

**HEALTH LEGISLATION (MISCELLANEOUS AMENDMENTS)
ACT 1994 No. 19**

NEW SOUTH WALES



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**HEALTH LEGISLATION (MISCELLANEOUS AMENDMENTS)
ACT 1994 No. 19**

NEW SOUTH WALES



Act No. 19, 1994

An Act to amend the Public Health Act 1991 in relation to public health orders, the disclosure of HIV/AIDS related information, and the reporting of test results; to amend various other Acts in relation to enterprise agreements involving certain health employees, infection control standards, regulation-making powers, and inquiries; and for other purposes. [Assented to 16 May 1994]

Health Legislation (Miscellaneous Amendments) Act 1994 No. 19

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Health Legislation (Miscellaneous Amendments) Act 1994.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Public Health Act 1991 No. 10

3. The Public Health Act 1991 is amended as set out in Schedules 1 and 2.

Amendment of other Acts

4. The Acts specified in Schedules 3–5 are amended as set out in those Schedules.

Explanatory notes

5. Matter appearing under the heading “Explanatory note” in this Act does not form part of this Act.

**SCHEDULE 1—AMENDMENTS TO PUBLIC HEALTH ACT
1991 RELATING TO PUBLIC HEALTH ORDERS AND
DISCLOSURE OF HIV/AIDS INFORMATION**

(Sec. 3)

(1) Section 17 (Protection of identity):

Omit section 17 (3) (d), insert instead:

- (d) to a person who is involved in the provision of care to, or treatment or counselling of, the other person if the information is required in connection with providing such care, treatment or counselling; or

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**SCHEDULE 1—AMENDMENTS TO PUBLIC HEALTH ACT 1991
RELATING TO PUBLIC HEALTH ORDERS AND DISCLOSURE
OF HIV/AIDS INFORMATION—*continued***

(2) Section 23 (Making of public health order):

After section 23 (3), insert:

(3A) In making a public health order, the authorised medical practitioner must take into account:

- (a) such guidelines relating to public health orders as may be approved by the Director-General from time to time; and
- (b) the principle that any requirement restricting the liberty of the person to whom the order applies should be imposed only if it is the only effective way to ensure that the health of the public is not endangered or likely to be endangered.

Explanatory note

Disclosure of HIV/AIDS related information (item (1))

Section 17 of the Public Health Act 1991 currently prohibits the disclosure of information about persons who have been tested for, or who are infected with, HIV/AIDS. However, such information can be disclosed in certain circumstances. One circumstance currently specified is disclosure as a normal duty as a consequence of providing the service in the course of which the information was obtained. The amendment to section 17 will provide instead that information about a person's HIV/AIDS condition may be disclosed to a person involved in providing care to, or treatment or counselling of, the person who has been tested for or who is infected with HIV/AIDS, but only if the information is required in connection with providing such care, treatment or counselling.

Public health orders (item (2))

Section 23 of the Act enables an authorised medical practitioner to make a public health order in respect of a person who is suffering from HIV/AIDS and who is behaving in a way that could endanger the health of the public because of the person's condition. A public health order requires the person to do certain things (e.g. to refrain from specified conduct, to undergo treatment or to be detained in a specified place).

The amendment to section 23 will require an authorised medical practitioner, when making a public health order, to take into account:

- certain guidelines approved by the Director-General; and
- the principle that the order should impose a requirement restricting the liberty of the person concerned only if it is the only way to ensure that the health of the public is not endangered or likely to be endangered.

**SCHEDULE 2—AMENDMENTS TO PUBLIC HEALTH ACT
1991 RELATING TO NOTIFICATION OF TEST RESULTS**

(Sec. 3)

(1) Sections 16, 16A:

Omit section 16, insert instead:

Notification of test results—Category 3 medical conditions generally

16. (1) This section applies if a medical practitioner requests a person to carry out a serological test (or other test prescribed for the purposes of this paragraph) for the purpose of detecting whether a patient is suffering from a Category 3 medical condition.

(2) If the test has a positive result, the person certifying the result of the test to the medical practitioner must, as soon as practicable, send to the Director-General a report, in an approved form, relating to the test.

(3) The person certifying the result of the test must not disclose the name or address of the patient in the report if the medical condition detected by the test is also a Category 5 medical condition.

(4) A medical practitioner who requests a person to carry out a test under this section must, unless the medical practitioner has a reasonable excuse, provide (within the prescribed period) the person with sufficient information to enable the person to comply with subsection (2).

Maximum penalty (subsections (2)–(4)): 50 penalty units.

Notification of cervical cytology and other test results

16A. (1) This section applies if:

- (a) a medical practitioner or registered nurse requests a person to carry out a cervical cytology test; or
- (b) a medical practitioner requests a person to carry out a test prescribed for the purposes of this paragraph.

(2) A request for any such test must be made in the approved form (“the request form”).

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**SCHEDULE 2—AMENDMENTS TO PUBLIC HEALTH ACT 1991
RELATING TO NOTIFICATION OF TEST RESULTS—*continued***

(3) On the request form, the medical practitioner or registered nurse is required:

- (a) to include the name and address of the patient to whom the test relates; and
- (b) to certify that the medical practitioner or nurse has explained to the patient the reasons for the patient's name and address being disclosed in the report required to be made to the Director-General under this section; and
- (c) to indicate whether or not the patient has consented to the patient's name and address being disclosed in the report.

(4) Regardless of whether the test has a positive result, the person certifying the result of the test to the medical practitioner or registered nurse must, as soon as practicable, send to the Director-General a report, in an approved form, relating to the test.

(5) The person certifying the result of the test must not disclose the name or address of the patient in the report:

- (a) unless the patient has consented (as indicated on the request form) to the disclosure of that information; and
- (b) irrespective of whether the patient has so consented—if the medical condition detected by the test is also a Category 5 medical condition.

(6) A medical practitioner or registered nurse who requests a person to carry out a test under this section must, unless the medical practitioner or nurse has a reasonable excuse, provide (within the prescribed period) the person with sufficient information to enable the person to comply with subsection (4).

Maximum penalty (subsections (4)–(6)): 50 penalty units.

(2) **Section 19 (Notice by Director-General requiring disclosure of name and address):**

Omit section 19 (1) (b), insert instead:

- (b) a medical practitioner or registered nurse who has requested a test to which a report under section 16 or 16A relates,

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**SCHEDULE 2—AMENDMENTS TO PUBLIC HEALTH ACT 1991
RELATING TO NOTIFICATION OF TEST RESULTS—*continued***

Explanatory note

At present under section 16 of the Public Health Act 1991, a medical practitioner can request a serological test or other prescribed test to be carried out for the purpose of detecting whether a patient is suffering from a Category 3 medical condition listed in Schedule 1 to the Act. If the test has a positive result, the person who carried out the test must report the result to the Director-General of the Department of Health. The report must not identify the patient if the medical condition detected is also a Category 5 medical condition (i.e. HIV/AIDS).

Item (1) replaces section 16 with 2 separate provisions:

- Proposed section 16 merely recasts the existing section.
- Proposed section 16A provides for 2 new classes of tests—cervical cytology tests and other prescribed tests. Requests for these tests must be in the approved test form which requires the medical practitioner (or the registered nurse in the case of cervical cytology tests) to certify that the medical practitioner or nurse has explained to the patient the reasons for the patient's name and address being disclosed in the test report, and to indicate that the patient has consented to the disclosure of that information. The test result must be reported to the Director-General regardless of whether the result is positive or negative, and the test report must not disclose the identity of the patient unless the patient has consented to the disclosure of that information.

The information reported to the Director-General in relation to cervical cytology tests is intended to be included in a register set up for certain purposes (such as monitoring cervical cancer screening programs).

Item (2) is a consequential amendment.

