

First print



New South Wales

Health Legislation Amendment Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

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 that the person has been convicted of an offence (and the circumstances of the offence render the person unfit to practise medicine) or on the grounds of the 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*,
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- (e) 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,
- (f) to enable regulations to be made for or with respect to the infection control standards to be followed by dental technicians, physiotherapists and podiatrists,
- (g) to make consequential amendments.

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

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act will 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 object described above:

Dental Technicians Registration Act 1975

Medical Practice Act 1992

Physiotherapists Registration Act 1945

Podiatrists Act 1989

Poisons Act 1966

Public Health Act 1991.



New South Wales

Health Legislation Amendment Bill 1995

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New South Wales

Health Legislation Amendment Bill 1995

No. , 1995

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 and notifications of notifiable diseases, and various other Acts in relation to infection control standards; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Health Legislation Amendment Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of various Acts

Each Act specified in Schedules 1–4 is amended as set out in those Schedules.

4 Explanatory notes 10

The matter appearing under the heading “Explanatory note” in any of the Schedules to this Act does not form part of this Act.

Schedule 1 Amendment of Medical Practice Act 1992

(Section 3)

[1] Section 64 Tribunal can suspend or deregister in certain cases

Insert at the end of section 64 (1) (b): 5

, or

(c) that the person has been convicted of an offence (either in or outside New South Wales) and the circumstances of the offence render the person unfit in the public interest to practise medicine, or 10

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

[2] Schedule 2 Proceedings before a committee or the Tribunal

Omit "granted leave to appear" from clause 13 (1).

Insert instead "entitled to appear (whether as of right or because leave to appear has been granted)". 15

[3] Schedule 5 Savings and transitional provisions

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: 20

this Act

the Health Legislation Amendment Act 1995.

[4] Schedule 5, clause 2 (2)

Omit "this Act". Insert instead "the Act concerned".

[5] Schedule 5, Part 4

Insert after clause 19:

**Part 4 Provisions consequent on enactment of the
Health Legislation Amendment Act 1995**

20 Definition 5

In this Part, *the Act* means the *Health Legislation Amendment Act 1995*.

21 Suspension or deregistration

- (1) A finding referred to in section 64 (1) (c) and made after the commencement of Schedule 1 (1) to the Act authorises the making of an order under section 64 (1) even if: 10
- (a) the finding is made in relation to an offence that was committed, or
- (b) the complaint concerned was made, 15
before that commencement.
- (2) However, subclause (1) does not apply if the offence 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) to the Act. 20
- (3) A finding referred to in section 64 (1) (d) does not authorise the making of an order under section 64 (1) if the complaint concerned was made before the commencement of Schedule 1 (1) to the Act. 25

Explanatory note

Suspension or deregistration (item (1))

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. 30

Item (1) of the proposed amendments establishes a situation similar to the situation that prevailed under the old *Medical Practitioners Act 1938* by providing that a person's criminal conviction (where the circumstances of the offence render the person unfit to practise medicine) or lack of good character also constitute grounds for suspension or deregistration.

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Award of costs (item (2))

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.

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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 (items (3)–(5))

Item (3) 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 (4) makes a consequential amendment.

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Item (5) 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 an offence, where the circumstances render the person unfit to practise medicine, or a finding that the practitioner is not of good character, and are similar to the grounds for suspension or deregistration under the old *Medical Practitioners Act 1938*.)

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Item (5) provides that a finding made after the enactment of Schedule 1 (1) relating to an offence 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.

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However, such a finding will not operate to authorise the making of such an order if the offence 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 an offence than the penalty applicable at the time the offence was committed. Item (5) 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 of the new provisions.

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Schedule 2 Amendment of Poisons Act 1966

(Section 3)

Section 24 Regulations under Division 1 of Part 4

Insert "prohibiting or" before "regulating" in section 24 (1) (d).

Validation

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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.

Explanatory note

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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.

