

Health Legislation Further Amendment
Bill 2004
New South Wales

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 *Nursing Homes Act 1988* and the *Nursing Homes Regulation 1996*,
- (b) to amend the *Dental Technicians Registration Act 1975* to increase certain penalties under that Act,
- (c) to amend the *Health Services Act 1997* to enable the Health Administration Corporation (**the Corporation**) to provide health support services to public health organisations and to provide health support services and other services to other persons with the approval of the Minister,
- (d) to amend the *New South Wales Institute of Psychiatry Act 1964* to remove the requirement for the New South Wales Institute of Psychiatry (**the Institute**) to obtain the Minister's approval to carry out certain functions outside New South Wales and to enable the Institute to employ certain staff members with the Minister's approval and to enable the Institute to delegate certain of its functions,
- (e) to amend the *Optical Dispensers Act 1963* to include contact lenses that have no corrective power as optical appliances to which that Act applies,
- (f) to amend the *Public Health Act 1991* to remove the need for the Minister's approval to use crematory equipment and to require the person who operates a nursing home to ensure that a registered nurse is on duty at the nursing home at all times and that a registered nurse is appointed as a director of nursing of the nursing home,
- (g) to amend a number of other Acts and instruments consequent on the repeal of the *Nursing Homes Act 1988*.

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 repeals the *Nursing Homes Act 1988* and the *Nursing Homes Regulation 1996*.

Clause 4 is a formal provision that gives effect to the amendments to Acts and instruments set out in Schedules 1–6.

**Schedule 1 Amendment of Dental Technicians
Registration Act 1975 No 40**

Schedule 1 [1] amends the *Dental Technicians Registration Act 1975* to increase the maximum penalty for an offence under that Act for which no penalty is expressly provided, from 5 penalty units (\$550) to 50 penalty units (\$5500). **Schedule 1 [2]** increases the maximum penalty that may be imposed by a regulation made under that Act from 2 penalty units (\$220) to 10 penalty units (\$1100).

**Schedule 2 Amendment of Health Services Act 1997
No 154**

Schedule 2 [7] inserts proposed Part 1A into Chapter 10 of the *Health Services Act 1997* which enables the Corporation to provide health support services to public health organisations and, with the Minister's approval, to provide health support services or corporate or other services, by contract or agreement, to other persons. A Public Health System Support Division of the Corporation is established and the

persons employed in that Division are employed in connection with public health organisations and the public hospitals that they control and are to carry out the Corporation's function of providing health support services to those organisations. The Corporation may delegate its functions under the proposed Part to a person or an appointed body. The Director-General may transfer staff of a public health organisation to the Corporation for the purpose of exercising those functions and the Director-General may authorise the Corporation to make use of the services of any of the staff of a public health organisation. When the Corporation is making use of the services of such staff, it is taken to be an employer for the purposes of the *Occupational Health and Safety Act 2000* and certain other employer liability legislation. The Minister may require a public health organisation to acquire health support services from the Corporation or some other specified person and any such requirement is authorised despite Part IV of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*. **Schedule 2 [6]** updates the Introduction note to Chapter 10 to explain the purpose of proposed Part 1A. **Schedule 2 [9] and [10]** update the definition of **health support service** in the Dictionary. **Schedule 2 [1]** provides that the Public Health System Support Division of the Corporation is part of the public health system.

Schedule 2 [2] provides that persons employed in the Public Health System Support Division of the Corporation are part of the NSW Health Service. **Schedule 2 [3]–[5]** permit the Corporation to transfer those persons, on the ground of redundancy, to another position in the NSW Health Service.

Schedule 2 [8] enables the regulations to make provision for matters of a savings and transitional nature consequent on the proposed amendments to the Act.

Schedule 2 [11] amends the definition of **nursing home** in the Dictionary consequent on the repeal of the *Nursing Homes Act 1988*.

Schedule 3 Amendment of New South Wales Institute of Psychiatry Act 1964 No 44

Schedule 3 [3] amends the *New South Wales Institute of Psychiatry Act 1964* to remove the requirement for the Minister's approval for the Institute to be able to accept the invitation of, or to co-operate with, the government or a public health authority or other authority of certain other jurisdictions in implementing within that jurisdiction any of the objects for which the Institute is established.

Schedule 3 [5] re-enacts section 20 of the Act and enables the Institute to employ certain staff members subject to the approval of the Minister rather than subject to the approval of the Public Employment Office. **Schedule 3 [7]** provides that the re-enactment of section 20 has no effect on the terms of employment of any person employed by the Institute at the time of that re-enactment.

Schedule 3 [5] also inserts proposed section 20A that enables the Institute to delegate the exercise of any of its functions under the Act (except the power of delegation).

Schedule 3 [2] makes a consequential amendment.

Schedule 3 [1] and [4] make amendments by way of statute law revision.

Schedule 3 [6] enables the regulations to make provision for matters of a savings and transitional nature consequent on the proposed amendments to the Act.

Schedule 4 Amendment of Optical Dispensers Act 1963 No 35

Schedule 4 [1] amends the *Optical Dispensers Act 1963* to include in the definition of **Optical appliance** contact lenses, other than those designed to correct, remedy or relieve any refractive abnormality or defect of sight. The Act places certain restrictions on the sale and supply of optical appliances. **Schedule 4 [2]** makes a consequential amendment to ensure that such a lens is not required to be supplied by way of prescription.

Schedule 4 [3] enables the regulations to make provision for matters of a savings and transitional nature consequent on the proposed amendments to the Act.

Schedule 5 Amendment of Public Health Act 1991

No 10

Schedule 5 [2] amends the *Public Health Act 1991* by omitting a section that makes it an offence for a person to conduct a crematory if the equipment and apparatus used in the crematory are not in accordance with the approval of the Minister. A new unrelated section is inserted in the same location to require a person who operates a nursing home to ensure that a registered nurse is on duty at the nursing home at all times and that a registered nurse is appointed as a director of nursing of the nursing home. The regulations may prescribe the minimum necessary qualifications for the holder of a position of director of nursing. **Schedule 5 [1]** inserts a definition of ***nursing home*** into the Act. **Schedule 5 [3]** makes a consequential amendment.

Schedule 5 [4] enables the regulations to make provision for matters of a savings and transitional nature consequent on the proposed amendments to the *Public Health Act 1991* and on the repeal of the *Nursing Homes Act 1988*. **Schedule 5 [5]** inserts a savings and transitional provision to update certain references to nursing homes.

Schedule 6 Consequential amendment of other Acts and instruments

Schedule 6 amends a number of other Acts and instruments consequent on the repeal of the *Nursing Homes Act 1988*.