**SCHEDULE 3—AMENDMENTS RELATING TO ENTERPRISE
AGREEMENTS**

(Sec. 4)

AMBULANCE SERVICES ACT 1990 No. 16

Section 15 (Determination of conditions of employment of staff):

(a) Omit section 15 (2), insert instead:

(2) The Health Administration Corporation:

- (a) is, for the purpose of making any determination under subsection (1), taken to be the employer of the employees of the Ambulance Service; and
- (b) is, for the purpose of entering into an enterprise agreement relating to the enterprise carried on by the Ambulance Service, taken to be the employer of the employees of the Ambulance Service; and

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SCHEDULE 3—AMENDMENTS RELATING TO ENTERPRISE AGREEMENTS—*continued*

(c) is, for the purpose of any proceedings before a competent tribunal having power to deal with industrial matters, taken to be the employer of the employees of the Ambulance Service.

(2A) To remove any doubt, the Health Administration Corporation may, in accordance with section 21 of the Health Administration Act 1982, delegate its functions as such an employer.

(b) In section 15 (3), after “agreement”, insert “(not being an enterprise agreement)”.

(c) From section 15 (3), omit “salaries, wages or remuneration”, insert instead “conditions of employment (including salaries, wages and remuneration)”.

(d) Omit section 15 (6), insert instead:

(6) The Ambulance Service must give effect to:

(a) any determination made by the Health Administration Corporation under subsection (1); and

(b) any enterprise agreement referred to in subsection (2); and

(c) any order or determination made by a competent tribunal in proceedings referred to in subsection (2); and

(d) any agreement referred to in subsection (3).

(7) In this section, “**enterprise agreement**” and “**industrial matters**” have the same meanings as in the Industrial Relations Act 1991.

AREA HEALTH SERVICES ACT 1986 No. 50

Section 26 (Determination of conditions of employment of staff):

(a) Omit section 26 (1), insert instead:

(1) In this section, “**enterprise agreement**” and “**industrial matters**” have the same meanings as in the Industrial Relations Act 1991.

SCHEDULE 3—AMENDMENTS RELATING TO ENTERPRISE AGREEMENTS—*continued*

(b) Omit section 26 (3), insert instead:

(3) The Health Administration Corporation:

- (a) is, for the purpose of making any determination under subsection (2), taken to be the employer of the employees of area health services; and
- (b) is, for the purpose of entering into an enterprise agreement relating to the enterprise carried on by an area health service or area health services, taken to be the employer of the employees of the area health service concerned; and
- (c) is, for the purpose of any proceedings before a competent tribunal having power to deal with industrial matters, taken to be the employer of the employees of area health services.

(3A) To remove any doubt, the Health Administration Corporation may, in accordance with section 21 of the Health Administration Act 1982, delegate its functions as such an employer.

- (c) In section 26 (4), after “agreement”, insert “(not being an enterprise agreement)”.
- (d) From section 26 (4), omit “salaries, wages or remuneration”, insert instead “conditions of employment (including salaries, wages and remuneration)”.
- (e) Omit section 26 (6), insert instead:
 - (6) An area health service must give effect to:
 - (a) any determination made by the Health Administration Corporation under subsection (2); and
 - (b) any enterprise agreement referred to in subsection (3); and
 - (c) any order or determination made by a competent tribunal in proceedings referred to in subsection (3); and
 - (d) any agreement referred to in subsection (4).

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SCHEDULE 3—AMENDMENTS RELATING TO ENTERPRISE AGREEMENTS—*continued*

INDUSTRIAL RELATIONS ACT 1991 No. 34

Section 118 (Effect of an enterprise agreement):

In section 118 (4) (a), after “sector”, insert “(including employment with an area health service or a public hospital)”.

PUBLIC HOSPITALS ACT 1929 No. 8

Section 40BA (Determination of conditions of employment of officers and employees of hospitals):

(a) In section 40BA (1), before the definition of “hospital”, insert:

“enterprise agreement” and “industrial matters” have the same meanings as in the Industrial Relations Act 1991;

(b) From section 40BA (1), omit the definition of “industrial matters”.

(c) Omit section 40BA (3), insert instead:

(3) The Corporation:

(a) is, for the purpose of making any determination under subsection (2), taken to be the employer of the officers and employees of hospitals; and

(b) is, for the purpose of entering into an enterprise agreement relating to the enterprise carried on by a hospital or hospitals, taken to be the employer of the officers and employees of the hospital concerned; and

(c) is, for the purpose of any proceedings before a competent tribunal having power to deal with industrial matters, taken to be the employer of the officers and employees of hospitals.

(3A) To remove any doubt, the Corporation may, in accordance with section 21 of the Health Administration Act 1982, delegate its functions as such an employer.

(d) In section 40BA (4), after “agreement”, insert “(not being an enterprise agreement)”.

(e) From section 40BA (4), omit “salaries, wages or remuneration”, insert instead “conditions of employment (including salaries, wages and remuneration)”.

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SCHEDULE 3—AMENDMENTS RELATING TO ENTERPRISE AGREEMENTS—*continued*

- (f) Omit section 40BA (6), insert instead:
- (6) A hospital must give effect to:
 - (a) any determination made by the Corporation under subsection (2); and
 - (b) any enterprise agreement referred to in subsection (3); and
 - (c) any order or determination made by a competent tribunal in proceedings referred to in subsection (3); and
 - (d) any agreement referred to in subsection (4).

Explanatory note

Amendments to the Ambulance Service Act 1991, Area Health Services Act 1986 and Public Hospitals Act 1929

At present, the Health Administration Corporation is taken to be the employer of the employees of the Ambulance Service, area health services and public hospitals for the purpose of determining the conditions of employment of such employees and for the purpose of proceedings for awards relating to such employees. The amendments extend this situation so that the Corporation is also taken to be the employer for the purpose of entering into enterprise agreements involving the employees of the Ambulance Service, area health services and public hospitals. The amendments also make it clear that the Corporation can delegate its functions as an "enterprise employer".

The Corporation can also, at present, enter into certain industrial agreements (which are not enterprise agreements) with organisations which represent groups of employees of the Ambulance Service, area health services and public hospitals in relation to such matters as the salaries, wages or remuneration of the employees. The amendments make it clear that the matters in respect of which such agreements are made are matters relating to the conditions of employment of the employees, and that these conditions of employment include salaries, wages and remuneration.

Consequential amendment of Industrial Relations Act 1991

Section 118 of the Industrial Relations Act 1991 provides that the provisions of an enterprise agreement prevail over the provisions of an "award" (which is defined for the purposes of that section to include certain determinations and agreements relating to employment in the public sector similar to those made by the Public Employment Industrial Relations Authority under the Public Sector Management Act 1988). The amendment to the Industrial Relations Act 1991 extends the definition of "award" in section 118 to make it clear that it also refers to determinations and agreements relating to employees of area health services and public hospitals (since those agencies do not represent the Crown, such employees may not be "public sector" employees). The amendment is consequential on the other amendments in Schedule 3 which provide that the Health Administration Corporation is taken to be the "enterprise employer" of these employees for the purposes of entering into enterprise agreements with them.

SCHEDULE 4—AMENDMENTS RELATING TO STANDARDS FOR CONTROL OF INFECTION AND TO REGULATIONS

(Sec. 4)

DENTAL TECHNICIANS REGISTRATION ACT 1975 No. 40

Section 35 (Regulations):

- (a) From section 35 (2) (h), omit “and”.
- (b) At the end of section 35 (2) (i), insert:
 - ; and
 - (j) infection control standards to be followed by dental prosthetists engaged in the practice of dental prosthetics.
- (c) After section 35 (3), insert:
 - (3A) A regulation may apply, adopt or incorporate any publication as in force from time to time.

DENTISTS ACT 1989 No. 139

Section 67 (Regulations):

- (a) From section 67 (1), omit “, on the recommendation of the Board,”.
- (b) In section 67 (2) (m), before “the application”, insert “providing for”.
- (c) From section 67 (2) (m), omit “and” where secondly occurring.
- (d) At the end of section 67 (2) (n), insert:
 - ; and
 - (o) for or with respect to infection control standards to be followed by persons engaged in the practice of dentistry.
- (e) After section 67 (2), insert:
 - (3) Before a regulation is made, the Minister is to give the Board an opportunity to comment on the proposal concerned.
 - (4) A regulation may apply, adopt or incorporate any publication as in force from time to time.

