



New South Wales

# Health Practitioner Regulation Legislation Amendment Bill 2014

## Explanatory note

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

## Overview of Bill

The objects of this Bill are:

- (a) to amend the *Health Practitioner Regulation (Adoption of National Law) Act 2009* so as to modify the *Health Practitioner Regulation National Law (NSW)*:
  - (i) to require the Council for a health profession to notify a complainant who makes a complaint against a health practitioner or student of certain outcomes resulting from action taken by the Council in respect of the complaint, and
  - (ii) to enable the Civil and Administrative Tribunal to make prohibition orders against former registered health practitioners, and
  - (iii) to make it clear that a person whose registration as a health practitioner has been cancelled, or who has been disqualified from being so registered, by the Civil and Administrative Tribunal cannot apply for registration as a health practitioner unless the Tribunal makes a reinstatement order in respect of the person, and
  - (iv) to enable the Council for a health profession to order that a contravention of a condition on the registration of a health practitioner that it imposes or alters because of the impairment of the practitioner will result in the contravention being referred to the Health Care Complaints Commission to be dealt with as a complaint against the practitioner, and
  - (v) to require the Council for a health profession to notify the employer or accreditor of a registered health practitioner of the imposition of conditions (or the alteration or removal of conditions) on the practitioner's registration concerning the health, conduct or performance of the practitioner, and

- (vi) to make certain other amendments in the nature of statute law revision, and
- (b) to amend the *Health Services Act 1997* to permit public health organisations to share and exchange certain information about the appointments of health practitioners with licensees of private health facilities, and
- (c) to amend the *Private Health Facilities Act 2007* to permit licensees of private health facilities to share and exchange certain information about the appointments of health practitioners with other licensees of private health facilities and public health organisations.

## 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.

## Schedule 1      **Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86**

### **Notification of outcomes for complaints**

**Schedule 1 [1]** requires the Council for a health profession to notify a complainant who makes a complaint against a health practitioner or student of outcomes resulting from action taken by the Council under section 145B (Courses of action available to Council on complaint [NSW]) of the *Health Practitioner Regulation National Law (NSW)* in respect of the complaint.

### **Prohibition orders against former registered health practitioners**

**Schedule 1 [3]** enables the Civil and Administrative Tribunal to make a prohibition order against a former registered health practitioner under section 149C of the *Health Practitioner Regulation National Law (NSW)* if the Tribunal would have made an order suspending or cancelling the practitioner's registration if he or she had been registered. A *prohibition order* is an order that prohibits a person from providing specified health services or imposes conditions on the provision of specified health services by a person.

### **Registration of persons whose registration is cancelled or who have been disqualified from being registered**

**Schedule 1 [4]** makes it clear that a person whose registration as a health practitioner has been cancelled, or who has been disqualified from being so registered, by the Civil and Administrative Tribunal cannot apply for registration as a health practitioner unless the Tribunal makes a reinstatement order in respect of the person. The amendment seeks to remove uncertainty arising from observations made by the Court of Appeal in *Health Care Complaints Commission v Do* [2014] NSWCA 307 at [45]–[48]. **Schedule 1 [7]** provides for savings and transitional matters in connection with this amendment.

### **Critical impairment conditions**

**Schedule 1 [5]** enables the Council for a health profession to order that a contravention of a condition on the registration of a health practitioner that it imposes or alters because of the impairment of the practitioner will result in the contravention being referred to the Health Care Complaints Commission to be dealt with as a complaint against the practitioner. These kinds of conditions will be known as *critical impairment conditions*.

### **Notification of employers and accreditors of conditions imposed on registered health practitioners**

**Schedule 1 [6]** requires the Council for a health profession to notify the employer and accreditors of a registered health practitioner of the imposition of conditions (or the alteration or removal of conditions) on the practitioner's registration concerning the health, conduct or performance of the

practitioner. It also permits a Council to notify subsequent employers or accreditors of the practitioner.

If information is disclosed in a notice to an employer or accreditor about a registered health practitioner's impairment, the employer or accreditor will be under a duty to ensure that the nominated or agreed information recipient discloses or uses information about the impairment only for the purpose of:

- (a) the supervision or oversight of the practitioner during the course of the practitioner's work, or
- (b) ensuring the safety of patients at premises used by the practitioner during the course of the practitioner's work.

A failure to comply with this duty will be an offence.

### **Statute law revision amendments**

**Schedule 1 [2]** corrects an incorrect cross-reference.

**Schedule 1 [8]** ensures that, in calculating the maximum consecutive terms of office that a member of a Council for a health profession may serve, a period in office resulting from the operation of a certain transitional provision is not counted.

## **Schedule 2 Amendment of other Acts**

**Schedule 2.1** amends the *Health Services Act 1997* to enable a public health organisation to share or exchange appointment information about a health practitioner with a private health facility licensee if the public health organisation:

- (a) reasonably believes that the health practitioner practises at the private health facility, and
- (b) reasonably considers that the disclosure of that information to the licensee is necessary because it raises serious concerns about the safety of patients.

Information is ***appointment information*** about a health practitioner if:

- (a) the health practitioner practises (or formerly practised) at a hospital or other health institution of the public health organisation (whether under a service contract or otherwise), and
- (b) the information relates to the variation, suspension or termination by the public health organisation of clinical privileges of the health practitioner.

**Schedule 2.2** amends the *Private Health Facilities Act 2007* to enable a licensee of a private health facility to share or exchange appointment information about a health practitioner with another licensee or a public health organisation if the licensee:

- (a) reasonably believes that the health practitioner practises at the private health facility of the other licensee or at a hospital or health institution of the public health organisation, and
- (b) reasonably considers that the disclosure of that information to the other licensee or the public health organisation is necessary because it raises serious concerns about the safety of patients.

***Appointment information*** about a health practitioner is defined in a manner consistent with the comparable provision to be inserted in the *Health Services Act 1997* by the proposed Act.