

FIRST PRINT

**HEALTH LEGISLATION (MISCELLANEOUS AMENDMENTS)
BILL (No. 2) 1994**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to amend certain Acts relating to health matters as follows:

- (a) to empower the Medical Tribunal to suspend a person from practising medicine, or to deregister the person, on the grounds of the person's criminal conviction (of a serious offence) or lack of good character;
- (b) to make it clear that costs may be awarded against any person entitled to appear in proceedings before the Medical Tribunal;
- (c) to remove any doubt as to the Governor's power to make certain regulations under the Poisons Act 1966;
- (d) to extend from 6 months to 2 years the time allowed for the commencement of proceedings for certain offences under the Public Health Act 1991;
- (e) to make the proof of age card (and other prescribed documents) the only acceptable proof of age for the purposes of a defence to a prosecution for selling tobacco to a person under the age of 18;
- (f) to repeal and re-enact a provision relating to the duty of a chief executive officer of a hospital to provide the Director-General of the Department of Health with information concerning persons suffering from a notifiable disease;
- (g) to rename the Dame Eadith Walker Convalescent Hospital for Men as the Dame Eadith Walker Hospital, to remove the limitation on the use of that Hospital and to validate its current use;
- (h) to make consequential amendments.

A detailed explanation of each amendment is set out in the Bill in the Schedule in which the amendment appears.

Health Legislation (Miscellaneous Amendments) (No. 2) 1994

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 various Acts.

Clause 4 makes it clear that the explanatory notes contained in the Schedules do not form part of the proposed Act.

Schedules 1–4 contain amendments to the following Acts to give effect to the objects described above:

- Medical Practice Act 1992
 - Poisons Act 1966
 - Public Health Act 1991
 - Walker Trusts Act 1938
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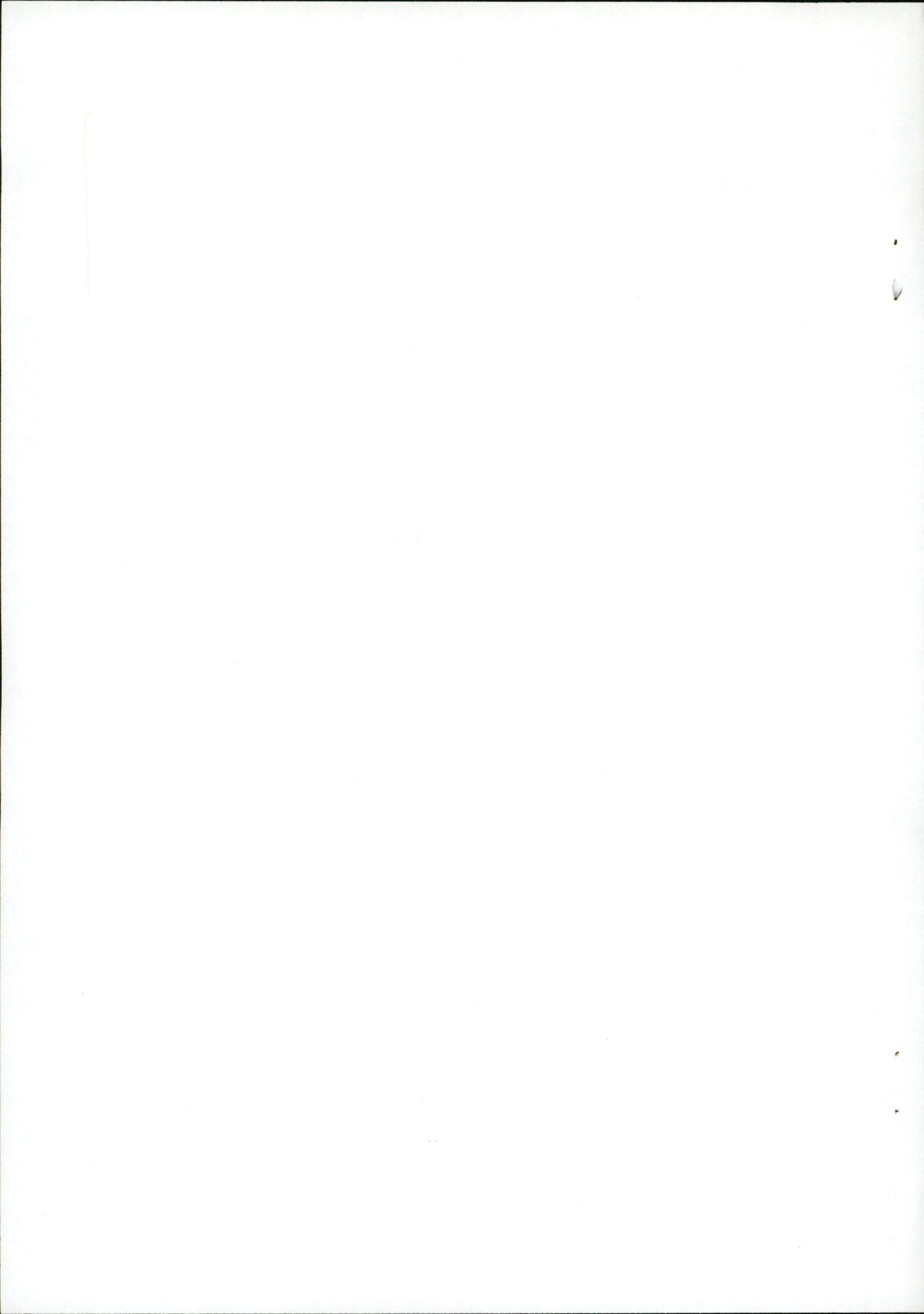
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of various Acts
4. Explanatory notes