**SCHEDULE 4—AMENDMENTS RELATING TO STANDARDS
FOR CONTROL OF INFECTION AND TO REGULATIONS—
*continued***

MEDICAL PRACTICE ACT 1992 No. 94

(1) Section 194 (**Regulations**):

After section 194 (4), insert:

(5) A regulation may apply, adopt or incorporate any publication as in force from time to time.

(2) Schedule 4 (**Regulations**):

After clause 9, insert:

Infection control standards

10. The infection control standards to be followed by medical practitioners in the practice of medicine. Before a regulation is made for or with respect to any such matter, the Minister is to give the Board an opportunity to comment on the proposal concerned.

OPTICAL DISPENSERS ACT 1963 No. 35

Section 35 (**Regulations**):

(a) From section 35 (1), omit “, on the recommendation of the board,”.

(b) After section 35 (1), insert:

(2) Before a regulation is made, the Minister is to give the board an opportunity to comment on the proposal concerned.

PHYSIOTHERAPISTS REGISTRATION ACT 1945 No. 9

Section 33 (**Regulations**):

(a) From section 33 (1), omit “, on the recommendation of the Board,”.

(b) After section 33 (1A), insert:

(2) Before a regulation is made, the Minister is to give the Board an opportunity to comment on the proposal concerned.

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**SCHEDULE 4—AMENDMENTS RELATING TO STANDARDS
FOR CONTROL OF INFECTION AND TO REGULATIONS—
*continued***

Explanatory note

Infection control standards

The amendments to the Dental Technicians Registration Act 1975, items (b)–(d) of the amendments to the Dentists Act 1989 and the amendments to the Medical Practice Act 1992 enable regulations to be made concerning the standards for controlling infection that must be followed by dental prosthetists, dentists and medical practitioners. This regulation-making power is designed, in particular, to enhance protection of patients against HIV infection and other infectious diseases, and it may involve the adoption of published health standards and guidelines about infection control.

Section 42 (1) of the Interpretation Act 1987 enables regulations to apply, adopt or incorporate the provisions of publications. However, section 69 of that Act provides that such publications can only be applied, adopted or incorporated as in force on a particular day or on the day the regulation took effect unless the Act concerned provides for application, adoption or incorporation as in force from time to time. The amendments enable the regulations under the Acts to adopt publications (such as national health standards) as in force from time to time.

Regulations made on the recommendation of health professional boards

Items (a) and (e) of the amendments to the Dentists Act 1989 (proposed section 67 (3)) and the amendments to the Optical Dispensers Act 1963 and the Physiotherapists Registration Act 1945 remove the requirement that the regulations under those Acts can only be made on the recommendation of the appropriate health professional board. However, to ensure that the appropriate board continues to be consulted in the making of proposed regulations, the amendments provide that the Minister is to give the relevant board an opportunity to comment before regulations are made.

**SCHEDULE 5—AMENDMENTS RELATING TO INQUIRIES
AND OTHER MATTERS**

(Sec. 4)

PHYSIOTHERAPISTS REGISTRATION ACT 1945 No. 9

(1) Section 24 (**Misconduct**):

- (a) From section 24 (1) (c), omit “as hereinafter provided”, insert instead “conducted by it or a Professional Standards Committee”.
- (b) In section 24 (2F), after “section”, insert “or, if the Board refers the matter to a Professional Standards Committee under section 24D, for inquiry by a Professional Standards Committee”.

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**SCHEDULE 5—AMENDMENTS RELATING TO INQUIRIES AND
OTHER MATTERS—*continued***

(2) Section 24A (Professional Standards Committees):

- (a) From section 24A (3) and (4), omit “investigating” wherever occurring, insert instead “inquiring into”.
- (b) From section 24A (6), omit “investigate”, insert instead “inquire into”.

(3) Section 24C (Decisions of Professional Standards Committees):

- (a) From section 24C (1), omit “arising during its investigation of a matter”.
- (b) From section 24C (2), omit “an investigation”, insert instead “an inquiry into a matter”.

(4) Section 24D (Reference of matters to Professional Standards Committees):

Omit “investigation”, insert instead “inquiry”.

(5) Section 28 (Board may examine witnesses on oath):

At the end of the section, insert:

(2) This section does not apply to an inquiry conducted by the Board under section 24 or by a Professional Standards Committee to which a matter has been referred by the Board under section 24D.

(6) Section 28A:

After section 28, insert:

Power to summon witnesses, take evidence and obtain documents at inquiries

28A. (1) The President of the Board or the chairperson of a Professional Standards Committee may summon a person to appear at an inquiry conducted by the Board or the Committee to give evidence and to produce such documents (if any) as are specified in the summons.

(2) The person presiding at the inquiry may require a person appearing at the inquiry to produce a document.

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SCHEDULE 5—AMENDMENTS RELATING TO INQUIRIES AND
OTHER MATTERS—*continued*

(3) The Board or a Professional Standards Committee may, at an inquiry conducted by it, take evidence on oath and, for that purpose a member of the Board or Committee:

- (a) may require a person appearing at the inquiry to give evidence, to take an oath or to make an affirmation in a form approved by the person presiding; and
- (b) may administer an oath to, or take an affirmation from, a person appearing at the inquiry.

(4) A person served with a summons to appear at any such inquiry and to give evidence must not, without reasonable excuse:

- (a) fail to attend as required by the summons; or
- (b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Board or the Committee.

(5) A person appearing at an inquiry to give evidence must not, without reasonable excuse:

- (a) when required to be sworn or affirm—fail to comply with the requirement; or
- (b) fail to answer a question that the person is required to answer by the person presiding; or
- (c) fail to produce a document that the person is required to produce under this section.

Maximum penalty (subsections (4) and (5)): 20 penalty units.

(6) A member of the Board or a Professional Standards Committee may, by notice in writing served on a person, require the person:

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Board or the Committee or a person authorised by the Board or Committee in that behalf; and
- (b) to produce, at that time and place, to the person so specified a document specified in the notice.

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**SCHEDULE 5—AMENDMENTS RELATING TO INQUIRIES AND
OTHER MATTERS—*continued***

(7) A person who fails, without reasonable excuse, to comply with a notice served on the person under subsection (6) is guilty of an offence.

Maximum penalty: 20 penalty units.

Explanatory note

The amendments to the Physiotherapists Registration Act 1945 make it clear that the Physiotherapists Registration Board can authorise a Professional Standards Committee to conduct inquiries into complaints that have been made to the Board concerning the professional misconduct of physiotherapists. Item (6) merely restates the existing provisions of the Physiotherapists Registration Regulation 1990 which authorise the Board to summon witnesses, take evidence and obtain documents at inquiries. These provisions are included in the Act for the sake of consistency with other health professional legislation.

PODIATRISTS ACT 1989 No. 23

(1) Section 15A:

After section 15, insert:

Power to summon witnesses, take evidence and obtain documents at inquiries

15A. (1) The President of the Board or the chairperson of a Professional Standards Committee may summon a person to appear at an inquiry conducted by the Board or the Committee to give evidence and to produce such documents (if any) as are specified in the summons.

(2) The person presiding at the inquiry may require a person appearing at the inquiry to produce a document.

(3) The Board or a Professional Standards Committee may, at an inquiry conducted by it, take evidence on oath and, for that purpose a member of the Board or Committee:

- (a) may require a person appearing at the inquiry to give evidence, to take an oath or to make an affirmation in a form approved by the person presiding; and
- (b) may administer an oath to, or take an affirmation from, a person appearing at the inquiry.

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**SCHEDULE 5—AMENDMENTS RELATING TO INQUIRIES AND
OTHER MATTERS—*continued***

(4) A person served with a summons to appear at any such inquiry and to give evidence must not, without reasonable excuse:

- (a) fail to attend as required by the summons; or
- (b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Board or the Committee.

