



New South Wales

Health Legislation Amendment Bill 2013

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 various Acts relating to health and associated matters.

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 Administration Act 1982 No 135**

Schedule 1 [1] inserts provisions into the *Health Administration Act 1982* to facilitate certain dispositions of land by the Health Administration Corporation (being dispositions, dedications or uses that are contrary to a provision of, or a trust arising under, the Crown grant of that land or that may make the land liable to be forfeited to the Crown). The provisions enable land to be disposed by the Health

Administration Corporation in the same manner as dispositions of land by local health districts under section 34 of the *Health Services Act 1997*.

Schedule 1 [2] makes it clear that a person may be appointed to a fourth consecutive term as a member of the Medical Services Committee established under the *Health Administration Act 1982* if the person was appointed as Chairperson of that Committee during the person's third consecutive term. In all other cases a person may not be appointed as a member for more than 3 consecutive terms.

Schedule 2 Amendment of Health Care Complaints Act 1993 No 105

Schedule 2 [1] sets out the principles that are to govern the exercise of functions by the Health Care Complaints Commission (*the Commission*) and other government agencies in connection with health care complaints under the *Health Care Complaints Act 1993 (the HCC Act)*.

Schedule 2 [2] makes it clear that a complaint under the HCC Act may be made concerning a health service that is likely to affect the clinical management or care of an individual client in addition to health services that do affect such management or care. **Schedule 2 [10]** makes a consequential amendment.

Schedule 2 [3] provides that the Health Care Complaints Commissioner may make a complaint under the HCC Act but only if it appears to the Commissioner that the matter that is the subject of the complaint:

- (a) raises a significant issue of public health or safety, or
- (b) raises a significant question regarding a health service that affects, or is likely to affect, the clinical management or care of an individual client, or
- (c) if substantiated, would:
 - (i) provide grounds for disciplinary action against a health practitioner, or
 - (ii) be found to involve gross negligence on the part of a health practitioner, or
 - (iii) result in the health practitioner being found guilty of an offence under Division 1 or 3 of Part 7 of the *Public Health Act 2010*.

Schedule 2 [4] provides that the Commission must give written notice of the making of a complaint, the nature of the complaint and the identity of the complainant to a person who currently employs or engages the health practitioner concerned as a health practitioner if the Commission considers on reasonable grounds that the giving of the notice is necessary to assess the matter effectively or to protect the health or safety of the public or a member of the public. The Commission is not required to give the notice if it appears to the Commission, on reasonable grounds, that the giving of the notice will place the complainant or another person at risk of intimidation or harassment or unreasonably prejudice the employment or engagement of the health practitioner.

Schedule 2 [5] and [8] update certain references.

Schedule 2 [6] makes it clear that following the assessment of a complaint the Commission is to give notice of the action taken or decision made to all the parties to the complaint and not only to the complainant.

Schedule 2 [7] amends a note.

Schedule 2 [9] provides that the Commission is to notify the parties to a complaint against a health organisation, and may notify other persons, of the action taken and the reasons for taking that action in addition to notice of the results of the investigation.

Schedule 2 [11] inserts provisions into the HCC Act to enable the Director of Proceedings to refer a complaint back to the Commission for further investigation if the Director:

- (a) is unable to determine whether the complaint should be prosecuted before a disciplinary body, or
- (b) is of the opinion that further evidence is required to enable the Director to prosecute the complaint before the disciplinary body.

Schedule 3 Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86

Schedule 3 makes amendments to the Health Practitioner Regulation National Law as set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland and as applied as a law of New South Wales by the *Health Practitioner Regulation (Adoption of National Law) Act 2009*.

Schedule 3 [1] provides that the Commission is not required to investigate a complaint referred to it by a health profession council, or cause it to be investigated, if the matter that is the subject of the complaint is being, or has been, investigated as, or as part of, another complaint to the Commission.

Schedule 3 [2]–[4] make amendments by way of statute law revision.

Schedule 4 Amendment of Health Services Act 1997 No 154

Schedule 4 amends the *Health Services Act 1997* to enable the Director-General of the Ministry of Health to suspend members of the NSW Health Service from duty without pay in certain circumstances, including certain cases of misconduct and being charged with certain serious criminal offences. The proposed power is generally similar to the power to suspend members of the Government Service contained in section 49 of the *Public Sector Employment and Management Act 2002*.

Schedule 5 Amendment of Mental Health Act 2007 No 8

Schedule 5 [1] makes it clear that a correctional patient under the *Mental Health (Forensic Provisions) Act 1990* who is re-classified under that Act as an involuntary patient is an involuntary patient for the purposes of the *Mental Health Act 2007*.

Schedule 5 [2] provides that an authorised medical officer of a mental health facility must, as soon as is reasonably practicable, notify the Mental Health Review Tribunal if the officer becomes aware that a person detained in the mental health facility under the *Mental Health Act 2007* is a forensic patient.

Schedule 5 [3] provides that an authorised medical officer of a mental health facility must, as soon as is reasonably practicable, notify the Mental Health Review Tribunal of the discharge of a person detained in the mental health facility whom the officer knows is a forensic patient.

Schedule 6 Amendment of Mental Health (Forensic Provisions) Act 1990 No 10

Schedule 6 [1] makes an amendment to clarify the circumstances in which a person ceases to be classified as a forensic patient under the *Mental Health (Forensic Provisions) Act 1990 (the MH (FP) Act)*.

Schedule 6 [2] provides that a community treatment order may be made in respect of a forensic patient who is to be released unconditionally in accordance with an order of the Mental Health Review Tribunal. On and from the release of the person, the community treatment order is taken to have been made under the *Mental Health Act 2007*.

Schedule 6 [3] makes it clear that an apprehension order under section 68 (Breach of orders for release) of the MH (FP) Act authorises the detention of the person concerned at the mental health facility, correctional centre or other place specified in the order.

Schedule 6 [4] makes it clear that the *Mental Health Act 2007* applies to a person who has been granted conditional release or leave of absence under Part 5 of the MH (FP) Act.

Schedule 6 [5] provides that if a party has appealed against a determination of the Mental Health Review Tribunal to the Supreme Court or the Court of Appeal on any question (not merely on a question of law), the Tribunal or the Court concerned may suspend, until the appeal is determined, the operation of any order or determination made in respect of the proceedings.