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Schedule 3 Amendment of Public Health Act 1991

(Section 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. 5

[2] Section 69

Omit the section. Insert instead: 10

69 Chief executive officer to provide information

- (1) A person who is providing professional care or treatment at a hospital and who has reasonable grounds for believing that:
- (a) a patient at the hospital has a notifiable disease, or 15
- (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. 20
- (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:
- (a) a patient at the hospital who has a notifiable disease, or 25
- (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. 30

- (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.
- (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. 10

[3] Section 79 Proceedings for offences

Omit section 79 (2). Insert instead: 15

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

[4] Schedule 4 Savings and transitional provisions

Insert after clause 1 (2):

- (2A) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Health Legislation Amendment Act 1995*. 20
- (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 Amendment Act 1995* or a later date. 25

[5] Schedule 4, clause 1 (3)

Insert "or (2A)" after "subclause (1)".

[6] Schedule 4, Part 3

Insert after clause 9:

Part 3 Provisions consequent on enactment of the Health Legislation Amendment Act 1995

10 Definition

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In this Part, *the Act* means the *Health Legislation Amendment Act 1995*.

11 Proceedings for offences under Part 4 (section 50)

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) to the Act, continues to apply in respect of any such offence as if it had not been replaced.

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12 Chief executive officer to provide information (section 69)

(1) The duty, under section 69 (1), as inserted by Schedule 3 (2) to the Act, of a person who is providing professional care or treatment at a hospital does not apply in respect of a period during which a person was a patient at the hospital before the commencement of Schedule 3 (2) to the Act.

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(2) The obligation, under section 69 (2), as inserted by Schedule 3 (2) to the Act, of the chief executive officer of a hospital does not apply in respect of a period during which a person was a patient at the hospital before the commencement of Schedule 3 (2) to the Act. However, section 69, as in force immediately before the commencement of Schedule 3 (2) to the Act, 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.

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Explanatory note

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.

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Notifications to Director-General in relation to certain medical conditions (item (2))

Item (2) 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.

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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.

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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.

Consequential amendment (item (3))

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Item (3) is consequential on item (1) and part of item (2).

Savings and transitional provisions (item (4))

Item (4) of the proposed amendments empowers the making of regulations containing provisions of a savings or transitional nature that are consequential on the enactment of this Act. Item (5) makes a consequential amendment.

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Item (6) ensures that the amendments made to sections 50 and 69 do not have retrospective effect.

Schedule 4 Amendments relating to standards for control of infection

(Section 3)

4.1 Dental Technicians Registration Act 1975 No 40

Section 35 Regulations

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Insert “and by dental technicians in carrying out technical work” after “prosthetics” in section 35 (2) (j).

4.2 Physiotherapists Registration Act 1945 No 9

Section 33 Regulations

Insert after section 33 (1) (h):

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- (i) for or with respect to infection control standards to be followed by physiotherapists in the practice of physiotherapy.

4.3 Podiatrists Act 1989 No 23

Section 34 Regulations

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Insert at the end of section 34 (2) (k):

, and

- (l) infection control standards to be followed by registered podiatrists in the practice of podiatry.

Health Legislation Amendment Bill 1995

Schedule 4 Amendments relating to standards for control of infection

Explanatory note

Infection control standards (Schedule 4)

The amendments to the *Dental Technicians Registration Act 1975*, the *Physiotherapists Registration Act 1945* and the *Podiatrists Act 1989* enable regulations to be made concerning the standards for controlling infection that must be followed by dental technicians, physiotherapists and podiatrists. This regulation making power is designed, in particular, to enhance protection against HIV infection and other infectious diseases.