(5) A person appearing at an inquiry to give evidence must not, without reasonable excuse:

- (a) when required to be sworn or affirm—fail to comply with the requirement; or
- (b) fail to answer a question that the person is required to answer by the person presiding; or
- (c) fail to produce a document that the person is required to produce under this section.

Maximum penalty (subsections (4) and (5)): 20 penalty units.

(6) A member of the Board or a Professional Standards Committee may, by notice in writing served on a person, require the person:

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Board or the Committee or a person authorised by the Board or Committee in that behalf; and
- (b) to produce, at that time and place, to the person so specified a document specified in the notice.

(7) A person who fails, without reasonable excuse, to comply with a notice served on the person under subsection (6) is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) Section 27 (Board may examine witnesses on oath):

At the end of the section, insert:

(2) This section does not apply to an inquiry conducted by the Board or a Professional Standards Committee under section 15.

SCHEDULE 5—AMENDMENTS RELATING TO INQUIRIES AND
OTHER MATTERS—*continued*

PSYCHOLOGISTS ACT 1989 No. 51

(1) Section 6 (**Qualifications for registration**):

Omit section 6 (2).

(2) Section 15A:

After section 15, insert:

Power to summon witnesses, take evidence and obtain documents at inquiries

15A. (1) The President of the Board or the chairperson of a Professional Standards Committee may summon a person to appear at an inquiry conducted by the Board or the Committee to give evidence and to produce such documents (if any) as are specified in the summons.

(2) The person presiding at the inquiry may require a person appearing at the inquiry to produce a document.

(3) The Board or a Professional Standards Committee may, at an inquiry conducted by it, take evidence on oath and, for that purpose a member of the Board or Committee:

(a) may require a person appearing at the inquiry to give evidence, to take an oath or to make an affirmation in a form approved by the person presiding; and

(b) may administer an oath to, or take an affirmation from, a person appearing at the inquiry.

(4) A person served with a summons to appear at any such inquiry and to give evidence must not, without reasonable excuse:

(a) fail to attend as required by the summons; or

(b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Board or the Committee.

(5) A person appearing at an inquiry to give evidence must not, without reasonable excuse:

(a) when required to be sworn or affirm—fail to comply with the requirement; or

SCHEDULE 5—AMENDMENTS RELATING TO INQUIRIES AND OTHER MATTERS—continued

- (b) fail to answer a question that the person is required to answer by the person presiding; or
- (c) fail to produce a document that the person is required to produce under this section.

Maximum penalty (subsections (4) and (5)): 20 penalty units.

(6) A member of the Board or a Professional Standards Committee may, by notice in writing served on a person, require the person:

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Board or the Committee or a person authorised by the Board or Committee in that behalf; and
- (b) to produce, at that time and place, to the person so specified a document specified in the notice.

(7) A person who fails, without reasonable excuse, to comply with a notice served on the person under subsection (6) is guilty of an offence.

Maximum penalty: 20 penalty units.

(3) Section 27 (Board may examine witnesses on oath):

At the end of the section, insert:

(2) This section does not apply to an inquiry conducted by the Board or a Professional Standards Committee under section 15.

Explanatory note

Conduct of inquiries

The amendments to the Podiatrists Act 1989 and items (2) and (3) of the amendments to the Psychologists Act 1989 authorise, respectively, the Podiatrists Registration Board and the Psychologists Registration Board (and their Professional Standards Committees) to summon witnesses, take evidence and obtain documents at inquiries into complaints made about the professional misconduct of podiatrists and psychologists. The amendments bring the inquiry procedure under the Acts into line with other health professional legislation.

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SCHEDULE 5—AMENDMENTS RELATING TO INQUIRIES AND
OTHER MATTERS—*continued*

Registration of certain persons as psychologists

Section 6 (2) of the Psychologists Act 1989 deals with the registration of certain persons who would not ordinarily qualify for registration as psychologists. It provides that a person of good character is entitled to be registered as a psychologist if the person has had relevant experience in the 10 years before that subsection commenced (i.e. before 1 August 1990), has attained an acceptable standard of education, and applies for registration within 2 years after 1 August 1990 (or such longer period as the Psychologists Registration Board may allow in a particular case). Item (1) of the amendments to the Psychologists Act 1989 removes the discretion of the Board to allow a longer period within which such persons can apply for registration in the above circumstances, and as a consequence, removes the whole provision as its operation is spent.

[Minister's second reading speech made in—
Legislative Assembly on 14 April 1994
Legislative Council on 3 May 1994]

FIRST PRINT

**HEALTH LEGISLATION (MISCELLANEOUS AMENDMENTS)
BILL 1994**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

(a) to amend the Public Health Act 1991 as follows:

- to modify the circumstances in which information about persons who have been tested for, or who are infected with, HIV/AIDS can be disclosed;
- to require authorised medical practitioners to take into account certain matters when making public health orders;
- to extend the Act to cover requests by medical practitioners and registered nurses for cervical cytology tests to be carried out;
- to require the results (whether positive or negative) of cervical cytology tests (and certain other prescribed tests) to be reported to the Director-General of the Department of Health, and to provide that information identifying the patient can (but only with the consent of the patient) be sent to the Director-General in the test report; and

(b) to amend certain health Acts as follows:

- to provide that the Health Administration Corporation is taken to be the employer of the employees of the Ambulance Service, area health services and public hospitals for the purposes of entering into enterprise agreements;
- to enable regulations to be made for or with respect to the infection control standards to be followed by dentists, dental prosthetists and medical practitioners;
- to remove the requirement for the recommendation of the appropriate health registration board before regulations are made;
- to make it clear that the Physiotherapists Registration Board can authorise a Professional Standards Committee to conduct inquiries into complaints about physiotherapists;

Health Legislation (Miscellaneous Amendments) 1994

- to bring the powers of the Podiatrists Registration Board and the Psychologists Registration Board (and the Professional Standards Committees of those Boards) in relation to the conduct of inquiries into complaints about podiatrists and psychologists, respectively, into line with the legislation relating to other health professional bodies;
 - to make other miscellaneous changes of an ancillary, consequential or minor nature; and
- (c) to amend the Industrial Relations Act 1991 as a consequence of the amendments relating to enterprise agreements.

A detailed explanation of each amendment is set out in the Bill after the amendment concerned.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be proclaimed.

Clause 3 gives effect to the Schedules of amendments to the Public Health Act 1991.

Clause 4 gives effect to the Schedules of amendments to other Acts.

Clause 5 makes it clear that the explanatory notes contained in the Schedules do not form part of the proposed Act.

Schedules 1 and 2 contain amendments to the Public Health Act 1991 to give effect to the objects described in paragraph (a) above.

Schedules 3–5 contain amendments to the following Acts to give effect to the objects described in paragraphs (b) and (c) above:

- Ambulance Services Act 1990 (see Schedule 3)
 - Area Health Services Act 1986 (see Schedule 3)
 - Dental Technicians Registration Act 1975 (see Schedule 4)
 - Dentists Act 1989 (see Schedule 4)
 - Industrial Relations Act 1991 (see Schedule 3)
 - Medical Practice Act 1992 (see Schedule 4)
 - Optical Dispensers Act 1963 (see Schedule 4)
 - Physiotherapists Registration Act 1945 (see Schedules 4 and 5)
 - Podiatrists Act 1989 (see Schedule 5)
 - Psychologists Act 1989 (see Schedule 5)
 - Public Hospitals Act 1929 (see Schedule 3)
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FIRST PRINT

**HEALTH LEGISLATION (MISCELLANEOUS AMENDMENTS)
BILL 1994**

NEW SOUTH WALES



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**HEALTH LEGISLATION (MISCELLANEOUS AMENDMENTS)
BILL 1994**

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to amend the Public Health Act 1991 in relation to public health orders, the disclosure of HIV/AIDS related information, and the reporting of test results; to amend various other Acts in relation to enterprise agreements involving certain health employees, infection control standards, regulation-making powers, and inquiries; and for other purposes.

