]** contain consequential amendments.

Schedule 2 [5] and [12] make statute law revision amendments.

Schedule 2 [10] amends the *Human Tissue Act 1983* to provide that the medical practitioners who may certify death prior to the removal of tissue from a deceased person's body must not be involved in the removal of tissue from the deceased person's body for the purposes of its transplantation or be responsible for the primary care of the intended recipient of the tissue.

Schedule 2 [11] amends the *Human Tissue Act 1983* to allow authorised persons, in addition to medical practitioners, to remove musculoskeletal tissue from a deceased person for the purpose of the transplantation of that tissue.

Schedule 2 [13] amends the *Human Tissue Act 1983* to provide that the Act does not prevent the use of small samples of tissue, that are lawfully removed, for carrying out analyses or tests that are part of a program to ensure, or improve, the quality of services carried out at a hospital, a forensic institution, a laboratory, an educational or research institution or by a supplier of blood or blood products, or that are necessary for the delivery of services carried out at or by these bodies or for the accreditation under any Act of these bodies.

Schedule 3 Amendment of Podiatrists Act 2003 No 69

Schedule 3 amends the *Podiatrists Act 2003* to allow regulations to be made in relation to infection control standards to be followed by podiatrists.

Schedule 4 Amendment of Poisons and Therapeutic Goods Act 1966 No 31

Schedule 4 [1] substitutes section 28 of the *Poisons and Therapeutic Goods Act 1966* to specify the types of drugs of addiction that may be prescribed for continuous therapeutic use only with the authority of the Director-General of the Department of Health.

Schedule 4 [2] amends the *Poisons and Therapeutic Goods Act 1966* to allow the Director-General of the Department of Health a discretion in respect of whether an authority to prescribe or supply drugs specifies the maximum quantity of the drug that may be prescribed or supplied or the period for which any drugs may be prescribed or supplied (it is currently mandatory for these details to be included in any such authorisation).

Schedule 5 Amendment of Poisons and Therapeutic Goods Regulation 2002

Schedule 5 amends the *Poisons and Therapeutic Goods Regulation 2002* to specify the types of drugs of addiction that may be prescribed for continuous therapeutic use only with the authority of the Director-General of the Department of Health.

Schedule 6 Amendment of Public Health Act 1991 No 10

Schedule 6 [1] amends the *Public Health Act 1991* to provide that a registered nurse may carry out surgical debridement of hypertrophic tissue of the foot using a sharp instrument if the debridement is carried out to the extent necessary to provide immediate relief from pain or discomfort (the Act does not currently allow this but provides a defence to prosecution in such circumstances). **Schedule 6 [2]** makes a consequential amendment.



New South Wales

Health Legislation Amendment Bill 2005

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Acts and regulation	2
Schedule 1 Amendment of Health Administration Act 1982 No 135	3
Schedule 2 Amendment of Human Tissue Act 1983 No 164	4
Schedule 3 Amendment of Podiatrists Act 2003 No 69	8
Schedule 4 Amendment of Poisons and Therapeutic Goods Act 1966 No 31	9
Schedule 5 Amendment of Poisons and Therapeutic Goods Regulation 2002	11
Schedule 6 Amendment of Public Health Act 1991 No 10	12



New South Wales

Health Legislation Amendment Bill 2005

No. , 2005

A Bill for

An Act to make miscellaneous amendments to various Acts and a regulation that relate to health and associated matters; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Health Legislation Amendment Act 2005</i> .	3
2 Commencement	4
(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).	5 6
(2) Schedule 6 commences on the date of assent to this Act or the commencement of section 10AH of the <i>Public Health Act 1991</i> (as inserted by the <i>Podiatrists Act 2003</i>), whichever is the later.	7 8 9
3 Amendment of Acts and regulation	10
The Acts and regulation specified in Schedules 1–6 are amended as set out in those Schedules.	11 12