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HEALTH LEGISLATION AMENDMENT BILL 1995

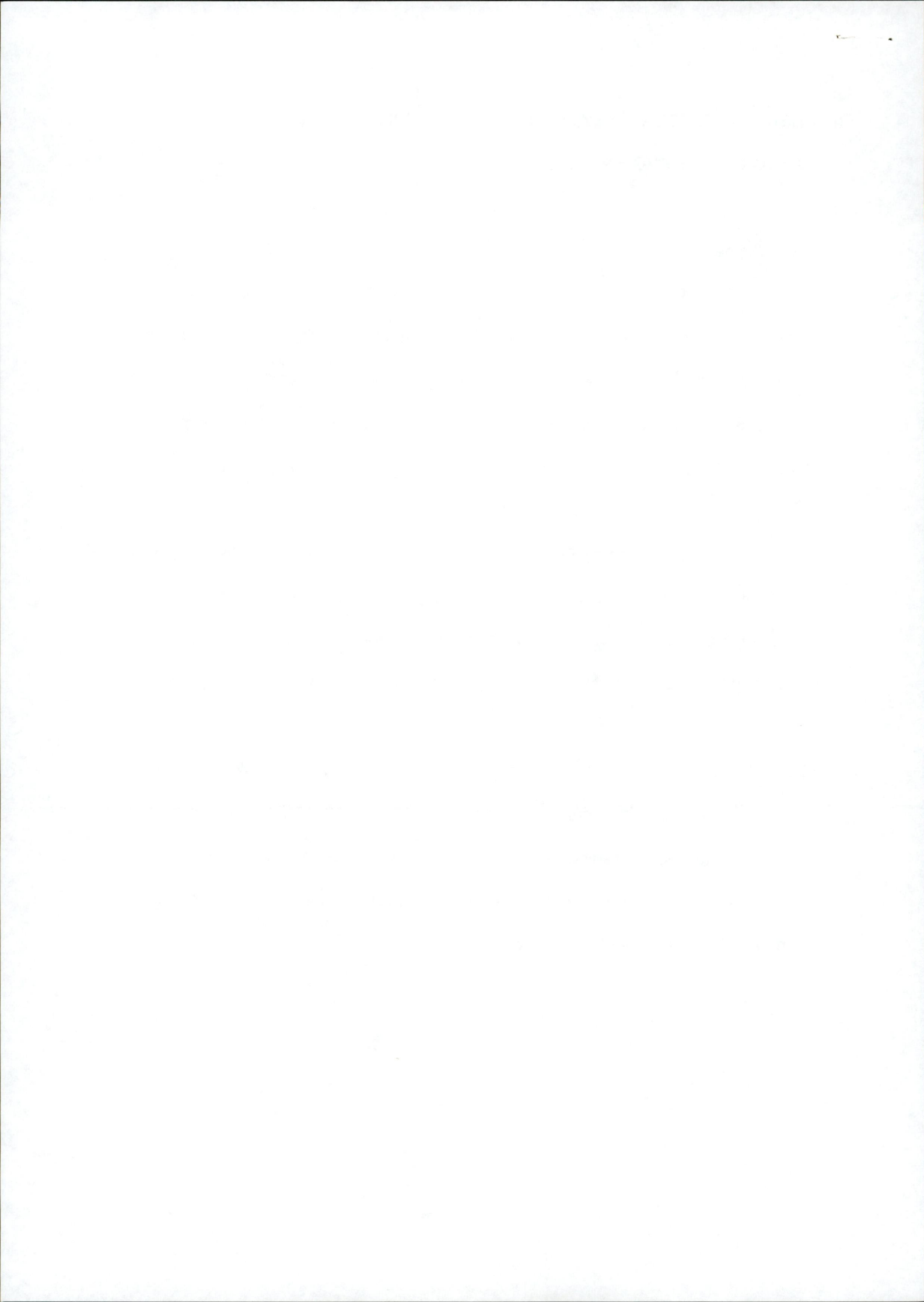
SECOND READING SPEECH

Mr President,

The Bill amends several pieces of Health legislation to clarify existing legislative provisions, achieve greater consistency in legislation and to address deficiencies which have recently become apparent in the operation of the various Acts. The amendments to each Act are set out in separate schedules of the Bill.