Health Legislation (Miscellaneous Amendments) 1994

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Health Legislation (Miscellaneous Amendments) Act 1994.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Public Health Act 1991 No. 10

3. The Public Health Act 1991 is amended as set out in Schedules 1 and 2.

Amendment of other Acts

4. The Acts specified in Schedules 3–5 are amended as set out in those Schedules.

Explanatory notes

5. Matter appearing under the heading “Explanatory note” in this Act does not form part of this Act.

**SCHEDULE 1—AMENDMENTS TO PUBLIC HEALTH ACT
1991 RELATING TO PUBLIC HEALTH ORDERS AND
DISCLOSURE OF HIV/AIDS INFORMATION**

20

(Sec. 3)

(1) Section 17 (Protection of identity):

Omit section 17 (3) (d), insert instead:

(d) to a person who is involved in the provision of care to, or treatment or counselling of, the other person if the information is required in connection with providing such care, treatment or counselling; or

25

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**SCHEDULE 1—AMENDMENTS TO PUBLIC HEALTH ACT 1991
RELATING TO PUBLIC HEALTH ORDERS AND DISCLOSURE
OF HIV/AIDS INFORMATION—*continued***

(2) Section 23 (Making of public health order):

After section 23 (3), insert:

(3A) In making a public health order, the authorised medical practitioner must take into account:

- (a) such guidelines relating to public health orders as may be approved by the Director-General from time to time; and
- (b) the principle that any requirement restricting the liberty of the person to whom the order applies should be imposed only if it is the only effective way to ensure that the health of the public is not endangered or likely to be endangered.

Explanatory note

Disclosure of HIV/AIDS related information (item (1))

Section 17 of the Public Health Act 1991 currently prohibits the disclosure of information about persons who have been tested for, or who are infected with, HIV/AIDS. However, such information can be disclosed in certain circumstances. One circumstance currently specified is disclosure as a normal duty as a consequence of providing the service in the course of which the information was obtained. The amendment to section 17 will provide instead that information about a person's HIV/AIDS condition may be disclosed to a person involved in providing care to, or treatment or counselling of, the person who has been tested for or who is infected with HIV/AIDS, but only if the information is required in connection with providing such care, treatment or counselling.

Public health orders (item (2))

Section 23 of the Act enables an authorised medical practitioner to make a public health order in respect of a person who is suffering from HIV/AIDS and who is behaving in a way that could endanger the health of the public because of the person's condition. A public health order requires the person to do certain things (e.g. to refrain from specified conduct, to undergo treatment or to be detained in a specified place).

The amendment to section 23 will require an authorised medical practitioner, when making a public health order, to take into account:

- certain guidelines approved by the Director-General; and
- the principle that the order should impose a requirement restricting the liberty of the person concerned only if it is the only way to ensure that the health of the public is not endangered or likely to be endangered.

**SCHEDULE 2—AMENDMENTS TO PUBLIC HEALTH ACT
1991 RELATING TO NOTIFICATION OF TEST RESULTS**

(Sec. 3)

(1) Sections 16, 16A:

5 Omit section 16, insert instead:

**Notification of test results—Category 3 medical
conditions generally**

10 16. (1) This section applies if a medical practitioner requests a person to carry out a serological test (or other test prescribed for the purposes of this paragraph) for the purpose of detecting whether a patient is suffering from a Category 3 medical condition.

15 (2) If the test has a positive result, the person certifying the result of the test to the medical practitioner must, as soon as practicable, send to the Director-General a report, in an approved form, relating to the test.

20 (3) The person certifying the result of the test must not disclose the name or address of the patient in the report if the medical condition detected by the test is also a Category 5 medical condition.

25 (4) A medical practitioner who requests a person to carry out a test under this section must, unless the medical practitioner has a reasonable excuse, provide (within the prescribed period) the person with sufficient information to enable the person to comply with subsection (2).

Maximum penalty (subsections (2)–(4)): 50 penalty units.

Notification of cervical cytology and other test results

16A. (1) This section applies if:

- 30 (a) a medical practitioner or registered nurse requests a person to carry out a cervical cytology test; or
(b) a medical practitioner requests a person to carry out a test prescribed for the purposes of this paragraph.

(2) A request for any such test must be made in the approved form (“the request form”).

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**SCHEDULE 2—AMENDMENTS TO PUBLIC HEALTH ACT 1991
RELATING TO NOTIFICATION OF TEST RESULTS—*continued***

- (3) On the request form, the medical practitioner or registered nurse is required:
- (a) to include the name and address of the patient to whom the test relates; and 5
 - (b) to certify that the medical practitioner or nurse has explained to the patient the reasons for the patient's name and address being disclosed in the report required to be made to the Director-General under this section; and 10
 - (c) to indicate whether or not the patient has consented to the patient's name and address being disclosed in the report.
- (4) Regardless of whether the test has a positive result, the person certifying the result of the test to the medical practitioner or registered nurse must, as soon as practicable, send to the Director-General a report, in an approved form, relating to the test. 15
- (5) The person certifying the result of the test must not disclose the name or address of the patient in the report: 20
- (a) unless the patient has consented (as indicated on the request form) to the disclosure of that information; and
 - (b) irrespective of whether the patient has so consented—if the medical condition detected by the test is also a Category 5 medical condition. 25
- (6) A medical practitioner or registered nurse who requests a person to carry out a test under this section must, unless the medical practitioner or nurse has a reasonable excuse, provide (within the prescribed period) the person with sufficient information to enable the person to comply with subsection (4). 30
- Maximum penalty (subsections (4)–(6)): 50 penalty units.
- (2) **Section 19 (Notice by Director-General requiring disclosure of name and address):** 35
- Omit section 19 (1) (b), insert instead:
- (b) a medical practitioner or registered nurse who has requested a test to which a report under section 16 or 16A relates,

Health Legislation (Miscellaneous Amendments) 1994

**SCHEDULE 2—AMENDMENTS TO PUBLIC HEALTH ACT 1991
RELATING TO NOTIFICATION OF TEST RESULTS—*continued***

Explanatory note

At present under section 16 of the Public Health Act 1991, a medical practitioner can request a serological test or other prescribed test to be carried out for the purpose of detecting whether a patient is suffering from a Category 3 medical condition listed in Schedule 1 to the Act. If the test has a positive result, the person who carried out the test must report the result to the Director-General of the Department of Health. The report must not identify the patient if the medical condition detected is also a Category 5 medical condition (i.e. HIV/AIDS).

Item (1) replaces section 16 with 2 separate provisions:

- Proposed section 16 merely recasts the existing section.
- Proposed section 16A provides for 2 new classes of tests—cervical cytology tests and other prescribed tests. Requests for these tests must be in the approved test form which requires the medical practitioner (or the registered nurse in the case of cervical cytology tests) to certify that the medical practitioner or nurse has explained to the patient the reasons for the patient's name and address being disclosed in the test report, and to indicate that the patient has consented to the disclosure of that information. The test result must be reported to the Director-General regardless of whether the result is positive or negative, and the test report must not disclose the identity of the patient unless the patient has consented to the disclosure of that information.

The information reported to the Director-General in relation to cervical cytology tests is intended to be included in a register set up for certain purposes (such as monitoring cervical cancer screening programs).

Item (2) is a consequential amendment.

