

Explanatory note

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

Overview of Bill

The object of this Bill is to amend various health Acts and regulations so as:

- (a) to allow the Chairperson or Deputy Chairperson of a health professional disciplinary tribunal to continue to sit on the Tribunal after the expiry of the person's term of appointment in certain circumstances, and
- (b) to extend the existing power of disciplinary tribunals, professional standards committees and Boards established under health professional legislation may issue orders precluding the disclosure of particular types of information that are capable of identifying a person to include orders in respect of information, pictures and other material, and
- (c) to increase the maximum penalty for a breach by a corporation of a non-disclosure order imposed by the Nurses and Midwives Tribunal or a professional standards committee under the *Nurses and Midwives Act 1991* to 150 penalty units, and
- (d) to require the Medical Board and the Dental Board (as appropriate) to be notified if a registered medical student or a registered dental student becomes a mentally incapacitated person, and
- (e) to remove a restriction on registered dental therapists carrying out dental auxiliary activities other than as an officer or employee of or a contractor to a public sector agency or prescribed body, and
- (f) to make provision with respect to payments out of the accounts of health professional boards, and
- (g) to enable the Director-General of the Department of Health to delegate functions relating to the provision of ambulance services to a public sector body appointed for the purpose of exercising those functions, and
- (h) to enable a Committee of Review under the *Health Services Act 1997* to refer matters to the Medical Board or the Dental Board (as appropriate) to be dealt with as a complaint where the Committee is of the opinion that serious concerns exist in relation to the performance or competence of an appellant, that the appellant has engaged in conduct that may constitute professional misconduct or unsatisfactory professional conduct, or the appellant may suffer from an impairment, and
- (i) to provide that no liability attaches to a person in connection with the conduct of a disciplinary review of a member of the NSW Health Service, and
- (j) to make it clear that the supply or fitting of a prosthesis or therapeutic device is a health service within the meaning of the *Health Services Act 1997*, and
- (k) to entitle persons with medical qualifications granted overseas to be registered as a medical practitioner in certain circumstances, and
- (l) to enable the Medical Board to order a medical practitioner who is the subject of a complaint or inquiry to be examined by a specified registered health practitioner, and
- (m) to make it clear that the Medical Board and the Registrar can delegate functions to groups of persons, including committees established under the *Medical Practice Act 1992*, and
- (n) to provide that certain senior employees and executives may be appointed as a member of the New South Wales Institute of Psychiatry, and
- (o) to provide that no personal liability attaches to a person in connection with the exercise of the person's functions as a performance assessor under the *Nurses and Midwives Act 1991*, and
- (p) to enable fees to be charged in connection with an application for an optometrists drug authority, and
- (q) to enable regulations to be made setting infection control standards to be

followed in the practice of pharmacy, and
(r) to enable the Director-General to make an order to prohibit or restrict certain persons from possessing, supplying or prescribing poisons in certain circumstances, and
(s) to authorise the Director-General to require a medical practitioner involved in the treatment of a person the subject of a report notifying a Category 3 medical condition to provide information to complete or correct the report, and
(t) to enable the prohibition of the sale of tobacco products with a distinctive fruity, sweet or confectionery-like character, and
(u) to prohibit the sale of tobacco products by a vendor carrying the products for sale on his or her person or from a mobile or temporary structure, and
(v) to empower authorised inspectors to issue penalty notices for offences under the *Smoke-free Environment Act 2000*.

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 the date of assent to the proposed Act, except for Schedule 2.1 [1] (which is to commence on 1 July 2008), and Schedule 2.13 [4] (which is to commence on proclamation).

Clause 3 is a formal provision that gives effect to the amendments to the Acts set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Acts and instruments set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments relating to disciplinary tribunals

Schedule 1.1 [1], 1.2 [1], 1.3 [1], 1.4 [1], 1.5 [1], 1.6 [1], 1.8 [1], 1.9 [1], 1.10 [1] and 1.11 [1] amend the *Chiropractors Act 2001*, the *Dental Practice Act 2001*, the *Medical Practice Act 1992*, the *Nurses and Midwives Act 1991*, the *Optometrists Act 2002*, the *Osteopaths Act 2001*, the *Pharmacy Practice Act 2006*, the *Physiotherapists Act 2001*, the *Podiatrists Act 2003* and the *Psychologists Act 2001*, respectively, to give effect to the object set out in paragraph (a) of the Overview. The effect of each amendment is that, following the expiry of a person's term of appointment as Chairperson or Deputy Chairperson, the person will be able to continue to sit on the relevant health professional disciplinary tribunal to complete the conduct or hearing of an inquiry or appeal that commenced before the person's appointment expired. The person will be taken to be, and will be able to exercise the functions of, a Deputy Chairperson in respect of such an inquiry or appeal.

Schedule 1.1 [2], 1.2 [2], 1.3 [2], 1.4 [2], 1.5 [2], 1.6 [2], 1.7, 1.8 [2], 1.9 [2], 1.10 [2] and 1.11 [2] amend the *Chiropractors Act 2001*, the *Dental Practice Act 2001*, the *Medical Practice Act 1992*, the *Nurses and Midwives Act 1991*, the *Optometrists Act 2002*, the *Osteopaths Act 2001*, the *Pharmacy Act 1964*, the *Pharmacy Practice Act 2006*, the *Physiotherapists Act 2001*, the *Podiatrists Act 2003* and the *Psychologists Act 2001*, respectively, to give effect to the object set out in paragraph (b) of the Overview.