Schedule 1 contains amendments to the Medical Practice Act. In 1992, the 1938 Medical Practitioners Act was repealed and replaced by a new statute. The 1992 Medical Practice Act includes streamlined provisions for the registration of medical practitioners and complaints and disciplinary action relating to medical practitioners.

Both the 1938 Act and the 1992 Act set out similar grounds for making a complaint against a registered medical practitioner. The 1992 Act specifies that complaints can be made about a registered medical practitioner in relation to a criminal conviction, unsatisfactory professional conduct or professional misconduct, lack of competence, impairment or character.



While the 1992 Act specifies that a complaint may be made under any of these five broad headings, section 64 provides that suspension or deregistration is possible only in relation to complaints where the Medical Tribunal is satisfied that the person is "not competent to practise medicine" or is "guilty of professional misconduct". It does not allow the Tribunal to suspend or deregister a medical practitioner on the basis of a finding about a complaint that the practitioner is not of good character or has been convicted of a criminal offence. This is what the Bill proposes to correct.

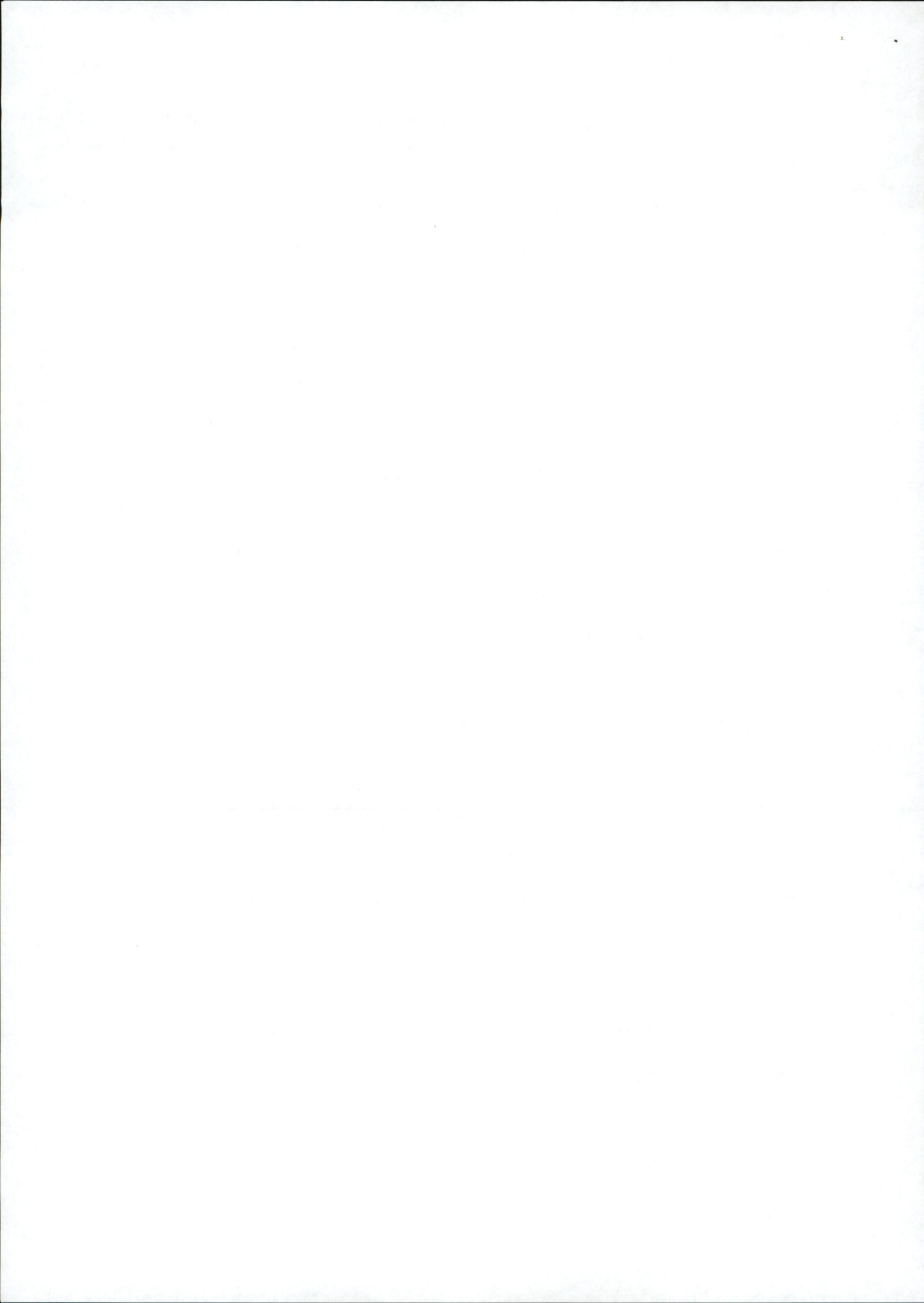
The Medical Board brought to attention this anomaly in the 1992 Act, which allows a complaint to be lodged that a registered medical practitioner is not of good character, or has been convicted of a criminal offence, and empowers the Medical Tribunal to conduct an inquiry into such a complaint, but does not allow the Tribunal to suspend or deregister a medical practitioner on the basis of such a complaint.