SCHEDULE 1—AMENDMENT OF MEDICAL PRACTICE ACT 1992
SCHEDULE 2—AMENDMENT OF POISONS ACT 1966
SCHEDULE 3—AMENDMENT OF PUBLIC HEALTH ACT 1991
SCHEDULE 4—AMENDMENT OF WALKER TRUSTS ACT 1938



**HEALTH LEGISLATION (MISCELLANEOUS AMENDMENTS)
BILL (No. 2) 1994**

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to amend the Medical Practice Act 1992 in relation to the grounds for deregistration or suspension from practice and the award of costs in proceedings before the Medical Tribunal, the Poisons Act 1966 in relation to the making of regulations, the Public Health Act 1991 in relation to proceedings for certain offences, the sale of tobacco to juveniles and notifications of notifiable diseases, and the Walker Trusts Act 1938 in relation to the name and use of the Dame Eadith Walker Convalescent Hospital for Men; and for other purposes.

Health Legislation (Miscellaneous Amendments) (No. 2) 1994

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Health Legislation (Miscellaneous Amendments) Act (No. 2) 1994.

5 **Commencement**

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

Amendment of various Acts

10 3. The Acts specified in Schedules 1–4 are amended as set out in those Schedules.

Explanatory notes

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

15 **SCHEDULE 1—AMENDMENT OF MEDICAL PRACTICE ACT
1992**

(Sec. 3)

(1) Section 64 (**Tribunal can suspend or deregister in certain cases**):

At the end of section 64 (1) (b), insert:

20

; or

25

(c) that the person has been convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or has been convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or

(d) that the person is not of good character.

(2) Schedule 2 (**Proceedings before a committee or the Tribunal**):

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From clause 13 (1), omit “granted leave to appear”, insert instead “entitled to appear (whether as of right or because leave to appear has been granted)”.

Health Legislation (Miscellaneous Amendments) (No. 2) 1994

SCHEDULE 1—AMENDMENT OF MEDICAL PRACTICE ACT
1992—*continued*

(3) Schedule 5 (**Savings and transitional provisions**):

(a) Omit clause 2 (1), insert instead:

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: 5

(a) this Act;

(b) the Health Legislation (Miscellaneous Amendments) Act (No. 2) 1994. 10

(b) From clause 2 (2), omit “this Act”, insert instead “the Act concerned”.

(c) After clause 19, insert:

**Part 4—Provisions consequent on enactment of the
Health Legislation (Miscellaneous Amendments) Act
(No. 2) 1994** 15

Definitions

20. In this Part, “the Act” means the Health Legislation (Miscellaneous Amendments) Act (No. 2) 1994.

Suspension or deregistration 20

21. (1) A finding referred to in section 64 (1) (c) (as inserted by Schedule 1 (1) to the Act) and made after the commencement of that Schedule item may operate to authorise the making of an order under section 64 (1) even if: 25

(a) the finding is made in relation to a crime that was committed; or

(b) the complaint concerned was made,
before the commencement of Schedule 1 (1).

