



New South Wales

# Health Legislation Amendment Bill 2012

## 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 Practitioner Regulation (Adoption of National Law) Act 2009* for the purpose of improving the administration of the Health Practitioner Regulation National Law as it applies in New South Wales and by way of statute law revision,
- (b) to amend the *Health Records and Information Privacy Act 2002* to provide for the disclosure and use of genetic information subject to certain conditions,
- (c) to amend the *Poisons and Therapeutic Goods Act 1966* to ensure that the same regulatory controls relating to certain restricted substances apply to registered podiatrists as those that apply to other registered health practitioners.

## 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 (except Schedule 1.2) on the date of assent to the proposed Act. Schedule 1.2 commences on a day to be appointed by proclamation.

## **Schedule 1      Amendment of Acts**

### **Schedule 1.1 Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86**

**Schedule 1.1** 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 (the National Law (NSW))*.

**Schedule 1.1 [1] and [3]** provide that an Impaired Registrants Panel is not an *adjudication body* for the purposes of the National Law (NSW). This is because an Impaired Registrants Panel can only make recommendations in relation to individual practitioners and may not take any action against them.

**Schedule 1.1 [2]** extends the objectives and guiding principles of the National Law (NSW) to provide that the protection of the public is to be the paramount consideration when exercising functions under a provision that is specific to New South Wales in its application.

**Schedule 1.1 [4], [6], [11] and [23]** make amendments by way of statute law revision.

**Schedule 1.1 [5], [22] and [27]** update references to the Department of Health to reflect changes to Government administrative arrangements.

**Schedule 1.1 [7]** provides that a mandatory notification of certain conduct by a registered health practitioner is taken to be a complaint against the health practitioner for the purposes of the National Law (NSW) and the *Health Care Complaints Act 1993*.

**Schedule 1.1 [8]** clarifies that counselling that a Professional Standards Committee, a health profession council (*a Council*), a health profession tribunal (*a Tribunal*) or an Impaired Registrants Panel may order or recommend a health practitioner or student to undergo includes psychological counselling.

**Schedule 1.1 [9]** amends a provision relating to the delegation of functions of a Council to a group of persons to provide that one person within that group must not be, and must never have been, a registered health practitioner or student in the same health profession for which the Council is established.

**Schedule 1.1 [10]** clarifies that an appeal that a person may make to a Tribunal regarding certain actions taken by a Council is to be dealt with by the Tribunal reconsidering the matter.

**Schedule 1.1 [12]** provides that a Council is the appropriate body to conduct a review of certain decisions made against a health practitioner if the Chairperson of the Tribunal so decides.

**Schedule 1.1 [13]** provides that certain orders of a Council may be the subject of a review under Division 8 of Part 8 of the National Law (NSW).

**Schedule 1.1 [14]** provides that a reinstatement order is an order that a person may be registered in accordance with Part 7 of the National Law (NSW) subject to an application for registration being made and approved under that Part.

**Schedule 1.1 [15]** removes the requirement for the Chairperson or Deputy Chairperson of a Tribunal to give notice of an inquiry or appeal to be conducted by the Tribunal to the Director-General of the Ministry of Health.

**Schedule 1.1 [16], [18] and [19]** amend provisions relating to the composition of a Professional Standards Committee, an Assessment Committee and a Performance Review Panel to provide that those bodies must include one person who is not, and never has been, a registered health practitioner or student in the same profession as the health practitioner who is the subject of the proceedings concerned.

**Schedule 1.1 [17]** removes the requirement for the Chairperson of a Professional Standards Committee to give notice of certain inquiries to be conducted by the Committee into complaints about health practitioners to the Director-General of the Ministry of Health.

**Schedule 1.1 [20]** enables a Council to issue evidentiary certificates that certify the registration status of a health practitioner prior to 1 July 2010. **Schedule 1.1 [21]** makes a consequential amendment.

**Schedule 1.1 [24]** enables savings and transitional regulations to be made as a consequence of the proposed Act. **Schedule 1.1 [25]** contains provisions of a savings and transitional nature.

**Schedule 1.1 [26]** clarifies that notice of an intention to enter the practice of a registered health practitioner by a performance assessor may be given by another person on behalf of the performance assessor.

### **Schedule 1.2 Health Records and Information Privacy Act 2002 No 71**

**Schedule 1.2 [3]** enables a person's genetic information to be used for a purpose other than the primary purpose for which it was collected on the condition that it is used in accordance with guidelines issued by the Privacy Commissioner appointed under the *Privacy and Personal Information Protection Act 1998* (*the Privacy Commissioner*) and that it is reasonably believed to be necessary to lessen or prevent a serious threat to the life, health or safety of a genetic relative. **Schedule 1.2 [1] and [2]** make consequential amendments.