In contrast, the provisions of the 1938 Act gave clear powers to suspend or deregister a registered practitioner where the Tribunal found that the practitioner was not of good character or had been convicted of a criminal offence. The Tribunal's power to suspend or deregister on these grounds was intended to be retained in the Medical Practice Act 1992. Similar powers exist in other health professional legislation.

There have been significant cases which arose under the 1938 Act where a criminal conviction has formed the basis for an order of deregistration or suspension by the Medical Tribunal. Similarly, a finding that a registered medical practitioner is "not of good character" has been of major significance in past decisions of the Tribunal to suspend or deregister.

Accordingly, Schedule 1 of the Bill amends section 64 of the Medical Practice Act to allow the Tribunal to suspend or deregister a medical practitioner where it finds that the practitioner is not of good character or has been convicted of a criminal offence where the circumstances of the offence are such as to render the person unfit to practise medicine. This re-establishes powers available to the Tribunal similar to those under the 1938 Medical Practitioners Act and is consistent with powers under other health professional registration Acts in NSW.

The wording of the amendment in relation to a practitioner's criminal conviction indicates that the Tribunal's power to suspend or deregister a practitioner is restricted to criminal convictions which render the person unfit in the public interest to practise medicine. The amendment makes it clear that the Tribunal's power does not extend to convictions for minor offences which would have no bearing on the person's ability to practise medicine and the Tribunal's protective jurisdiction. The amendment thus restores the essential power to the Tribunal to act to protect the public and ensures that the public interest is the guiding principle by which decisions to suspend or deregister a practitioner are made.