Schedule 1	Amendment of Health Administration Act 1982 No 135	1
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	(Section 3)	3
Section 20L Definitions		4
Insert “, the Ambulance Service of New South Wales” after “area health service” in the definition of <i>relevant health services organisation</i> .		5
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Schedule 2	Amendment of Human Tissue Act 1983	1
	No 164	2
	(Section 3)	3
[1] Section 4 Definitions		4
	Omit section 4 (2) (a). Insert instead:	5
	(a) a reference to a parent of a person includes a reference to the following:	6
	(i) a step-parent of the person,	7
	(ii) an adoptive parent of the person,	8
	(iii) the Minister administering the <i>Children and Young Persons (Care and Protection) Act 1998</i> , if the Minister has sole parental responsibility in respect of the person (whether under that Act or otherwise),	9
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[2] Section 10		14
	Omit the section. Insert instead:	15
	10 Consents to removal of regenerative tissue from children	16
	A parent of a child may give consent in writing to the removal from the child's body of specified regenerative tissue for the purpose of its transplantation to the body of a parent (being a biological parent, step-parent or adoptive parent), brother or sister of the child.	17
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	Note. A child must understand the nature and effect of the removal of tissue if a medical practitioner's certificate is to be issued under section 11. If a child is not capable of such understanding, a medical practitioner's certificate must be issued under section 11A and only transplantation to the body of a brother or sister is allowed.	22
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[3] Section 11A		27
	Insert after section 11:	28
	11A Medical practitioners' certificate—child not capable of understanding	29
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	(1) A medical practitioner who is of the opinion that a child is not, by reason of his or her age, capable of understanding the nature and effect of the removal of tissue from his or her body and the intended effect of its proposed transplantation, may certify in writing that:	31
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| (a) | the consent in writing of a parent of a child, the terms of which consent are set out in the certificate, was given in the presence of the medical practitioner, and | 1
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| (b) | the medical practitioner explained to the parent, before the consent was given, the nature and effect of the removal from the child's body of the tissue specified in the consent and the intended effect of its proposed transplantation, and | 4
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| (c) | the medical practitioner is satisfied that: | 8 |
| (i) | at the time the consent was given, the parent was of sound mind, and | 9
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| (ii) | at the time the consent was given, the parent understood the nature and effect of the removal of the tissue and the intended effect of its proposed transplantation, and | 11
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| (iii) | the consent was freely given, and | 15 |
| (d) | the medical practitioner is of the opinion that the following conditions (<i>the pre-conditions for child tissue donation</i>) are satisfied: | 16
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| (i) | the child, by reason of his or her age, is not capable of understanding the nature and effect of the removal of the tissue and the intended effect of its proposed transplantation, | 19
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| (ii) | the brother or sister of the child is likely to die or suffer serious and irreversible damage to his or her health unless the tissue intended to be removed from the child is used in the treatment of that brother or sister, | 23
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| (iii) | any risk to the child's health (including psychological and emotional health) caused by the removal of the tissue is minimal. | 28
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| (2) | A certificate by a medical practitioner to the effect that the pre-conditions for child tissue donation are satisfied is effective only if a second medical practitioner, who is a specialist in paediatric medicine or paediatric transplants, also certifies in the certificate that: | 31
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| (a) | he or she is of the opinion that those pre-conditions are satisfied, and | 36
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| (b) | he or she provides that opinion as an independent medical practitioner, being a medical practitioner: | 38
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| (i) | whose primary role in providing an opinion in the case is to ensure the health of the child from whom the tissue is to be removed, and | 40
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(ii)	who is not responsible for the care of the brother or sister in whose treatment the tissue is to be used.	1 2
[4]	Section 14 Effect of consent under section 10	3
	Insert at the end of the section:	4
(2)	Except as provided by section 15, a document that purports to be a consent given in accordance with section 10 is, where a certificate has been given in accordance with section 11A in relation to that consent, sufficient authority for a medical practitioner (other than either of the medical practitioners who gave the certificate) to remove the regenerative tissue specified in the consent for the purpose specified in the consent.	5 6 7 8 9 10 11
[5]	Section 15 Written consent not to be sufficient authority in certain circumstances	12 13
	Insert “or” at the end of section 15 (a).	14
[6]	Section 15 (b)	15
	Omit “or 11”. Insert instead “, 11 or 11A”.	16
[7]	Section 15 (c) and (d)	17
	Omit section 15 (c). Insert instead:	18
(c)	if a certificate was given for the purposes of section 11— that the child is no longer in agreement with the proposed removal and transplantation of the tissue, or	19 20 21
(d)	if a certificate was given for the purposes of section 11A— that the child has at least some understanding of the procedures involved in the removal of tissue from his or her body and has repeatedly and consistently expressed an unwillingness to undergo any such procedure.	22 23 24 25 26
[8]	Section 16 Revocation of consent	27
	Omit “or 11” from section 16 (2) and (5) (b) wherever occurring.	28
	Insert instead “, 11 or 11A”.	29
[9]	Section 20A Consent to removal of blood from child if child unable to agree	30 31
	Insert “(being the biological parent, step-parent or adoptive parent)” after “treatment of the child’s parent”.	32 33

