



New South Wales

Health Legislation Amendment Bill 2016

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to repeal the *New South Wales Institute of Psychiatry Act 1964*,
- (b) to amend the *Health Administration Act 1982* to update certain references and remove a redundant provision,
- (c) to amend the *Health Services Act 1997*:
 - (i) to update and ensure consistency between the governance provisions for local health districts and statutory health corporations, and
 - (ii) to update and simplify provisions relating to the making of by-laws, and
 - (iii) to avoid any conflicts that may arise when a local health district board is exercising employer functions (in anticipation of the commencement of certain provisions of the *Government Sector Employment Legislation Amendment Act 2016*), and
 - (iv) to extend the existing protection from personal liability provision, and
 - (v) to make provision in relation to the liability of members of staff of the NSW Health Service who assist in the exercise of functions under the *Guardianship Act 1987* and the *Children and Young Persons (Care and Protection) Act 1998*.
- (d) to amend the *Mental Health Act 2007* to ensure that a President of the Mental Health Review Tribunal who holds the office of judge retains their judicial commission, rank, salary and other privileges,

- (e) to amend the *Mental Health (Forensic Provisions) Act 1990*:
 - (i) to impose certain restrictions on the power of the Mental Health Review Tribunal to make an order that a forensic patient be classified as an involuntary patient, and
 - (ii) to provide for an interim extension order to continue in force for an additional 24 hours in certain circumstances to enable a medical practitioner or accredited person to assess whether a mental health certificate should be given in respect of the patient, and
 - (iii) to allow the sharing of certain information between Ministers administering the Act, and
 - (iv) to clarify that the Tribunal must comply with release criteria in section 43 before releasing a forensic patient, and
 - (v) to provide delegation powers for the Ministers administering the Act and the Secretary of the Department of Justice, and
 - (vi) to make further provision in relation to when the Minister for Health and the Attorney General may appear before the Tribunal, or make submissions to the Tribunal,
- (f) to make other minor and statute law revision amendments to the Acts specified above.

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 section 3 (Repeal of the *New South Wales Institute of Psychiatry Act 1964*) which commences on proclamation.

Clause 3 provides for the repeal of the *New South Wales Institute of Psychiatry Act 1964*.

Schedule 2 [19] contains provisions consequent on that repeal.

Schedule 1 Amendment of Health Administration Act 1982 No 135

Schedule 1 [1], [2], [3] and [5] update terminology following the commencement of the *Government Sector Employment Act 2013*.

Schedule 1 [4] omits a redundant provision.

Schedule 2 Amendment of Health Services Act 1997 No 154

Schedule 2 [1] and [2] extend the maximum term of appointment and years of holding office of a member of a local health district board from 4 and 8 years to 5 and 10 years. **Schedule 2 [19]** makes it clear that the amendments apply to persons holding office at the commencement of the amendments.

Schedule 2 [3] makes a minor law revision amendment.

Schedule 2 [5] replaces the provision relating to the making of local health district by-laws. The proposed new provision gives the Health Secretary the power to make model by-laws relating to specified matters. A local health district may adopt the provisions of the model by-laws as published on the NSW legislation website with such additions, omissions or other modifications (if any) as may be approved by the Health Secretary. A local health district may also make additional by-laws in relation to the specified matters (but not covered by the model by-laws) provided the additional by-laws are not inconsistent with the model by-laws.

Schedule 2 [6] gives the chief executive power to establish such committees and councils as he or she considers appropriate to assist the statutory health corporation in the exercise of its functions (a similar provision already exists in relation to local health districts).

Schedule 2 [7] replaces the provision relating to the making of statutory health corporation by-laws. The proposed new provision gives the relevant authority (the Minister or the Health Secretary) the power to make model by-laws relating to specified matters. A statutory health corporation may adopt the provisions of the model by-laws as published on the NSW legislation website with such additions, omissions or other modifications (if any) as may be approved by the relevant authority. A specialty network governed health corporation may also make additional by-laws in relation to the specified matters (but not covered by the model by-laws) provided the additional by-laws are not inconsistent with the model by-laws.

Schedule 2 [8] provides that the Health Secretary is, for the purposes of any proceedings relating to a member of the NSW Health Service held before a competent tribunal having jurisdiction to deal with industrial matters, taken to be the employer of that member.

Schedule 2 [9] extends section 139 (Liability of persons conducting performance reviews etc) to a review or inquiry conducted in relation to the operation of the public health system or any part of that system.

