

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 Public Health Act 1991 to require health practitioners who are de-registered or subject to prohibition orders to notify their patients and employers and to permit the regulations under that Act to prescribe a code of conduct for unregistered health practitioners,

(b) to amend the Health Care Complaints Act 1993 to permit the Health Care Complaints Commission (the Commission) to give public warnings about unsafe treatments and practitioners and to make prohibition orders against unregistered health practitioners who pose a substantial risk to the health of members of the public and to require the Commission to publish information about de-registered health practitioners and the decisions of health registration bodies,

(c) to amend each of the health registration Acts to permit a health registration body to make a prohibition order when cancelling or suspending a person's registration, if the person poses a substantial risk to the health of members of the public, and to require those bodies to publish certain decisions and give information about de-registered health practitioners.

### **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.

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

**Clause 4** 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 Amendment of Public Health Act 1991**

**Schedule 1 [2]** substitutes Part 2A of the Public Health Act 1991 (the Principal Act).

**Proposed Division 1** of the substituted Part sets out definitions to be used in the Part (proposed section 10AA) and provides for proceedings for an offence under the Part to be instituted by any person within 2 years of the date on which the offence is alleged to have been committed (proposed section 10AB). Schedule 1 [4] makes a consequential amendment.

**Proposed Division 2** of the substituted Part re-enacts, with some minor changes, current sections 10AC–10AH of the Principal Act. These are set out in proposed sections 10AC–10AI.

**Proposed Division 3** of the substituted Part makes provision with respect to health practitioners (de-registered health practitioners) whose registration as a health practitioner under a health registration Act or health registration legislation of another State or Territory is cancelled or suspended as a result of disciplinary proceedings and for health practitioners who are subject to a prohibition order made under a health registration Act or under the Health Care Complaints Act 1993 (see Schedules 2 and 3 below for more information on prohibition orders).

**Proposed section 10AJ** sets out definitions to be used in the proposed Division.

**Proposed section 10AK** creates an offence (maximum penalty 50 penalty units or imprisonment for 12 months, or both) if a person provides a health service in contravention of a prohibition order. The proposed section also creates an offence (maximum penalty 50 penalty units) if a de-registered health practitioner fails to ensure that, before providing a health service to any person, the person and the

practitioner's employer are notified that the practitioner has been de-registered. The proposed section also creates an offence (maximum penalty 50 penalty units) if a health practitioner who is subject to a prohibition order fails to ensure that, before providing a health service to any person, the person and the practitioner's employer are notified that the practitioner is subject to the order.

**Proposed section 10AL** creates an offence (maximum penalty 50 penalty units) if a person advertises health services that are to be provided by a health practitioner and the person fails to disclose in the advertisement that the health practitioner is de-registered (if the health practitioner is a de-registered health practitioner) or that the health practitioner is subject to a prohibition order (if the practitioner is subject to such an order).

**Proposed Division 4** of the substituted Part contains miscellaneous provisions.

**Proposed section 10AM** permits the regulations to prescribe a code of conduct (the code of conduct for unregistered health practitioners) for health practitioners who are not required to be registered under a health registration Act (including de-registered health practitioners) and health practitioners who are registered under a health registration Act who provide health services that are unrelated to their registration.

**Proposed section 10AN** creates an offence (maximum penalty 100 penalty units for a first offence and 200 penalty units for a second or subsequent offence) if a person advertises a health service in a manner that is false or misleading.

**Schedule 1 [1]** clarifies the status of notes in the Principal Act.

**Schedule 1 [3]** permits the Director-General to inquire into any alleged offence under the Principal Act.

**Schedule 1 [5]** amends Schedule 4 to the Principal Act to enable the regulations to make provision for matters of a savings and transitional nature consequent on the amendments to the Act.

**Schedule 1 [6]** inserts a provision of a savings and transitional nature to make it clear that proposed Division 3 of Part 2A extends to a health practitioner whose registration is cancelled or suspended before that Division commences.

### **Schedule 2 Amendment of Health Care Complaints Act 1993**

**Schedule 2 [12]** inserts proposed Division 6A (proposed sections 41A–41D) into

#### **Part 2 of the Health Care Complaints Act 1993 (the Principal Act).**

**Proposed section 41A** provides that, if the Health Care Complaints Commission (the Commission) finds that a health practitioner has breached the code of conduct for unregistered health practitioners or has been convicted of certain offences, and the Commission is of the opinion that the health practitioner poses a substantial risk to the health of members of the public, the Commission may make a prohibition order in respect of the health practitioner or cause a public statement to be issued giving warnings or information about the health practitioner and health services provided by the health practitioner. A prohibition order can prohibit the health practitioner from providing health services or specified health services for the period specified in the order or permanently or can place conditions on the provision of health services or specified health services by the health practitioner. Schedule 2 [9] and [11] make consequential amendments.