**Schedule 1.2 [4]** enables a person's genetic information to be disclosed to their genetic relatives for a purpose other than the primary purpose for which it was collected on the condition that it is disclosed in accordance with guidelines issued by the Privacy Commissioner and that it is reasonably believed to be necessary to lessen or prevent a serious threat to the life, health or safety of a genetic relative.

**Schedule 1.3 Poisons and Therapeutic Goods Act 1966 No 31**

**Schedule 1.3** applies the same exemptions and restrictions to registered podiatrists in relation to the possession, use, supply or prescription of certain restricted substances as those applying to other registered health practitioners. Currently, podiatrists are included in certain provisions of the *Poisons and Therapeutic Goods Act 1966* along with other registered health practitioners, but have inadvertently been omitted from other provisions applying to registered health practitioners.

First print



New South Wales

# Health Legislation Amendment Bill 2012

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New South Wales

# Health Legislation Amendment Bill 2012

No. , 2012

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## **A Bill for**

An Act to make miscellaneous amendments to various Acts that relate to health and associated matters.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Health Legislation Amendment Act 2012</i> .	3
<b>2 Commencement</b>	4
(1) This Act commences on the date of assent to this Act, except as provided by subsection (2).	5 6
(2) Schedule 1.2 commences on a day to be appointed by proclamation.	7



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<b>Schedule 1</b>	<b>Amendments of Acts</b>	1
<b>1.1</b>	<b>Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86</b>	2
		3
<b>[1]</b>	<b>Section 6A Adjudication body</b>	4
	Omit section 6A (d).	5
<b>[2]</b>	<b>Schedule 1 Modification of Health Practitioner Regulation National Law</b>	6
	Insert before Schedule 1 [1]:	7
<b>[1A]</b>	<b>Section 3A</b>	8
	Insert after section 3:	9
	<b>3A Objective and guiding principle [NSW]</b>	10
	In the exercise of functions under a NSW provision, the protection of the health and safety of the public must be the paramount consideration.	11
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	<b>Note.</b> This section is an additional New South Wales provision.	14
<b>[3]</b>	<b>Schedule 1 [3]</b>	15
	Omit “, Performance Review Panels and Impaired Registrants Panels” from the note.	16
		17
	Insert instead “and Performance Review Panels”.	18
<b>[4]</b>	<b>Schedule 1 [5A]</b>	19
	Insert after Schedule 1 [5]:	20
<b>[5A]</b>	<b>Section 5, definitions of “NSW provision” and “NSW regulation”</b>	21
	Insert in alphabetical order:	22
	<i>NSW provision</i> means—	23
	(a) a provision that forms part of this Law because of a modification made by the <i>Health Practitioner Regulation (Adoption of National Law) Act 2009</i> ; or	24
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	(b) a NSW regulation.	27
	<b>Note.</b> This definition is an additional New South Wales provision.	28
	<i>NSW regulation</i> means a regulation made under section 247A.	29
	<b>Note.</b> This definition is an additional New South Wales provision.	30

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<b>[5] Schedule 1 [13]</b>	1
Omit “Department of Health” from the definition of <i>Director-General</i> in section 138 (1).	2
Insert instead “Ministry of Health”.	3
<b>[6] Schedule 1 [13]</b>	4
Omit the definitions of <i>NSW provision</i> and <i>NSW regulation</i> from section 138 (1).	5
<b>[7] Schedule 1 [14A]</b>	6
Insert after Schedule 1 [14]:	7
<b>[14A] Section 143A</b>	8
Insert after section 143:	9
<b>143A Mandatory notifications [NSW]</b>	10
A mandatory notification is taken to be a complaint both for the purposes of this Part and for the purposes of the <i>Health Care Complaints Act 1993</i> (including sections 96 and 98 of that Act).	11
<b>Note.</b> This section is an additional New South Wales provision.	12
<b>[8] Schedule 1 [15]</b>	13
Insert “(including, but not limited to, psychological counselling)” after “counselling” wherever occurring in sections 146B (1) (c), 148E (1) (d) and (2) (c), 149A (1) (c) and (2) (c) and 152I (2) (a).	14
<b>[9] Schedule 1 [15]</b>	15
Omit section 150 (7). Insert instead:	16
(7) If a Council delegates any function of the Council under this section to a group of 2 or more persons, at least one of those persons must be a person who—	17
(a) is not a registered health practitioner or student in the health profession for which the Council is established; and	18
(b) has not at any time been registered as a health practitioner or student in that health profession under this Law or a corresponding prior Act.	19
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<b>[10] Schedule 1 [15]</b>	1
Insert after section 159 (2):	2
(3) The appeal is to be dealt with by reconsideration of the matter by the Tribunal and fresh evidence, or evidence in addition to or in substitution for the evidence that was before the Council when it considered the matter, may be given.	3 4 5 6
<b>[11] Schedule 1 [15]</b>	7
Omit “Division 13” from section 161. Insert instead “Division 14A”.	8
<b>[12] Schedule 1 [15]</b>	9
Insert after section 163 (1) (a):	10
(a1) if the Chairperson of the Tribunal decides, on application by the person the subject of the review or the Commission, that a Council is the appropriate review body, the Council; or	11 12 13 14
<b>[13] Schedule 1 [15]</b>	15
Insert after paragraph (b) of the definition of <i>decision-making entity</i> in section 163A (4):	16 17
(b1) a Council, but only in relation to orders made under this Division or under Subdivision 5 of Division 3;	18 19
<b>[14] Schedule 1 [15]</b>	20
Omit section 163B (3). Insert instead:	21
(3) A <i>reinstatement order</i> is an order that the person may be registered in accordance with Part 7 if—	22 23
(a) the person makes an application for registration to the National Board; and	24 25
(b) the relevant National Board decides to register the person.	26
(3A) Any condition imposed on a person’s registration by the National Board under Part 7 applies but only to the extent that it is not inconsistent with conditions imposed or altered by the appropriate review body under subsection (4).	27 28 29 30
<b>[15] Schedule 1 [15]</b>	31
Omit section 167A (2) (c).	32