**SCHEDULE 3—AMENDMENTS RELATING TO ENTERPRISE
AGREEMENTS**

(Sec. 4)

30 AMBULANCE SERVICES ACT 1990 No. 16

Section 15 (Determination of conditions of employment of staff):

- (a) Omit section 15 (2), insert instead:
- (2) The Health Administration Corporation:
- (a) is, for the purpose of making any determination under subsection (1), taken to be the employer of the employees of the Ambulance Service; and
- (b) is, for the purpose of entering into an enterprise agreement relating to the enterprise carried on by the Ambulance Service, taken to be the employer of the employees of the Ambulance Service; and

Health Legislation (Miscellaneous Amendments) 1994

SCHEDULE 3—AMENDMENTS RELATING TO ENTERPRISE AGREEMENTS—*continued*

- (c) is, for the purpose of any proceedings before a competent tribunal having power to deal with industrial matters, taken to be the employer of the employees of the Ambulance Service. 5
- (2A) To remove any doubt, the Health Administration Corporation may, in accordance with section 21 of the Health Administration Act 1982, delegate its functions as such an employer. 10
- (b) In section 15 (3), after “agreement”, insert “(not being an enterprise agreement)”.
- (c) From section 15 (3), omit “salaries, wages or remuneration”, insert instead “conditions of employment (including salaries, wages and remuneration)”. 15
- (d) Omit section 15 (6), insert instead:
 - (6) The Ambulance Service must give effect to:
 - (a) any determination made by the Health Administration Corporation under subsection (1); and
 - (b) any enterprise agreement referred to in subsection (2); and 20
 - (c) any order or determination made by a competent tribunal in proceedings referred to in subsection (2); and
 - (d) any agreement referred to in subsection (3). 25
 - (7) In this section, “enterprise agreement” and “industrial matters” have the same meanings as in the Industrial Relations Act 1991.

AREA HEALTH SERVICES ACT 1986 No. 50

- Section 26 (Determination of conditions of employment of staff): 30
- (a) Omit section 26 (1), insert instead:
 - (1) In this section, “enterprise agreement” and “industrial matters” have the same meanings as in the Industrial Relations Act 1991. 35

Health Legislation (Miscellaneous Amendments) 1994

SCHEDULE 3—AMENDMENTS RELATING TO ENTERPRISE AGREEMENTS—*continued*

(b) Omit section 26 (3), insert instead:

(3) The Health Administration Corporation:

5 (a) is, for the purpose of making any determination under subsection (2), taken to be the employer of the employees of area health services; and

10 (b) is, for the purpose of entering into an enterprise agreement relating to the enterprise carried on by an area health service or area health services, taken to be the employer of the employees of the area health service concerned; and

15 (c) is, for the purpose of any proceedings before a competent tribunal having power to deal with industrial matters, taken to be the employer of the employees of area health services.

20 (3A) To remove any doubt, the Health Administration Corporation may, in accordance with section 21 of the Health Administration Act 1982, delegate its functions as such an employer.

(c) In section 26 (4), after “agreement”, insert “(not being an enterprise agreement)”.

25 (d) From section 26 (4), omit “salaries, wages or remuneration”, insert instead “conditions of employment (including salaries, wages and remuneration)”.

(e) Omit section 26 (6), insert instead:

(6) An area health service must give effect to:

30 (a) any determination made by the Health Administration Corporation under subsection (2); and

(b) any enterprise agreement referred to in subsection (3); and

(c) any order or determination made by a competent tribunal in proceedings referred to in subsection (3); and

35 (d) any agreement referred to in subsection (4).

Health Legislation (Miscellaneous Amendments) 1994

**SCHEDULE 3—AMENDMENTS RELATING TO ENTERPRISE
AGREEMENTS—*continued***

INDUSTRIAL RELATIONS ACT 1991 No. 34

Section 118 (Effect of an enterprise agreement):

In section 118 (4) (a), after “sector”, insert “(including employment with an area health service or a public hospital)”.

5

PUBLIC HOSPITALS ACT 1929 No. 8

Section 40BA (Determination of conditions of employment of officers and employees of hospitals):

10

(a) In section 40BA (1), before the definition of “hospital”, insert:

“enterprise agreement” and “industrial matters” have the same meanings as in the Industrial Relations Act 1991;

15

(b) From section 40BA (1), omit the definition of “industrial matters”.

(c) Omit section 40BA (3), insert instead:

(3) The Corporation:

(a) is, for the purpose of making any determination under subsection (2), taken to be the employer of the officers and employees of hospitals; and

20

(b) is, for the purpose of entering into an enterprise agreement relating to the enterprise carried on by a hospital or hospitals, taken to be the employer of the officers and employees of the hospital concerned; and

25

(c) is, for the purpose of any proceedings before a competent tribunal having power to deal with industrial matters, taken to be the employer of the officers and employees of hospitals.

30

(3A) To remove any doubt, the Corporation may, in accordance with section 21 of the Health Administration Act 1982, delegate its functions as such an employer.

(d) In section 40BA (4), after “agreement”, insert “(not being an enterprise agreement)”.

35

(e) From section 40BA (4), omit “salaries, wages or remuneration”, insert instead “conditions of employment (including salaries, wages and remuneration)”.

Health Legislation (Miscellaneous Amendments) 1994

SCHEDULE 3—AMENDMENTS RELATING TO ENTERPRISE AGREEMENTS—*continued*

(f) Omit section 40BA (6), insert instead:

- (6) A hospital must give effect to:
- 5 (a) any determination made by the Corporation under subsection (2); and
 - (b) any enterprise agreement referred to in subsection (3); and
 - 10 (c) any order or determination made by a competent tribunal in proceedings referred to in subsection (3); and
 - (d) any agreement referred to in subsection (4).

Explanatory note

15 **Amendments to the Ambulance Service Act 1991, Area Health Services Act 1986 and Public Hospitals Act 1929**

20 At present, the Health Administration Corporation is taken to be the employer of the employees of the Ambulance Service, area health services and public hospitals for the purpose of determining the conditions of employment of such employees and for the purpose of proceedings for awards relating to such employees. The amendments extend this situation so that the Corporation is also taken to be the employer for the purpose of entering into enterprise agreements involving the employees of the Ambulance Service, area health services and public hospitals. The amendments also make it clear that the Corporation can delegate its functions as an "enterprise employer".

25 The Corporation can also, at present, enter into certain industrial agreements (which are not enterprise agreements) with organisations which represent groups of employees of the Ambulance Service, area health services and public hospitals in relation to such matters as the salaries, wages or remuneration of the employees. The amendments make it clear that the matters in respect of which such agreements are made are matters relating to the conditions of employment of the employees, and that these conditions of employment include salaries, wages and remuneration.

30

Consequential amendment of Industrial Relations Act 1991

35 Section 118 of the Industrial Relations Act 1991 provides that the provisions of an enterprise agreement prevail over the provisions of an "award" (which is defined for the purposes of that section to include certain determinations and agreements relating to employment in the public sector similar to those made by the Public Employment Industrial Relations Authority under the Public Sector Management Act 1988). The amendment to the Industrial Relations Act 1991 extends the definition of "award" in section 118 to make it clear that it also refers to determinations and agreements relating to employees of area health services and public hospitals (since those agencies do not represent the Crown, such employees may not be "public sector" employees). The amendment is consequential on the other amendments in Schedule 3 which provide that the Health Administration Corporation is taken to be the "enterprise employer" of these employees for the purposes of entering into enterprise agreements with them.

40

**SCHEDULE 4—AMENDMENTS RELATING TO STANDARDS
FOR CONTROL OF INFECTION AND TO REGULATIONS**

(Sec. 4)

DENTAL TECHNICIANS REGISTRATION ACT 1975 No. 40

Section 35 (Regulations):

5

(a) From section 35 (2) (h), omit “and”.

(b) At the end of section 35 (2) (i), insert:

; and

(j) infection control standards to be followed by dental
prosthodontists engaged in the practice of dental
prosthodontics.

10

(c) After section 35 (3), insert:

(3A) A regulation may apply, adopt or incorporate any
publication as in force from time to time.

DENTISTS ACT 1989 No. 139

15

Section 67 (Regulations):

(a) From section 67 (1), omit “, on the recommendation of the
Board,”.

(b) In section 67 (2) (m), before “the application”, insert
“providing for”.

20

(c) From section 67 (2) (m), omit “and” where secondly
occurring.

(d) At the end of section 67 (2) (n), insert:

; and

(o) for or with respect to infection control standards to be
followed by persons engaged in the practice of
dentistry.

25

(e) After section 67 (2), insert:

(3) Before a regulation is made, the Minister is to give the
Board an opportunity to comment on the proposal concerned.

30

(4) A regulation may apply, adopt or incorporate any
publication as in force from time to time.