(2) However, subclause (1) does not apply if the crime concerned was committed on or after 1 July 1993 (the date of the repeal of the Medical Practitioners Act 1938) and before the date of the commencement of Schedule 1 (1). 30

(3) A finding referred to in section 64 (1) (d) (as inserted by Schedule 1 (1) to the Act) does not operate to authorise the making of an order under section 64 (1) if the complaint concerned was made before the commencement of Schedule 1 (1). 35

Health Legislation (Miscellaneous Amendments) (No. 2) 1994

SCHEDULE 1—AMENDMENT OF MEDICAL PRACTICE ACT
1992—*continued*

Explanatory note

Suspension or deregistration (item (1))

5 At present, the Medical Tribunal may suspend a person from practising medicine for a specified period, or direct that a person be deregistered, only if the Tribunal is satisfied (when making a finding on a complaint about the person) that the person is not competent to practise medicine or is guilty of professional misconduct.

10 Item (1) of the proposed amendments establishes a situation similar to the situation that prevailed under the (repealed) Medical Practitioners Act 1938 by providing that a person's criminal conviction (of a serious offence) or lack of good character may also constitute grounds for suspension or deregistration.

Award of costs (item (2))

15 At present, clause 13 (1) of Schedule 2 to the Act empowers the Medical Tribunal to award costs against the following persons in proceedings before it:

- the complainant (if any)
- the registered medical practitioner concerned
- any person granted leave to appear in the proceedings.

20 Item (2) of the proposed amendments makes it clear that costs may be awarded against *any* person entitled to appear in the proceedings concerned.

Savings and transitional regulations (item (3))

25 Item (3) (a) of the proposed amendments empowers the making of regulations under the Medical Practice Act 1992 containing provisions of a savings or transitional nature that are consequential on the enactment of this Act. Item (3) (b) makes a consequential amendment.

30 Item (3) (c) relates to the new grounds for suspension or deregistration of a medical practitioner that are inserted in the Act by Schedule 1 (1) to this Act. (Those new grounds are conviction for a serious crime or a finding that the practitioner is not of good character. They were also grounds for suspension or deregistration under the Medical Practitioners Act 1938.)

Item (3) (c) provides that a finding made after the enactment of Schedule 1 (1) relating to a crime committed, or on a complaint made, before that enactment may operate to authorise the making of an order under section 64 (1) for the suspension or deregistration of the person the subject of the complaint.

35 However, such a finding will not operate to authorise the making of such an order if the crime concerned was committed on or after the date of the repeal of the Medical Practitioners Act 1938 and before the commencement of Schedule 1 (1) to this Act. This exclusion is in keeping with clause 1 of Article 15 of the International Covenant on Civil and Political Rights, which provides (in part) that there is not to be imposed a heavier penalty for a criminal offence than the penalty applicable at the time the crime was committed.

40 Item (3) (c) also ensures that a finding that a person is not of good character will not operate to authorise the making of an order for the suspension or deregistration of the person if the finding relates to a complaint that was made before the commencement
45 of the new provisions.

SCHEDULE 2—AMENDMENT OF POISONS ACT 1966

(Sec. 3)

Section 24 (Regulations under Div. 1 of Part 4):

In section 24 (1) (d), before “regulating”, insert
“prohibiting or”.

5

Validation

Any regulation made, or taken to be made, under the Poisons Act 1966 before the commencement of the amendment made to that Act by this Schedule that would have been validly made had the amendment been in force at the time the regulation was made, is taken to have been validly made.

10

Explanatory note

The proposed amendment removes any doubt as to whether the Governor’s power, under section 24 (1) (d) of the Poisons Act 1966, to regulate certain activities includes the power to prohibit those activities. The activities concerned are:

- (a) the issue by medical practitioners, dentists and veterinary surgeons of prescriptions for drugs of addiction; and
- (b) the dispensing of such prescriptions; and
- (c) the supply of drugs of addiction under such prescriptions.

15

**SCHEDULE 3—AMENDMENT OF PUBLIC HEALTH ACT
1991**

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(Sec. 3)

(1) Section 50 (Proceedings for offences under Part 4):

Omit section 50 (4), insert instead:

(4) Proceedings for an offence under this Part may be commenced at any time within, but not later than, 2 years after the time at which the offence is alleged to have been committed.