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<b>[16] Schedule 1 [15]</b>	1
Omit section 169B (1) (c). Insert instead:	2
(c) one person, appointed from among a panel of persons for the time being nominated by the Minister, who—	3
(i) is not a registered health practitioner or student in the same health profession as the relevant health practitioner the subject of the proceedings before the Committee; and	4
(ii) has not at any time been registered as a health practitioner or student in that health profession under this Law or a corresponding prior Act.	5
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<b>[17] Schedule 1 [15]</b>	12
Omit section 171 (4) (c).	13
<b>[18] Schedule 1 [15]</b>	14
Omit section 172B (1) (b). Insert instead:	15
(b) one person, appointed from among a panel of persons for the time being nominated by the Minister, who—	16
(i) is not a registered health practitioner or student in the same health profession as the relevant health practitioner the subject of the proceedings before the Committee; and	17
(ii) has not at any time been registered as a health practitioner or student in that health profession under this Law or a corresponding prior Act.	18
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<b>[19] Schedule 1 [15]</b>	25
Omit section 174A (2) (b). Insert instead:	26
(b) one is to be a person who—	27
(i) is not a registered health practitioner or student in the same health profession as the health practitioner to whom the proceedings relate; and	28
(ii) has not at any time been registered as a health practitioner or student in that health profession under this Law or a corresponding prior Act.	29
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<b>[20] Schedule 1 [18]</b>	1
Omit “provision.” from section 244A (e). Insert instead:	2
provision;	3
(f) on a stated day before 1 July 2010, or during a stated period	4
before 1 July 2010, a stated person was or was not	5
registered as a health practitioner or a student under a	6
repealed Act;	7
(g) on a stated day before 1 July 2010, or during a stated period	8
before 1 July 2010, a registration under a repealed Act was	9
or was not subject to a stated condition;	10
(h) on a stated day before 1 July 2010, a registration under a	11
repealed Act was suspended or cancelled or otherwise	12
ceased to have effect (whether or not for a specified	13
period).	14
<b>[21] Schedule 1 [18]</b>	15
Insert at the end of section 244A:	16
(2) In this section—	17
<i>registration</i> under a repealed Act includes any other form of	18
authorisation, for example, a practising certificate, endorsement,	19
or the like.	20
<i>repealed Act</i> means an Act that was repealed by the <i>Health</i>	21
<i>Practitioner Regulation Amendment Act 2010</i> .	22
<b>[22] Schedule 1 [19]</b>	23
Omit “Department of Health” from section 247A (2) (e).	24
Insert instead “Ministry of Health”.	25
<b>[23] Schedule 1 [24A]</b>	26
Insert after Schedule 1 [24]:	27
<b>[24A] Schedule 5 Investigators</b>	28
Omit “(section 163)”.	29
<b>[24] Schedule 1 [25]</b>	30
Insert at the end of clause 1 (1) of Schedule 5A:	31
the <i>Health Legislation Amendment Act 2012</i>	32