Health Legislation (Miscellaneous Amendments) 1994

**SCHEDULE 4—AMENDMENTS RELATING TO STANDARDS
FOR CONTROL OF INFECTION AND TO REGULATIONS—
*continued***

MEDICAL PRACTICE ACT 1992 No. 94

5 **(1) Section 194 (Regulations):**

After section 194 (4), insert:

(5) A regulation may apply, adopt or incorporate any publication as in force from time to time.

10 **(2) Schedule 4 (Regulations):**

After clause 9, insert:

Infection control standards

15 10. The infection control standards to be followed by medical practitioners in the practice of medicine. Before a regulation is made for or with respect to any such matter, the Minister is to give the Board an opportunity to comment on the proposal concerned.

OPTICAL DISPENSERS ACT 1963 No. 35

Section 35 (Regulations):

20 (a) From section 35 (1), omit “, on the recommendation of the board,”.

(b) After section 35 (1), insert:

(2) Before a regulation is made, the Minister is to give the board an opportunity to comment on the proposal concerned.

PHYSIOTHERAPISTS REGISTRATION ACT 1945 No. 9

25 **Section 33 (Regulations):**

(a) From section 33 (1), omit “, on the recommendation of the Board,”.

(b) After section 33 (1A), insert:

30 (2) Before a regulation is made, the Minister is to give the Board an opportunity to comment on the proposal concerned.

Health Legislation (Miscellaneous Amendments) 1994

**SCHEDULE 4—AMENDMENTS RELATING TO STANDARDS
FOR CONTROL OF INFECTION AND TO REGULATIONS—
*continued***

Explanatory note

Infection control standards

The amendments to the Dental Technicians Registration Act 1975, items (b)–(d) of the amendments to the Dentists Act 1989 and the amendments to the Medical Practice Act 1992 enable regulations to be made concerning the standards for controlling infection that must be followed by dental prosthetists, dentists and medical practitioners. This regulation-making power is designed, in particular, to enhance protection of patients against HIV infection and other infectious diseases, and it may involve the adoption of published health standards and guidelines about infection control.

Section 42 (1) of the Interpretation Act 1987 enables regulations to apply, adopt or incorporate the provisions of publications. However, section 69 of that Act provides that such publications can only be applied, adopted or incorporated as in force on a particular day or on the day the regulation took effect unless the Act concerned provides for application, adoption or incorporation as in force from time to time. The amendments enable the regulations under the Acts to adopt publications (such as national health standards) as in force from time to time.

Regulations made on the recommendation of health professional boards

Items (a) and (e) of the amendments to the Dentists Act 1989 (proposed section 67 (3)) and the amendments to the Optical Dispensers Act 1963 and the Physiotherapists Registration Act 1945 remove the requirement that the regulations under those Acts can only be made on the recommendation of the appropriate health professional board. However, to ensure that the appropriate board continues to be consulted in the making of proposed regulations, the amendments provide that the Minister is to give the relevant board an opportunity to comment before regulations are made.

**SCHEDULE 5—AMENDMENTS RELATING TO INQUIRIES
AND OTHER MATTERS**

(Sec. 4)

PHYSIOTHERAPISTS REGISTRATION ACT 1945 No. 9

(1) Section 24 (Misconduct):

- (a) From section 24 (1) (c), omit “as hereinafter provided”, insert instead “conducted by it or a Professional Standards Committee”.
- (b) In section 24 (2F), after “section”, insert “or, if the Board refers the matter to a Professional Standards Committee under section 24D, for inquiry by a Professional Standards Committee”.

Health Legislation (Miscellaneous Amendments) 1994

**SCHEDULE 5—AMENDMENTS RELATING TO INQUIRIES AND
OTHER MATTERS—*continued***

(2) Section 24A (Professional Standards Committees):

- 5 (a) From section 24A (3) and (4), omit “investigating” wherever occurring, insert instead “inquiring into”.
 (b) From section 24A (6), omit “investigate”, insert instead “inquire into”.

(3) Section 24C (Decisions of Professional Standards Committees):

- 10 (a) From section 24C (1), omit “arising during its investigation of a matter”.
 (b) From section 24C (2), omit “an investigation”, insert instead “an inquiry into a matter”.

(4) Section 24D (Reference of matters to Professional Standards Committees):

- 15 Omit “investigation”, insert instead “inquiry”.

(5) Section 28 (Board may examine witnesses on oath):

At the end of the section, insert:

- 20 (2) This section does not apply to an inquiry conducted by the Board under section 24 or by a Professional Standards Committee to which a matter has been referred by the Board under section 24D.

(6) Section 28A:

After section 28, insert:

25 **Power to summon witnesses, take evidence and obtain documents at inquiries**

- 30 28A. (1) The President of the Board or the chairperson of a Professional Standards Committee may summon a person to appear at an inquiry conducted by the Board or the Committee to give evidence and to produce such documents (if any) as are specified in the summons.

(2) The person presiding at the inquiry may require a person appearing at the inquiry to produce a document.

Health Legislation (Miscellaneous Amendments) 1994

**SCHEDULE 5—AMENDMENTS RELATING TO INQUIRIES AND
OTHER MATTERS—*continued***

(3) The Board or a Professional Standards Committee may, at an inquiry conducted by it, take evidence on oath and, for that purpose a member of the Board or Committee: 5

(a) may require a person appearing at the inquiry to give evidence, to take an oath or to make an affirmation in a form approved by the person presiding; and

(b) may administer an oath to, or take an affirmation from, a person appearing at the inquiry. 10

(4) A person served with a summons to appear at any such inquiry and to give evidence must not, without reasonable excuse:

(a) fail to attend as required by the summons; or

(b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Board or the Committee. 15

(5) A person appearing at an inquiry to give evidence must not, without reasonable excuse:

(a) when required to be sworn or affirm—fail to comply with the requirement; or 20

(b) fail to answer a question that the person is required to answer by the person presiding; or

(c) fail to produce a document that the person is required to produce under this section. 25

Maximum penalty (subsections (4) and (5)): 20 penalty units.

(6) A member of the Board or a Professional Standards Committee may, by notice in writing served on a person, require the person: 30

(a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Board or the Committee or a person authorised by the Board or Committee in that behalf; and

(b) to produce, at that time and place, to the person so specified a document specified in the notice. 35

Health Legislation (Miscellaneous Amendments) 1994

**SCHEDULE 5—AMENDMENTS RELATING TO INQUIRIES AND
OTHER MATTERS—*continued***

- 5 (7) A person who fails, without reasonable excuse, to
comply with a notice served on the person under subsection
(6) is guilty of an offence.

Maximum penalty: 20 penalty units.

Explanatory note

- 10 The amendments to the Physiotherapists Registration Act 1945 make it clear that the
Physiotherapists Registration Board can authorise a Professional Standards Committee
to conduct inquiries into complaints that have been made to the Board concerning the
professional misconduct of physiotherapists. Item (6) merely restates the existing
provisions of the Physiotherapists Registration Regulation 1990 which authorise the
Board to summon witnesses, take evidence and obtain documents at inquiries. These
15 provisions are included in the Act for the sake of consistency with other health
professional legislation.

PODIATRISTS ACT 1989 No. 23

(1) Section 15A:

After section 15, insert:

- 20 **Power to summon witnesses, take evidence and obtain
documents at inquiries**

- 25 15A. (1) The President of the Board or the chairperson of
a Professional Standards Committee may summon a person
to appear at an inquiry conducted by the Board or the
Committee to give evidence and to produce such documents
(if any) as are specified in the summons.

(2) The person presiding at the inquiry may require a
person appearing at the inquiry to produce a document.

- 30 (3) The Board or a Professional Standards Committee may,
at an inquiry conducted by it, take evidence on oath and, for
that purpose a member of the Board or Committee:

- (a) may require a person appearing at the inquiry to give
evidence, to take an oath or to make an affirmation in a
form approved by the person presiding; and
35 (b) may administer an oath to, or take an affirmation from,
a person appearing at the inquiry.