Schedule 1.4 [3] amends the *Nurses and Midwives Act 1991* to give effect to the object set out in paragraph (c) of the Overview. The effect of the amendment is to make the maximum penalty for a breach by a corporation of a non-disclosure order consistent with the corresponding penalty under the other health professional registration Acts.

Schedule 2 Other amendments

Schedule 2.1 [1] amends the *Dental Practice Act 2001* to give effect to the object set

out in paragraph (e) of the Overview with effect from 1 July 2008.

Schedule 2.1 [2] amends the *Dental Practice Act 2001* and **Schedule 2.6 [5]** amends the *Medical Practice Act 1992* to give effect to the object set out in paragraph (d) of the Overview. **Schedule 2.2 and Schedule 2.7** contain consequential amendments to regulations under those Acts.

Schedule 2.4 amends the *Health Administration Act 1982* to give effect to the object set out in paragraph (f) of the Overview. The effect of the amendment is that the Health Administration Corporation will be able to apply funds held in the accounts of individual health professional registration boards to pay any amounts required to meet the costs associated with the employment of NSW Health Service staff for the purposes of those boards.

Schedule 2.5 [1] and [2] amend the *Health Services Act 1997* to give effect to the object set out in paragraph (g) of the Overview. The effect of the amendments is that the functions of the Director-General of providing, conducting, operating and maintaining ambulance services, and the associated functions set out in section 67B of that Act, will be able to be delegated to a body appointed under proposed section 67AB of that Act. **Schedule 2.5 [3]** makes a consequential amendment.

Schedule 2.5 [4] amends the *Health Services Act 1997* to give effect to the object set out in paragraph (h) of the Overview.

Schedule 2.5 [5] amends the *Health Services Act 1997* to give effect to the object set out in paragraph (i) of the Overview.

Schedule 2.5 [6] amends the *Health Services Act 1997* to give effect to the object set out in paragraph (j) of the Overview.

Schedule 2.6 [1] amends the *Medical Practice Act 1992* to give effect to the object set out in paragraph (k) of the Overview. The effect of the amendment is that a person with medical qualifications granted overseas will be entitled to be registered as a medical practitioner if the person has received a certificate or other qualification in accordance with a procedure approved by the Medical Board for the purpose of qualifying a person for registration as a medical practitioner.

Schedule 2.6 [2] amends the *Medical Practice Act 1992* to give effect to the object set out in paragraph (l) of the Overview. **Schedule 2.6 [3], [4], [6]–[9], [11]–[14] and 16** make consequential amendments.

Schedule 2.6 [10] amends the *Medical Practice Act 1992* to give effect to the object set out in paragraph (m) of the Overview, and **Schedule 2.6 [15]** makes a consequential amendment validating delegations already made.

Schedule 2.8 amends the *New South Wales Institute of Psychiatry Act 1964* to give effect to the object set out in paragraph (n) of the Overview. The effect of the amendment is that a senior employee of a statutory health corporation constituted under the *Health Services Act 1997* or a member of the Health Executive Service within the meaning of that Act will be able to be appointed as a member of the Institute.

Schedule 2.9 [1] and [2] amend the *Nurses and Midwives Act 1991* to give effect to the object set out in paragraph (o) of the Overview.

Schedule 2.10 amends the *Optometrists Act 2002* to give effect to the object set out in paragraph (p) of the Overview.

Schedule 2.11 amends the *Pharmacy Practice Act 2006* to give effect to the object set out in paragraph (q) of the Overview.

Schedule 2.12 [1] and [2] amend the *Poisons and Therapeutic Goods Act 1966 (the Act)* to give effect to the object set out in paragraph (r) of the Overview. The effect of the amendment is that the Director-General will be able to make an order prohibiting or restricting a medical practitioner, nurse, midwife, dentist, optometrist, pharmacist, podiatrist or veterinary practitioner from possessing, supplying or prescribing a substance specified in Schedule 2, 3 or 4 of the Poisons List. Such an order will be able to be made if the person is convicted of an offence under the Act

or the regulations made under it (or if an order is made in respect of such an offence under section 10 (1) the *Crimes (Sentencing Procedure) Act 1999*), if the person has failed to comply with any other requirement of an order imposed under the Act, or if the Director-General is of the opinion that the person should be so restricted or prohibited for the purpose of protecting life or health.

Schedule 2.13 [1] amends the *Public Health Act 1991* to give effect to the object set out in paragraph (s) of the Overview. The effect of the amendment will be to enable the Director-General to seek information to ensure the integrity of data held in the NSW Cancer Registry.

Schedule 2.13 [3] amends the *Public Health Act 1991* to give effect to the object set out in paragraph (t) of the Overview. The amendment will enable the Minister to publish a notice in the Gazette declaring a tobacco product, or a class of tobacco products, with a distinctive fruity, sweet or confectionery-like character to be a prohibited tobacco product. **Schedule 2.13 [2]** makes a consequential amendment.

Schedule 2.13 [4] amends the *Public Health Act 1991* to give effect to the object set out in paragraph (u) of the Overview. Under new section 57A of that Act it will be an offence:

(a) for a vendor to carry tobacco products on his or her person on any premises for the purpose of selling the products by retail on the premises. The offence will extend to a person who employs or pays the vendor to undertake such an activity. It will also be an offence for a person who has control of premises to cause or permit such an activity on the premises, and

(b) for a person to sell tobacco products by retail from mobile or temporary premises. It will also be an offence for a person who has control of premises, and for a person organising a concert or other event on premises, to cause or permit such sales on the premises.

Schedule 2.14 amends the *Smoke-free Environment Act 2000* to give effect to the object set out in paragraph (v) of the Overview. **Schedule 2.3** makes a consequential amendment to the *Fines Act 1996*.