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<b>[25] Schedule 1 [25]</b>	1
Insert after Part 3 of Schedule 5A:	2
<b>Part 4 Provisions consequent on enactment of Health Legislation Amendment Act 2012 [NSW]</b>	3 4 5
<b>30 Definition [NSW]</b>	6
In this Part:	7
<i>amending Act</i> means the <i>Health Legislation Amendment Act 2012</i> .	8 9
<b>31 Mandatory notifications [NSW]</b>	10
Section 143A as inserted by the amending Act does not extend to a notification under Division 2 of Part 8 that was made before the commencement of that section.	11 12 13
<b>32 Suspension or conditions of registration to protect public [NSW]</b>	14
Section 150 (7) as substituted by the amending Act does not apply to a delegation made by a Council before that substitution.	15 16
<b>33 Membership of Committees [NSW]</b>	17
(1) The substitution of section 169B (1) (c) by the amending Act does not affect any Committee that was established before that substitution.	18 19 20
(2) The substitution of section 172B (1) (b) by the amending Act does not affect any Committee that was established before that substitution.	21 22 23
<b>34 Membership of Performance Review Panels [NSW]</b>	24
The substitution of section 174A (2) (b) by the amending Act does not affect any Performance Review Panel that was established before that substitution.	25 26 27
<b>[26] Schedule 1 [25]</b>	28
Insert after clause 2 (2) of Schedule 5B:	29
(2A) The notice referred to in subclause (2) (b) may be given by the assessor or by another person on behalf of the assessor.	30 31

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<b>[27] Schedule 1 [25]</b>	1
Omit “Department of Health” wherever occurring in Schedules 5C and 5D.	2
Insert instead “Ministry of Health”.	3
<b>1.2 Health Records and Information Privacy Act 2002 No 71</b>	4
<b>[1] Section 4 Definitions</b>	5
Insert in alphabetical order in section 4 (1):	6
<i>genetic information</i> means health information of a type described in section 6 (d).	7
<i>genetic relative</i> means a person who is related to an individual by blood, for example, a sibling, parent or descendant of the individual.	8
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<b>[2] Section 6 Definition of “health information”</b>	12
Omit “any sibling, relative or descendant” from section 6 (d).	13
Insert instead “a genetic relative”.	14
<b>[3] Schedule 1 Health Privacy Principles</b>	15
Insert after clause 10 (1) (c):	16
(c1) <b>Genetic information</b>	17
the information is genetic information and the use of the information for the secondary purpose:	18
(i) is reasonably believed by the organisation to be necessary to lessen or prevent a serious threat to the life, health or safety (whether or not the threat is imminent) of a genetic relative of the individual to whom the genetic information relates, and	19
(ii) is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or	20
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<b>[4] Schedule 1, clause 11 (1) (c1)</b>	28
Insert after clause 11 (1) (c):	29
(c1) <b>Genetic information</b>	30
the information is genetic information and the disclosure of the information for the secondary purpose:	31
(i) is to a genetic relative of the individual to whom the genetic information relates, and	32
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	(ii) is reasonably believed by the organisation to be necessary to lessen or prevent a serious threat to the life, health or safety (whether or not the threat is imminent) of a genetic relative of the individual to whom the genetic information relates, and	1 2 3 4 5
	(iii) is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or	6 7 8
<b>1.3</b>	<b>Poisons and Therapeutic Goods Act 1966 No 31</b>	9
<b>[1]</b>	<b>Section 8 Poisons List</b>	10
	Insert “, podiatrist authorised to prescribe the substance under section 17C” after “section 17B” in section 8 (2).	11 12
<b>[2]</b>	<b>Section 10 Prohibition on supply of certain substances otherwise than by wholesale</b>	13 14
	Insert after section 10 (2) (a3):	15
	(a4) by a podiatrist, who is authorised under section 17C to supply the substance, in the lawful practice of his or her profession as such, or	16 17 18
<b>[3]</b>	<b>Section 10 (4) (a4)</b>	19
	Insert after section 10 (4) (a3):	20
	(a4) by a podiatrist, who is authorised under section 17C to supply the substance, in the lawful practice of his or her profession as such, or	21 22 23
<b>[4]</b>	<b>Sections 10 (4) (b), 16 (1) (b) and (d1), (2), (3) (a) (i) and (5), 17 (1) (j1), 18A (1) (b) and 34 (4)</b>	24 25
	Insert “, podiatrist” after “optometrist” wherever occurring.	26
<b>[5]</b>	<b>Section 11 Restriction on wholesale supply of certain substances</b>	27
	Insert after section 11 (2) (a3):	28
	(a4) a podiatrist authorised under section 17C to supply or use, or have possession of, the substance concerned, or	29 30
<b>[6]</b>	<b>Section 12 Obtaining substances by false representation</b>	31
	Insert after section 12 (2) (a3):	32
	(a4) a podiatrist authorised under section 17C to supply or use, or have possession of, the substance concerned, or	33 34



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<b>[7] Section 16 Offences relating to prescribed restricted substances</b>	1
Insert after section 16 (1) (a3):	2
(a4) the person is a podiatrist who is authorised under	3
section 17C to possess the substance and the person	4
obtains possession or attempts to obtain possession of it in	5
the lawful practice of his or her profession,	6
<b>[8] Section 36AA Medicines to be dispensed by pharmacists</b>	7
Insert “a podiatrist,” after “an optometrist,” wherever occurring.	8