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**SCHEDULE 5—AMENDMENTS RELATING TO INQUIRIES AND
OTHER MATTERS—*continued***

(4) A person served with a summons to appear at any such inquiry and to give evidence must not, without reasonable excuse: 5

- (a) fail to attend as required by the summons; or
- (b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Board or the Committee.

(5) A person appearing at an inquiry to give evidence must not, without reasonable excuse: 10

- (a) when required to be sworn or affirm—fail to comply with the requirement; or
- (b) fail to answer a question that the person is required to answer by the person presiding; or 15
- (c) fail to produce a document that the person is required to produce under this section.

Maximum penalty (subsections (4) and (5)): 20 penalty units.

(6) A member of the Board or a Professional Standards Committee may, by notice in writing served on a person, require the person: 20

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Board or the Committee or a person authorised by the Board or Committee in that behalf; and 25
- (b) to produce, at that time and place, to the person so specified a document specified in the notice.

(7) A person who fails, without reasonable excuse, to comply with a notice served on the person under subsection (6) is guilty of an offence. 30

Maximum penalty: 20 penalty units.

(2) Section 27 (Board may examine witnesses on oath):

At the end of the section, insert:

(2) This section does not apply to an inquiry conducted by the Board or a Professional Standards Committee under section 15. 35

**SCHEDULE 5—AMENDMENTS RELATING TO INQUIRIES AND
OTHER MATTERS—*continued***

PSYCHOLOGISTS ACT 1989 No. 51

(1) Section 6 (**Qualifications for registration**):

5 Omit section 6 (2).

(2) Section 15A:

After section 15, insert:

**Power to summon witnesses, take evidence and obtain
documents at inquiries**

10 15A. (1) The President of the Board or the chairperson of
a Professional Standards Committee may summon a person
to appear at an inquiry conducted by the Board or the
Committee to give evidence and to produce such documents
(if any) as are specified in the summons.

15 (2) The person presiding at the inquiry may require a
person appearing at the inquiry to produce a document.

(3) The Board or a Professional Standards Committee may,
at an inquiry conducted by it, take evidence on oath and, for
that purpose a member of the Board or Committee:

20 (a) may require a person appearing at the inquiry to give
evidence, to take an oath or to make an affirmation in a
form approved by the person presiding; and

(b) may administer an oath to, or take an affirmation from,
a person appearing at the inquiry.

25 (4) A person served with a summons to appear at any such
inquiry and to give evidence must not, without reasonable
excuse:

(a) fail to attend as required by the summons; or

30 (b) fail to attend from day to day unless excused, or
released from further attendance, by a member of the
Board or the Committee.

(5) A person appearing at an inquiry to give evidence must
not, without reasonable excuse:

35 (a) when required to be sworn or affirm—fail to comply
with the requirement; or

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**SCHEDULE 5—AMENDMENTS RELATING TO INQUIRIES AND
OTHER MATTERS—*continued***

- (b) fail to answer a question that the person is required to answer by the person presiding; or
- (c) fail to produce a document that the person is required to produce under this section. 5

Maximum penalty (subsections (4) and (5)): 20 penalty units.

- (6) A member of the Board or a Professional Standards Committee may, by notice in writing served on a person, require the person: 10

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Board or the Committee or a person authorised by the Board or Committee in that behalf; and 15
 - (b) to produce, at that time and place, to the person so specified a document specified in the notice.

- (7) A person who fails, without reasonable excuse, to comply with a notice served on the person under subsection (6) is guilty of an offence. 20

Maximum penalty: 20 penalty units.

(3) Section 27 (Board may examine witnesses on oath):

At the end of the section, insert:

- (2) This section does not apply to an inquiry conducted by the Board or a Professional Standards Committee under section 15. 25

Explanatory note

Conduct of inquiries

The amendments to the Podiatrists Act 1989 and items (2) and (3) of the amendments to the Psychologists Act 1989 authorise, respectively, the Podiatrists Registration Board and the Psychologists Registration Board (and their Professional Standards Committees) to summon witnesses, take evidence and obtain documents at inquiries into complaints made about the professional misconduct of podiatrists and psychologists. The amendments bring the inquiry procedure under the Acts into line with other health professional legislation. 30
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**SCHEDULE 5—AMENDMENTS RELATING TO INQUIRIES AND
OTHER MATTERS—*continued*****Registration of certain persons as psychologists**

- 5 Section 6 (2) of the Psychologists Act 1989 deals with the registration of certain persons who would not ordinarily qualify for registration as psychologists. It provides that a person of good character is entitled to be registered as a psychologist if the person has had relevant experience in the 10 years before that subsection commenced (i.e. before 1 August 1990), has attained an acceptable standard of education, and applies for registration within 2 years after 1 August 1990 (or such longer period as the
- 10 Psychologists Registration Board may allow in a particular case). Item (1) of the amendments to the Psychologists Act 1989 removes the discretion of the Board to allow a longer period within which such persons can apply for registration in the above circumstances, and as a consequence, removes the whole provision as its operation is spent.
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~~ADDRESS IN REPLY~~

Mr President

The Health Legislation (Miscellaneous Amendments) Bill 1994 introduces a range of important reforms to health legislation and will provide significant benefits to the community as a whole as well as enhancing the health status of particular groups.

Proposed amendments to the Public Health Act in relation to the reporting of Pap smear test results will provide better health outcomes for women in this State. For the first time women will have the opportunity to participate in a comprehensive approach to cervical cancer screening through the establishment of a NSW cervical cytology register. The Register is an important step in the fight against cervical cancer. There will be considerable advantages to women in agreeing to participate in the Register. Among other things the Register will enable reminders to be sent to women that their next pap test is overdue and ensure that women who have abnormal smears receive appropriate management and follow up. Mechanisms established through this program will also ensure that cervical cytology services in NSW are consistently of a high standard.

It clearly important that legislative provisions are in place to protect the rights and dignity of HIV infected people and people with AIDS as it is with other members of the public. Not only is there a need to avoid discriminatory action against and stigmatisation of HIV infected people essential from a civil liberty point of view but it is only through assuring such basic human rights that the success of AIDS prevention and control programs may be assured.

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These amendments to the Public Health Act relate to the confidentiality of HIV and AIDS information and the administration of public health orders. They will provide a more effective mechanism to protect people with HIV and AIDS against inappropriate disclosure of personal information and the possible abuse of public health orders. I am confident that these reforms will significantly address concerns of discrimination in the Health system against HIV infected people and those with AIDS.

The AIDS Council of NSW has drawn attention to specific concerns surrounding incidences of inappropriate disclosure of HIV information, particularly in youth refuges. It would appear that such incidences may be a result of ignorance of the current laws in this area. To address this concern an education program will be conducted specifically targeting youth refuges to ensure that all employees of these facilities are aware that a person's infectious status is strictly confidential. These provisions do not, of course, diminish the need to protect the public from behaviour that may spread HIV or AIDS. It is accepted that in situations where information is required in connection with providing care, treatment or counselling or where there is a genuine public risk, information must be made available to enable appropriate action to be taken.

The community can be confident that provisions are in place to ensure that appropriate and prompt action can be taken where a person is exposed to HIV or AIDS or where there is a risk of such exposure.

The community can also have confidence that all appropriate steps are being taken to ensure safety against HIV infection during operations. The amendments to the Medical Practice Act, Dentists Act and Dental Technicians Registration Act will provide for strict standards of infection control to be applied in the treatment of patients in doctors' and dentists' private rooms and by dental prosthetists.

The amendments to the Physiotherapists Registration Act, Psychologists Act and Podiatrists Act will improve the effectiveness and efficiency of the disciplinary and registration processes for these professional groups and will promote the maintenance of appropriate standards of practice.

Further amendments to the Dentists Act, Optical Dispensers Act and Physiotherapists Registration Act provide that the Boards are consulted during the development of a new regulation. However, the Board's views will not be able to override broader considerations which the Minister may consider to be in the community's interest.

Mr President, I am confident that these amendments will provide considerable benefits to the community and I commend them to the House.