[10] Section 26 Certificates required in certain situations	1
Insert after section 26 (1):	2
(1A) The 2 medical practitioners referred to in subsection (1) must not include:	3
(a) any medical practitioner who is responsible for, or involved in, the removal of tissue from the person's body for the purpose of its transplantation to the body of another person, or	4
(b) any medical practitioner who is responsible for the care of the person who is the intended recipient of the tissue.	5
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[11] Section 27 Effect of authority under this Part	11
Insert "or the transplantation of musculoskeletal tissue" after "corneal transplantation" wherever occurring in section 27 (1A).	12
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[12] Section 27 (1A) (a)	14
Omit "Secretary". Insert instead "Director-General".	15
[13] Section 34 Act does not prevent specified removals of tissue	16
Insert after section 34 (1) (b2):	17
(b3) the use of small samples of any tissue that is lawfully removed from the body of a person (whether living or deceased) for the purpose of carrying out analyses or tests:	18
(i) that are part of a program (including any quality assurance program, quality control program, audit or evaluation) to ensure, or improve, the quality of services carried out at or by a hospital, a forensic institution, a laboratory, an educational or research institution or a supplier of blood or blood products, or	19
(ii) that are necessary for the delivery of services carried out at or by a hospital, a forensic institution, a laboratory, an educational or research institution or a supplier of blood or blood products or for the accreditation under any Act of a hospital, a forensic institution, a laboratory, an educational or research institution or a supplier of blood or blood products,	20
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Schedule 3	Amendment of Podiatrists Act 2003	1
	No 69	2
	(Section 3)	3
Section 132 Regulations		4
Insert after section 132 (2) (m):		5
(n)	infection control standards to be followed by podiatrists in the practice of podiatry.	6
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Schedule 4 Amendment of Poisons and Therapeutic Goods Act 1966 No 31

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(Section 3)

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[1] Section 28

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Omit the section. Insert instead:

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28 Prohibition on prescribing drugs of addiction in certain cases

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- (1) A medical practitioner or nurse practitioner must not, without the proper authority, prescribe for or supply to any person a type A drug of addiction. 7
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- (2) A medical practitioner or nurse practitioner must not, without the proper authority, prescribe or supply a type B drug of addiction: 10
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 - (a) for continuous therapeutic use by a person for a period exceeding 2 months, or 12
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 - (b) for a period that, together with any other period for which that drug or any other type B drug of addiction has been prescribed or supplied by the medical practitioner or nurse practitioner or has, to the medical practitioner's or nurse practitioner's knowledge, been prescribed or supplied by any other medical practitioner or nurse practitioner, would result in that drug, or that drug together with any other such drug, being prescribed or supplied for continuous therapeutic use for a period exceeding 2 months. 14
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- (3) A medical practitioner or nurse practitioner must not, without the proper authority, prescribe for or supply to a person who, in the opinion of the medical practitioner or nurse practitioner, is a drug dependent person a type C drug of addiction. 23
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- (4) For the purposes of this section, *the proper authority* means an authority under section 29 that authorises the medical practitioner or nurse practitioner to prescribe or supply the drug of addiction to the person concerned. 27
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- (5) A drug of addiction may be prescribed for or supplied to a person by a medical practitioner or nurse practitioner without the proper authority if the medical practitioner or nurse practitioner is authorised by the regulations to prescribe or supply the drug without an authority under section 29. 31
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(6)	In this section:	1
	<i>type A drug of addiction</i> means a drug of addiction prescribed by the regulations under this section as a type A drug of addiction.	2
	<i>type B drug of addiction</i> means a drug of addiction prescribed by the regulations under this section as a type B drug of addiction.	3
	<i>type C drug of addiction</i> means any drug of addiction (other than a type A drug of addiction).	4
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[2]	Section 29 Director-General may authorise prescription or supply of drugs of addiction	8
	Omit “shall” wherever occurring in section 29 (5) (a) and (b).	9
	Insert instead “may”.	10
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Schedule 5	Amendment of Poisons and Therapeutic Goods Regulation 2002	1
		2
	(Section 3)	3
Clauses 121 and 121A		4
Omit clause 121. Insert instead:		5
121 Prescribed type A drugs of addiction		6
For the purposes of section 28 of the Act, each of the following is prescribed as a type A drug of addiction:		7
(a) amphetamine,		8
(b) dexamphetamine,		9
(c) methylamphetamine,		10
(d) methylphenidate,		11
(e) phendimetrazine,		12
(f) phenmetrazine.		13
121A Prescribed type B drugs of addiction		14
For the purposes of section 28 of the Act, each of the following is prescribed as a type B drug of addiction:		15
(a) a drug of addiction that is packaged and labelled in a manner that is consistent with the drug being intended for administration by injection,		16
(b) buprenorphine,		17
(c) dextromoramide,		18
(d) flunitrazepam,		19
(e) hydromorphone,		20
(f) methadone.		21
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Schedule 6	Amendment of Public Health Act 1991	1
	No 10	2
	(Section 3)	3
[1]	Section 10AH Certain foot care services not to be provided by unregistered persons (as inserted by the Podiatrists Act 2003)	4
	Insert at the end of section 10AH (2) (b):	5
	, or	6
	(c) registered nurse and the debridement is carried out to the extent necessary to provide immediate relief from pain or discomfort.	7
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[2]	Section 10AH (5) (as inserted by the Podiatrists Act 2003)	11
	Omit the subsection.	12