25

(2) Section 59 (Sale of tobacco to person under 18 prohibited):

Omit section 59 (2), insert instead:

(2) It is a defence to a prosecution for an offence under subsection (1) if the court is satisfied that:

30

- (a) the person to whom the tobacco was sold was over the age of 14 years at the time of the sale; and

Health Legislation (Miscellaneous Amendments) (No. 2) 1994

SCHEDULE 3—AMENDMENT OF PUBLIC HEALTH ACT 1991—
continued

5 (b) at or before the time of the sale there was produced to the defendant approved documentary evidence that might reasonably be accepted as applying to the person to whom the tobacco was sold and as proving that the person was at least 18 years of age.

10 (3) An environmental health officer is an authorised person for the purposes of section 152A (Confiscation of proof of age cards) of the Liquor Act 1982.

(4) In this section:

15 “approved documentary evidence” means evidence that is of a kind prescribed by the regulations for the purposes of section 117E (Reasonable evidence of age) of the Liquor Act 1982.

(3) Section 69:

Omit the section, insert instead:

Chief executive officer to provide information

20 69. (1) A person who is providing professional care or treatment at a hospital and who has reasonable grounds for believing that:

- 25 (a) a patient at the hospital has a notifiable disease; or
(b) a person who was a patient at the hospital had a notifiable disease at any time during the person’s stay in the hospital,

has a duty, and is authorised, to ensure that the chief executive officer of the hospital is aware of the matter.

30 (2) The chief executive officer of the hospital must provide the Director-General, in accordance with the regulations, with such information as may be prescribed by the regulations in relation to:

- 35 (a) a patient at the hospital who has a notifiable disease; or
(b) a person who was a patient at the hospital and who had a notifiable disease at any time during the person’s stay in the hospital.

Maximum penalty: 50 penalty units.

Health Legislation (Miscellaneous Amendments) (No. 2) 1994

SCHEDULE 3—AMENDMENT OF PUBLIC HEALTH ACT 1991—
continued

(3) The chief executive officer's obligation under subsection (2) arises immediately the chief executive officer is made aware, or otherwise has reasonable grounds for believing, that the patient (or person who was a patient) concerned has (or had) the disease. 5

(4) It is a defence to a prosecution under this section if the chief executive officer satisfies the court that he or she had reasonable cause to believe that the information concerned had been provided to the Director-General. 10

(5) Proceedings for an offence under this section may be commenced at any time within, but not later than, 2 years after the time at which the offence is alleged to have been committed. 15

(4) Section 79 (**Proceedings for offences**):

Omit section 79 (2), insert instead:

(2) This section does not affect the operation of section 50 or 69.

(5) Schedule 4 (**Savings and transitional provisions**): 20

(a) After clause 1 (2), insert:

(2A) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the Health Legislation (Miscellaneous Amendments) Act (No. 2) 1994. 25

(2B) A provision referred to in subclause (2A) may, if the regulations so provide, take effect from the date of assent to the Health Legislation (Miscellaneous Amendments) Act (No. 2) 1994 or a later date.

(b) In clause 1 (3), after "subclause (1)", insert "or (2A)". 30

(c) After clause 9, insert:

Part 3—Provisions consequent on enactment of the Health Legislation (Miscellaneous Amendments) Act (No. 2) 1994

Definitions 35

10. In this Part, "the Act" means the Health Legislation (Miscellaneous Amendments) Act (No. 2) 1994.

SCHEDULE 3—AMENDMENT OF PUBLIC HEALTH ACT 1991—
continued

Proceedings for offences under Part 4 (sec. 50)

5 11. Section 50 (4), as replaced by Schedule 3 (1) to the Act, does not apply in respect of an offence alleged to have been committed before the replacement of that subsection. Section 50 (4), as in force immediately before its replacement by Schedule 3 (1), continues to apply in respect of any such offence as if it had not been replaced.

10 **Sale of tobacco to persons under 18 (sec. 59)**

12. Section 59, as amended by Schedule 3 (2) to the Act, does not apply in respect of a prosecution for an offence under that section alleged to have been committed before the commencement of the amendment. Section 59, as in force immediately before the commencement of that amendment, continues to apply in respect of any such proceedings as if the amendment had not been made.

Chief executive officer to provide information (sec. 69)

20 13. (1) The duty, under section 69 (1), as inserted by Schedule 3 (3) to the Act, of a person who is providing professional care or treatment at a hospital does not apply in respect of patients at the hospital before the commencement of Schedule 3 (3).