**Proposed section 41B** requires the Commission to provide a statement of a decision to the relevant health practitioner if the Commission finds that the health practitioner has breached the code of conduct for unregistered health practitioners or if the Commission takes action under proposed section 41A. The statement of the decision (except for any confidential information) is also to be provided to the complainant and any professional body or association that the Commission considers to be relevant to the health practitioner or to the area of practice to which the complaint relates. The Commission may also make the statement of the decision publicly available.

**Proposed section 41C** permits a health practitioner to apply to the Administrative Decisions Tribunal for a review of a decision of the Commission that the health practitioner has breached the code of conduct for unregistered health practitioners or a decision of the Commission to take action under proposed section 41A.

**Proposed section 41D** requires the Commission, if it makes a prohibition order in respect of a person, to provide a copy of a statement of the decision to each registration authority.

**Schedule 2 [13]** inserts proposed sections 94A–94C into the Principal Act.

**Proposed section 94A** permits the Commission to cause a public statement to be issued warning about a particular treatment or health service if, following an investigation, it is of the view that the treatment or service poses a risk to public health or safety.

**Proposed section 94B** requires the Commission to make publicly available statements of decisions of tribunals under health registration Acts in respect of complaints that have been proved or admitted in whole or in part. The Commission is also required to make publicly available certain statements of decisions of the Dental Technicians Registration Board, the Optical Dispensers Licensing Board and the Pharmacy Board of New South Wales. The proposed section also requires the Commission to make information provided to it under health registration Acts about de-registered health practitioners publicly available.

Proposed section 94C protects a number of persons, including the Commission, from liability for a publication in good faith under proposed section 41A, 41B, 94A or 94B.

**Schedule 2 [1]** amends section 4 of the Principal Act to make it clear that the making of an order or the issue of a statement under proposed section 41A is disciplinary action for the purposes of the Principal Act.

**Schedule 2 [2]** amends section 7 of the Principal Act to clarify that an alleged breach by a health practitioner of Division 3 of Part 2A of the Public Health Act 1991 or of the code of conduct for unregistered health practitioners is a matter about which a complaint can be made to the Commission. Schedule 2 [6] amends section 25 of the Principal Act to provide that the Commission is not required to notify the Director-General of the details of such a complaint. Schedule 2 [7] and [8] amend notes to take account of the fact that the Commission, rather than the Director-General, is primarily responsible for investigating such a complaint.

**Schedule 2 [3]** amends section 12 of the Principal Act to clarify that the Commission is not required to consult with a registration authority in cases where there is no such registration authority.

**Schedule 2 [4]** amends section 18 of the Principal Act to provide that a complaint that, if substantiated, would result in a health practitioner being found guilty of an offence under Division 3 of Part 2A of the Public Health Act 1991 must continue to be dealt with by the Commission even if the complaint is withdrawn. Schedule 2 [5] amends section 23 of the Principal Act to provide that such complaints must be investigated by the Commission.

**Schedule 2 [10]** omits a redundant definition.

**Schedule 2 [14]** amends Schedule 4 to the Principal Act to enable the regulations to make provision for matters of a savings and transitional nature consequent on the amendments to the Act.

**Schedule 2 [15]** inserts provisions of a savings and transitional nature into Schedule 4 to the Principal Act. These provide that a prohibition order may be made or a public statement issued in respect of conduct that occurred before the commencement of proposed section 41A. A prohibition order can also be made or a public statement issued in respect of a complaint that was pending at the time of that commencement. The savings and transitional provisions also provide that the power to issue a warning under proposed section 94A about an unsafe treatment or health service extends to an investigation that is completed before the commencement of that section. They also provide that the Commission is only to make publicly available a statement of a

decision that is given after the commencement of proposed section 94B (1).

