



New South Wales

Health Legislation Amendment Bill (No 2) 2018

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 amend the *Health Care Complaints Act 1993* to require certain information about a person whose registration as a registered health practitioner is cancelled or suspended as a result of disciplinary proceedings to be made publicly available,
- (b) to make miscellaneous amendments to the *Health Practitioner Regulation (Adoption of National Law) Act 2009* with respect to reviews and appeals, the powers of authorised persons, suspension of registration and the membership of an Assessment Committee of a Council for a health profession,
- (c) to amend the *Poisons and Therapeutic Goods Act 1966* to impose requirements in respect of certain substances and goods that may be used for cosmetic and other purposes,
- (d) to amend the *Private Health Facilities Act 2007* to create an offence of performing certain services or treatments at certain private health facilities, and to provide authorised officers with the power to require a person to answer questions or provide information and documents,
- (e) to amend the *Public Health Act 2010* to permit the Chief Health Officer to make public a statement identifying and giving warnings or information about a risk to health or safety, to exclude compensation for defamation for statements made under that Act and to clarify the meaning of de-registered health practitioner.

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

Section 94B of the *Health Care Complaints Act 1993* requires the Health Care Complaints Commission to make publicly available information required to be provided to it under the *Health Practitioner Regulation National Law (NSW)* about a person whose registration as a registered health practitioner is cancelled or suspended as a result of disciplinary proceedings. **Schedule 1** amends that section to make it clear that a person's registration as a registered health practitioner is cancelled if the person is disqualified from being registered as a registered health practitioner in a health profession.

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

The Health Practitioner Regulation National Law (the *National Law*) is set out in the *Health Practitioner Regulation National Law Act 2009* of Queensland (the *Queensland Act*). The National Law is then adopted and modified in New South Wales (to become the *National Law (NSW)*) by the *Health Practitioner Regulation (Adoption of National Law) Act 2009* (the *NSW adopting Act*). **Schedule 2** further modifies the National Law (NSW) by way of a number of amendments to the NSW adopting Act.

Schedule 2 [1] removes redundant provisions consequential on a previous amendment that removed a requirement that an Assessment Committee (being an Assessment Committee of a Council established for a health profession) must, if a complaint is referred to the Committee, encourage the complainant and the relevant health practitioner to settle the complaint by consent.

Schedule 2 [3] and [6] provide for a review of the imposition by a Council for a health profession of conditions on a practitioner's registration in circumstances where the conditions are imposed with the consent of the practitioner.

Schedule 2 [4] provides for a person to appeal to the Civil and Administrative Tribunal (the *Tribunal*) against a reprimand by a Council for a health profession.

Schedule 2 [5] clarifies that the Tribunal on an appeal against a decision of a Council for a health profession may confirm or set aside the decision or may set aside the decision and make a new decision.

Schedule 2 [7] clarifies that the powers of an authorised person under the National Law (NSW) may be exercised for the purposes of ascertaining whether conditions or suspensions are being complied with or have been contravened.

Schedule 2 [8] omits redundant references to the NSW regulations as the definition of *NSW provision* in the National Law (NSW) includes NSW regulations.

Schedule 2 [9] clarifies the effect of a suspension of registration and what happens when the suspension ends. **Schedule 2 [2]** makes a consequential amendment.

Schedule 2 [10] omits a redundant provision that purported to extend the application of a provision that does not form part of the National Law (NSW).

Schedule 2 [11] inserts savings and transitional provisions consequent on the other amendments in Schedule 2.

Schedule 2 [12] permits a Council for a health profession (rather than the Minister for Health) to grant a leave of absence to, accept the resignation of or remove from office a member of an Assessment Committee of the Council.

Schedule 3 Amendment of Poisons and Therapeutic Goods Act 1966 No 31

Schedule 3 inserts proposed Division 1A into Part 3 of the *Poisons and Therapeutic Goods Act 1966* (the *principal Act*). The proposed Division provides for requirements in respect of certain substances and goods that may be used for cosmetic and other purposes. The proposed Division applies to botulinum toxins, hyaluronic acid and substances listed in certain Schedules to the Poisons List, and therapeutic goods, prescribed by the regulations made under the principal Act. The proposed Division permits regulations under the principal Act to prescribe requirements in respect of the possession, manufacture, supply, use, prescription, administration, storage and disposal of any substance or goods to which the proposed Division applies. If the regulations identify the requirement as a category 1 requirement, failure to comply with the requirement is an offence with a maximum penalty of \$110,000 in the case of a body corporate or \$22,000 or imprisonment for 6 months (or both) in the case of an individual. If the regulations identify the requirement as a category 2 requirement, failure to comply with the requirement is an offence with a maximum penalty of \$27,500 in the case of a body corporate or \$5,500 in the case of an individual.

Schedule 4 Amendment of Private Health Facilities Act 2007 No 9

Schedule 4 [1] permits regulations under the *Private Health Facilities Act 2007* (the *principal Act*) to prescribe certain services or treatments that must not be performed at certain private health facilities. Failure to comply with such a regulation is an offence with a maximum penalty of \$55,000.

Schedule 4 [2] permits an authorised officer who enters and inspects premises under the principal Act to be accompanied by other persons.

Schedule 4 [4] removes redundant references to a record as record is included in the definition of *document* in section 21 of the *Interpretation Act 1987*. **Schedule 4 [3]** makes a consequential amendment.

Schedule 4 [5] gives specific powers for authorised officers to direct a person to answer questions and provide information and documents regardless of whether a power of entry is being exercised. **Schedule 4 [7]** protects individuals from self-incrimination in relation to the exercise of any such power. **Schedule 4 [6]** provides that failure to comply with a direction is an offence under section 53 of the principal Act (with a maximum penalty of \$22,000). **Schedule 4 [3]** makes a consequential amendment to ensure that the offence in section 53 of the principal Act continues to apply to section 51 (3) (a) of that Act.

Schedule 5 Amendment of Public Health Act 2010 No 127

Schedule 5 [1] permits the Chief Health Officer to make public a statement identifying and giving warnings or information about a risk to the health or safety of the public or a sector of the public. **Schedule 5 [4]** contains a savings and transitional provision.

Schedule 5 [2] clarifies that for the purposes of Division 3 of Part 7 of the *Public Health Act 2010* (the *principal Act*), which deals with the provision of health services by health practitioners who are de-registered or subject to prohibition orders, a de-registered health practitioner includes a health practitioner who is disqualified from being registered as a registered health practitioner in a health profession.

Schedule 5 [3] provides that damages or other compensation is not payable in civil proceedings brought against the State or any authority of the State to the extent that the claim is based on alleged defamation arising in relation to the exercise of a function under the principal Act.