Schedule 2 [10] inserts proposed section 139A to exempt from personal liability members of staff of the NSW Health Service who, in good faith, assist in the exercise of functions under the *Guardianship Act 1987* and the *Children and Young Persons (Care and Protection) Act 1998*. Liability instead attaches to the local health district or statutory health corporation in which the member of the NSW Health Service was employed at the relevant time.

Schedule 2 [11] inserts proposed Schedule 4A (Constitution and procedure of local health district boards). These provisions are transferred from Schedule 1 to the *Health Services Regulation 2013* and amended to ensure they continue to be appropriate and consistent with similar provisions relating to health corporation boards in Schedule 5 to the *Health Services Act 1997*. **Schedule 2 [4]** makes a consequential amendment.

Schedule 2 [11] also inserts clause 8 of Schedule 4A in anticipation of the commencement of the *Government Sector Employment Legislation Amendment Act 2016* (to eliminate any conflict arising by making it clear that any member of a local health district board who is employed or otherwise holds an appointment of a type prescribed by the regulation is not to be present during any deliberation of the Board relating to the Board's employer functions in respect of the Chief Executive or take part in any decision of the Board with respect to the matter).

Schedule 2 [12]–[18] update governance provisions for health corporation boards to ensure the provisions continue to be appropriate and consistent with similar provisions relating to local health districts (as inserted by Schedule 2 [11]).

Schedule 2 [19] inserts savings and transitional provisions.

Schedule 3 Amendment of Mental Health Act 2007 No 8

Schedule 3 [2] provides that a President of the Mental Health Review Tribunal who holds the office of judge retains their judicial commission and that the appointment as President does not affect the person's rank, title, status, precedence, salary, allowances or other rights or privileges as the holder of a judicial office. The provision extends to any person who, at the commencement of the provision, is a current President and the holder of a judicial office. The provision does not apply in respect of acting judges. **Schedule 3 [1]** makes a consequential amendment.

Schedule 4 Amendment of Mental Health (Forensic Provisions) Act 1990 No 10

Schedule 4 [1]–[5], [10] and [11] update terminology following the commencement of the *Government Sector Employment Act 2013*.

Schedule 4 [6] inserts notes in sections relating to the release of a forensic patient about the requirement that the Tribunal comply with the criteria for release in section 43.

Schedule 4 [7] restricts the right of the Mental Health Review Tribunal to classify a forensic patient as an involuntary patient under section 53 of the *Mental Health (Forensic Provisions) Act 1990* by providing that such classification is not to be made unless each Minister entitled to apply for an extension of a patient's forensic status under Schedule 1 of the Act has notified the Tribunal that an application for an extension of the patient's forensic status is not proposed to be made or the Supreme Court has dismissed such an application for extension.

Schedule 4 [8] provides that the Minister for Health and the Attorney General may appear before the Tribunal, or make submissions to the Tribunal, in relation to the possible release or grant of leave of absence to a forensic patient, the recommendation to revoke an extension order in respect of a forensic patient or the review of a patient under section 68 (2) of the *Mental Health (Forensic Provisions) Act 1990*.

Schedule 4 [9] clarifies that the 28 day period for an appeal by the Minister for Health or the Attorney General under section 77A of the *Mental Health (Forensic Provisions) Act 1990* runs from the date of written notification to the Minister or Attorney General by the Tribunal of the reasons for an order determining proceedings.

Schedule 4 [12] inserts a general delegation power to ensure any Minister administering the *Mental Health (Forensic Provisions) Act 1990* (including the Attorney General) and the Secretary of the Department of Justice may delegate the exercise of any function of the Minister or Secretary under that Act to any person employed in a Department responsible to the Minister or a person or class of persons prescribed by the regulations. The provision does not limit the operation of the delegation provision in section 21 of the *Health Administration Act 1982*.

Schedule 4 [13] and [14] clarify the operation of the provision relating to forensic patients in respect of whom extension orders may be made.

Schedule 4 [15] provides that where the Supreme Court dismisses an application for an extension order in respect of a forensic patient who is detained only as a result of an interim extension order, the Court may order that the patient be detained for a further period of up to 24 hours to enable a medical practitioner or accredited person to assess whether a mental health certificate should be given in respect of the patient.

Schedule 4 [16] and [17] make provision in relation to the sharing of information obtained under the *Mental Health (Forensic Provisions) Act 1990* by Ministers administering that Act.

Schedule 5 Amendment of Health Services Regulation 2013

Schedule 5 omits Schedule 1 to the *Health Services Regulation 2013* (the proposed Act inserts an amended version of this Schedule as Schedule 4A to the *Health Services Act 1997*).