**Schedule 3 Amendment of other Acts**

**Schedule 3** contains amendments to the following Acts (health registration Acts):

Chiropractors Act 2001

Dental Practice Act 2001

Dental Technicians Registration Act 1975

Medical Practice Act 1992

Nurses and Midwives Act 1991

Optical Dispensers Act 1963

Optometrists Act 2002

Osteopaths Act 2001

Pharmacy Act 1964

Pharmacy Practice Act 2006

Physiotherapists Act 2001

Podiatrists Act 2003

Psychologists Act 2001

**Schedule 3** amends each health registration Act to permit the tribunal established under each of those Acts (or in the case of those Acts where there is no tribunal established (the Dental Technicians Registration Act 1975, the Optical Dispensers Act 1963 and the Pharmacy Act 1964), the Dental Technicians Registration Board, the Optical Dispensers Licensing Board and the Pharmacy Board of New South Wales) to make a prohibition order in respect of a health practitioner. A prohibition order can only be made if the tribunal or board cancels or suspends a health practitioner's registration and the tribunal or board is satisfied that the person poses a substantial risk to the health of members of the public. A prohibition order can prohibit the health practitioner from providing health services or specified health services for the period specified in the order or permanently or can place conditions on the provision of health services or specified health services by the health practitioner. If the tribunal or board is aware that a person in respect of whom it is proposing to make a prohibition order is registered under another health registration Act the tribunal or board is to consult the board constituted under that other Act. A health practitioner who is subject to a prohibition order has a right to have the order reviewed (see Schedule 3.1 [2]–[4], 3.2 [2]–[4], 3.3 [4]–[7], 3.4 [1]–[3], 3.5 [2] and [5]–[7], 3.6 [3], [5] and [8], 3.7 [2]–[4], 3.8 [2]–[4], 3.9 [3], 3.10 [2]–[4], 3.11 [2]–[4], 3.12 [2]–[4] and 3.13 [2]–[4]).

**Schedule 3** also amends each health registration Act to require the board established under each of those Acts to make publicly available statements of decisions in relation to complaints that have been proved or admitted in whole or in part unless, if there is a tribunal established under the relevant Act, the tribunal has ordered otherwise. The board under each of the Acts is also required to make publicly available the name of any health practitioner whose registration has been cancelled as a result of disciplinary proceedings. A board, a member of a board and a number of other persons are protected from liability for the publication of such information in good faith (see Schedule 3.1 [5] and [6], 3.2 [5] and [6], 3.3 [8] and [9], 3.4 [4] and [5], 3.5 [3], [4] and [8], 3.6 [6] and [9], 3.7 [5] and [6], 3.8 [5] and [6], 3.9 [4] and [5], 3.10 [5] and [6], 3.11 [5] and [6], 3.12 [5] and [6] and 3.13 [5] and [6]).

**Schedule 3** also amends each health registration Act to enable the regulations under each of the health registration Acts to make provision for matters of a savings and transitional nature consequent on the amendments to the relevant Act. The amendments also insert several provisions of a savings and transitional nature into each health registration Act. These provide that a prohibition order may be made in respect of conduct that occurred before the commencement of the provision allowing the prohibition order to be made. A prohibition order can also be made in respect of a complaint that was pending at the time of that commencement. The savings and

transitional provisions also provide that the relevant board is only to make publicly available a statement of a decision that is given after the commencement of the provision requiring them to be made publicly available. However, the requirement to make publicly available the name of any health practitioner whose registration has been cancelled as a result of disciplinary proceedings extends to any person whose registration is cancelled at the time the relevant provision commences (see Schedule 3.1 [7] and [8], 3.2 [7] and [8], 3.3 [10], 3.4 [6] and [7], 3.5 [9] and [10], 3.6 [10]–[12], 3.7 [7] and [8], 3.8 [7] and [8], 3.9 [6]–[8], 3.10 [8] and [9], 3.11 [7] and [8], 3.12 [7] and [8] and 3.13 [7] and [8]).

**Schedule 3** also amends each health registration Act to insert definitions to be used in those Acts (see **Schedule 3.1 [1], 3.2 [1], 3.3 [1], 3.4 [8], 3.5 [1], 3.6 [1], 3.7 [1], 3.8 [1], 3.9 [1], 3.10 [1], 3.11 [1], 3.12 [1] and 3.13 [1]**) and makes consequential amendments as a result of the insertion of those definitions (see Schedule 3.3 [3], 3.6 [4] and 3.9 [2]). **Schedule 3.6 [7]** corrects a reference to a court. **Schedule 3.10 [7]** makes an amendment consequential on the proposed substitution of Part 2A of the Public Health Act 1991 by **Schedule 1 [1]**. **Schedule 3.3 [2] and 3.6 [2]** clarifies the status of notes.