25 (2) The obligation, under section 69 (2), as inserted by Schedule 3 (3) to the Act, of the chief executive officer of a hospital does not apply in respect of patients at the hospital before the commencement of Schedule 3 (3). However, section 69, as in force immediately before the commencement of Schedule 3 (3), continues to apply in relation to information, concerning persons suffering from a notifiable disease who are, or who have been, patients at the hospital, that the chief executive officer possessed immediately before that commencement.

Explanatory note

35 **Time for instituting proceedings for certain offences (item (1))**

Item (1) of the proposed amendments increases from 6 months to 2 years the time allowed for the commencement of proceedings for offences relating to microbial control.

40 **Proof of age card (item (2))**

Section 59 makes it an offence to sell tobacco to a person who is under 18 years of age. The section currently provides a defence if the defendant can satisfy the court that the person to whom the tobacco was sold was believed on reasonable grounds to be at least 18 years of age.

Health Legislation (Miscellaneous Amendments) (No. 2) 1994

**SCHEDULE 3—AMENDMENT OF PUBLIC HEALTH ACT 1991—
*continued***

- The proposed amendment replaces this defence with a defence that requires the tobacco seller to have sighted documentary evidence of age of a kind prescribed by regulation under the Liquor Act 1982 (for the purposes of parallel provisions of that Act). Currently, the prescribed forms of evidence are a proof of age card (issued by the Roads and Traffic Authority), a driver's licence or a passport. The new defence will apply only if the person to whom the tobacco was sold was at least 14 years of age (consistently with parallel provisions of the Liquor Act 1982). 5
- The proposed amendment also makes environmental health officers (who have enforcement functions under the Public Health Act 1991) authorised persons for the purposes of a new provision of the Liquor Act 1982 which provides for the confiscation of proof of age cards being unlawfully or wrongfully used. 10
- Notifications to Director-General in relation to certain medical conditions (item (3))** 15
- Item (3) of the proposed amendments repeals and re-enacts a provision relating to the duty of a chief executive officer of a hospital to provide the Director-General of the Department of Health with information concerning persons suffering from a notifiable disease.
- The new section makes it clear that the chief executive officer's failure to provide the information concerned will be an offence. Proceedings for such an offence may be taken up to 2 years after the time the offence is alleged to have been committed. 20
- A person providing professional care or treatment at a hospital who has reasonable grounds for believing that a patient has, or an ex-patient (during the ex-patient's stay in the hospital) had, a notifiable disease will have a duty to ensure that the chief executive officer is aware of the matter. 25
- Consequential amendment (item (4))**
- Item (4) is consequential on item (1) and part of item (3).
- Savings and transitional provisions (item (5))**
- Item (5) (a) of the proposed amendments empowers the making of regulations under the Medical Practice Act 1992 containing provisions of a savings or transitional nature that are consequential on the enactment of this Act. Item 5 (b) makes a consequential amendment. 30
- Item (5) (c) ensures that the amendments made to sections 50, 59 and 69 do not have retrospective effect. 35

**SCHEDULE 4—AMENDMENT OF WALKER TRUSTS ACT
1938**

(Sec. 3)

(1) Section 9A:

After section 9, insert:

Dame Eadith Walker Hospital

9A. (1) On the commencement of Schedule 4 (1) to the Health Legislation (Miscellaneous Amendments) Act (No. 2) 1994:

40

SCHEDULE 4—AMENDMENT OF WALKER TRUSTS ACT
1938—*continued*

- 5 (a) the Dame Eadith Walker Convalescent Hospital for Men is renamed the Dame Eadith Walker Hospital; and
- (b) a reference in any Act or instrument to the Dame Eadith Walker Convalescent Hospital for Men is to be construed as a reference to the Dame Eadith Walker Hospital.
- 10 (2) Despite the other provisions of this Act, the Dame Eadith Walker Hospital may be used for the purpose of the provision of public health services.

(2) Section 19B:

After section 19A, insert:

15 **Validation**

19B. The Central Sydney Area Health Service constituted under the Area Health Services Act 1986 is taken always to have had power to agree to, and to allow, the Dame Eadith Walker Convalescent Hospital for Men to be used for the purpose of renal dialysis.

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Explanatory note

The proposed amendments:

- 25 (a) rename the Dame Eadith Walker Convalescent Hospital for Men as the Dame Eadith Walker Hospital and remove the limitation on the use of that Hospital to enable it to be used for the provision of public health services generally (item (1)); and
- (b) validate the Central Sydney Area Health Service's current use of the Hospital for renal dialysis (item (2)).
-