



New South Wales

Health Practitioner Legislation Amendment Bill 2024

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Health Care Complaints Act 1993* and *Health Practitioner Regulation (Adoption of National Law) Act 2009*.

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.

Schedule 1 Amendment of Health Care Complaints Act 1993 No 105

Schedule 1[2] updates section 14 to align the *Health Care Complaints Act 1993* (*the Act*) with terminology used in the *Health Practitioner Regulation National Law (NSW)* (*the National Law*). The terminology clarifies that Councils for health professions (**Councils**) under the National Law, section 41B must take action in certain circumstances to protect the public. **Schedule 1[1], [3] and [7]** update references to Councils to ensure uniform terminology throughout the Act.

Schedule 1[4] provides for the Health Care Complaints Commission (*the Commission*) to accept either written or oral notice from a complainant to withdraw their complaint.

Schedule 1[6] provides that the Commission is only required to consult with the appropriate Council, when deciding what action to take under section 39, if there is an appropriate Council.

Schedule 1[8] amends section 90B to explicitly state the functions of the Director of Proceedings include prosecuting a complaint, to varying the decision to prosecute or to discontinuing or withdrawing the prosecution whether or not a decision had already been made by the Director to prosecute.

Schedule 1[9] provides for the Commission to obtain a report from a person sufficiently qualified or experienced to provide expert advice on the matter of a complaint and makes certain provisions for obtaining a report from an expert. Schedule 1[9] also provides that the report may be used in disciplinary or related proceedings under the Act or National Law but may not be used in any other proceedings before a court, tribunal or body without the consent of the expert, the complainant and the person against whom the complaint is made. Schedule 1[9] also sets out that an expert, the Commission or the Commissioner may not be compelled to produce the report or give evidence in relation to the report before a court, tribunal or body, other than for disciplinary or related proceedings under the National Law. **Schedule 1[5]** makes a consequential amendment.

Schedule 1[10] amends section 99B to allow the Commission to disclose information to any person or body regulating health service providers in Australia or in another jurisdiction.

Schedule 2 Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86

Schedule 2[1] sets out that if the Tribunal would have suspended a person's registration under the National Law, section 149C(4)(a) the person may not reapply for registration in the health profession during the period the person would have been suspended if they were still a registered health practitioner.

Schedule 2[2] and [3] require Councils to give a registered health practitioner or student written notice of a decision made in relation to the practitioner or student and the reasons for the decision. Schedule 2[2] and [3] also provide that the written notice provided by Councils is not admissible in evidence in civil or criminal proceedings in a court of law, except proceedings under the National Law, or in an inquest or inquiry under the *Coroners Act 2009*.

Schedule 2[4] extends the existing privilege that prevents certain audio recordings of Council proceedings being admissible in evidence in certain proceedings to the transcripts of audio recordings.

Schedule 2[5] inserts proposed section 152IA to make certain provisions for consideration of reports by an Impaired Registrants Panel (a *Panel*), including provision for a Council, after considering a Panel's written report, to refer the recommendations in the report back to the Panel for further consideration and, if appropriate, to vary the recommendations.

Schedule 2[6] enables assessors to require a person to answer questions in writing or produce relevant records to an assessor conducting a performance assessment of a practitioner. Schedule 2[6] also makes it an offence for a person to fail to comply with an assessor's requirement to answer questions or produce records. **Schedule 2[7]–[10]** make consequential amendments.

Schedule 2[11] and [12] provide that the Minister may remove a member of a Council from office but only if the member's nomination for appointment to the Council was on the basis of their principal place of practice being in the State and their principal place of practice ceases to be in the state.

Schedule 2[13] provides that a Professional Standards Committee or the Civil and Administrative Tribunal may receive and admit the following as evidence in any proceedings—

- (a) a finding or decision of a Council about a complaint dealt with by inquiry at a meeting of the Council,
- (b) a finding or decision of a Performance Review Panel.

Schedule 2[14] makes a consequential amendment.