



New South Wales

Health Services Amendment (Mandatory Background Checks of Medical Practitioners) Bill 2008

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Health Services Act 1997* (the *Principal Act*) to require the chief executive of a public health organisation to carry out a background check of a medical practitioner with the New South Wales Medical Board before the medical practitioner is appointed by the public health organisation as a visiting practitioner under Chapter 8 or is employed under Chapter 9 to enable the public health organisation to exercise its functions. The Bill provides that the medical practitioner must not be appointed or employed to carry out any medical service for or on behalf of the public health organisation if the background check shows that any order made in respect of the medical practitioner, or any condition placed on the registration of the medical practitioner, under the *Medical Practice Act 1992* as a result of a misconduct finding would prevent or restrict the medical practitioner from carrying out the medical service concerned.

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 that is one month after the date of assent to the proposed Act.

Explanatory note

Clause 3 is a formal provision that gives effect to the amendments to the *Health Services Act 1997* set out in Schedule 1.

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 Amendments

Schedule 1 inserts proposed Chapter 10A (sections 132A–132C) into the Principal Act to achieve the object described in the Overview and amends Schedule 7 of the Principal Act to insert savings and transitional provisions.



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New South Wales

Health Services Amendment (Mandatory Background Checks of Medical Practitioners) Bill 2008

No. , 2008

A Bill for

An Act to amend the *Health Services Act 1997* to require the conduct of background checks for misconduct findings before the employment or appointment of medical practitioners.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Health Services Amendment (Mandatory Background Checks of Medical Practitioners) Act 2008</i> .	3 4
2 Commencement	5
This Act commences on the date that is one month after the date of assent to this Act.	6 7
3 Amendment of Health Services Act 1997 No 154	8
The <i>Health Services Act 1997</i> is amended as set out in Schedule 1.	9
4 Repeal of Act	10
(1) This Act is repealed on the day following the day on which this Act commences.	11 12
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	13 14

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Chapter 10A	3
	Insert after Chapter 10:	4
	Chapter 10A Background checking of medical practitioners before appointment or employment	5 6 7
132A	Definitions	8
	In this Chapter:	9
	<i>background check</i> means a check for any medical service restriction affecting the carrying out of medical services by the medical practitioner.	10 11 12
	<i>employ</i> includes make any recommendation relating to employment.	13 14
	<i>Medical Board</i> means the New South Wales Medical Board.	15
	<i>medical services restrictions</i> , in relation to a medical practitioner, means any order made in respect of the medical practitioner, or any condition placed on the registration of the medical practitioner, under the <i>Medical Practice Act 1992</i> as a result of a misconduct finding.	16 17 18 19 20
	<i>misconduct finding</i> includes a finding of professional misconduct or unsatisfactory professional conduct.	21 22
132B	Background checking mandatory before appointment or employment	23 24
	(1) The chief executive of a public health organisation must carry out a background check of a medical practitioner with the Medical Board before the medical practitioner is:	25 26 27
	(a) appointed by the public health organisation as a visiting practitioner under Chapter 8, or	28 29
	(b) employed under Chapter 9 to enable the public health organisation to exercise its functions.	30 31
	(2) The Medical Board is required to give to the chief executive any information concerning any medical services restriction affecting the carrying out of medical services by the medical practitioner of which it has knowledge.	32 33 34 35

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Schedule 1 Amendments

(3)	The medical practitioner must not be appointed or employed to carry out any medical service for or on behalf of the public health organisation if the background check shows that any medical service restriction would prevent or restrict the medical practitioner from carrying out the medical service concerned.	1 2 3 4 5
(4)	A chief executive of a public health organisation must not, without reasonable excuse, fail to comply with the requirements of subsections (1) and (3). Maximum penalty: 20 penalty units.	6 7 8 9
132C	Effect of Chapter on other rights and procedures	10
(1)	Nothing in this Chapter gives rise to, or can be taken into account in, any civil cause of action, other than an action to require future compliance of the chief executive of the public health organisation or the Medical Board with any duty imposed by this Chapter.	11 12 13 14 15
(2)	Background checks may be conducted, and information given or provided to the chief executive of the public health organisation, in compliance with this Chapter despite any other Act or law.	16 17 18

[2] Schedule 7 Savings and transitional provisions	1
Insert at the end of the Schedule:	2
Part 6 Provisions consequent on enactment of Health Services Amendment (Mandatory Background Checks of Medical Practitioners) Act 2008	3
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74 Mandatory background checks	7
Chapter 10A, as inserted by the <i>Health Services Amendment (Mandatory Background Checks of Medical Practitioners) Act 2008</i> , does not apply to or in respect of the appointment under Chapter 8, or employment under Chapter 9, of a medical practitioner before the commencement of this clause.	8
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