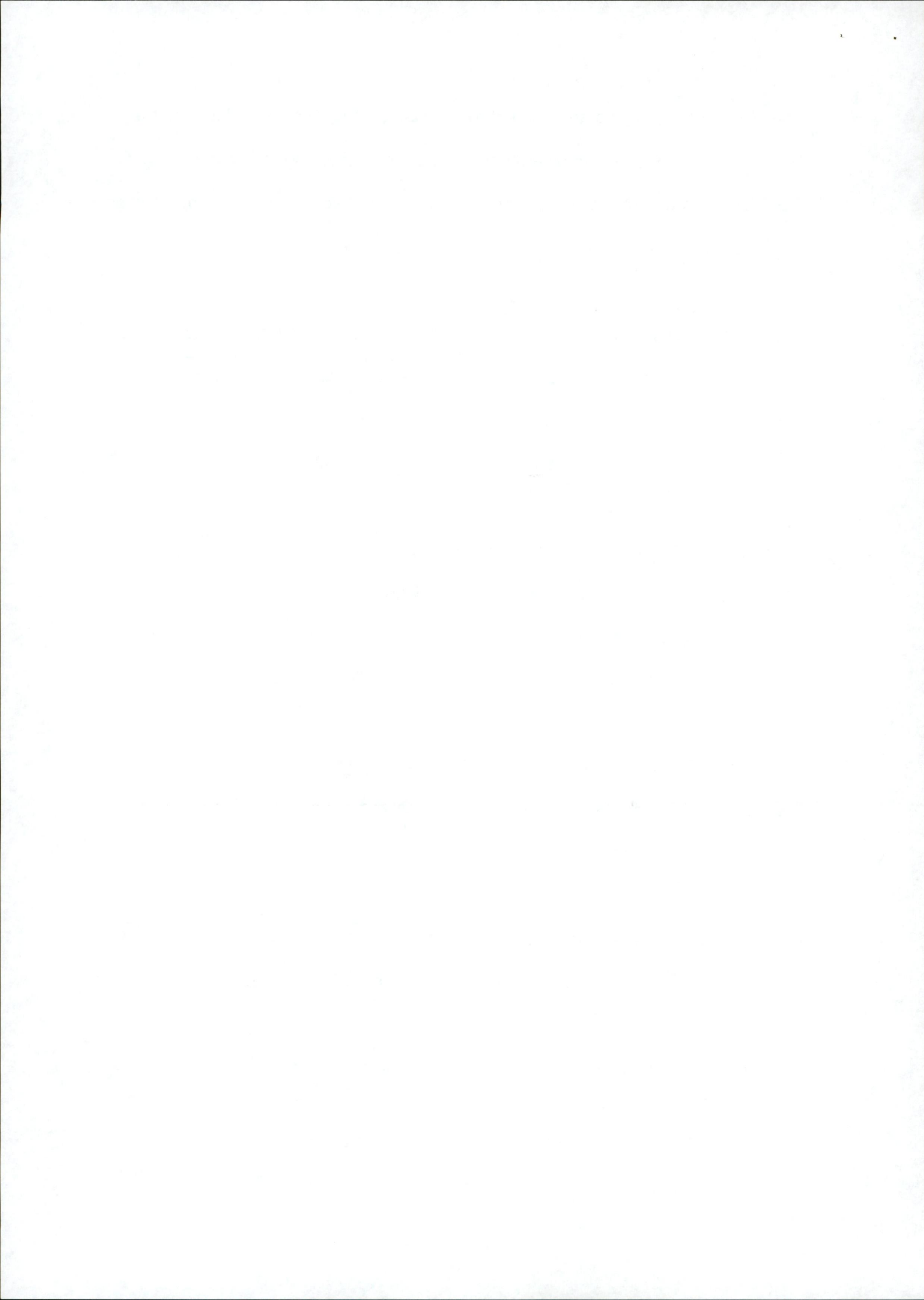
The Bill makes a second amendment to the Medical Practice Act, relating to the Medical Tribunal's power to award costs. The amendment will make it clear that the Tribunal may award costs against any person entitled to appear in proceedings before the Tribunal.

At present, clause 13 (1) of Schedule 2 of the Act provides that the Tribunal may order "the complainant, if any, the registered medical practitioner concerned, or any other person granted leave to appear at any inquiry or appeal before the Tribunal to pay such costs to such person as the Tribunal may determine".

The intention of this power to award costs was that it should apply to any person appearing before the Tribunal. However, the wording of this part of the Act creates an anomaly because it fails to include one particular category of persons who may bring Tribunal proceedings, that is, deregistered medical practitioners.

The Medical Tribunal will not always exercise its discretion to award costs under this provision. Examples of the types of circumstances where the Tribunal has exercised its discretion to award costs include:

- frivolous or vexatious proceedings - such as applications which repeatedly seek review of a single decision over a short period of time;
- proceedings which are considered an abuse of process; or

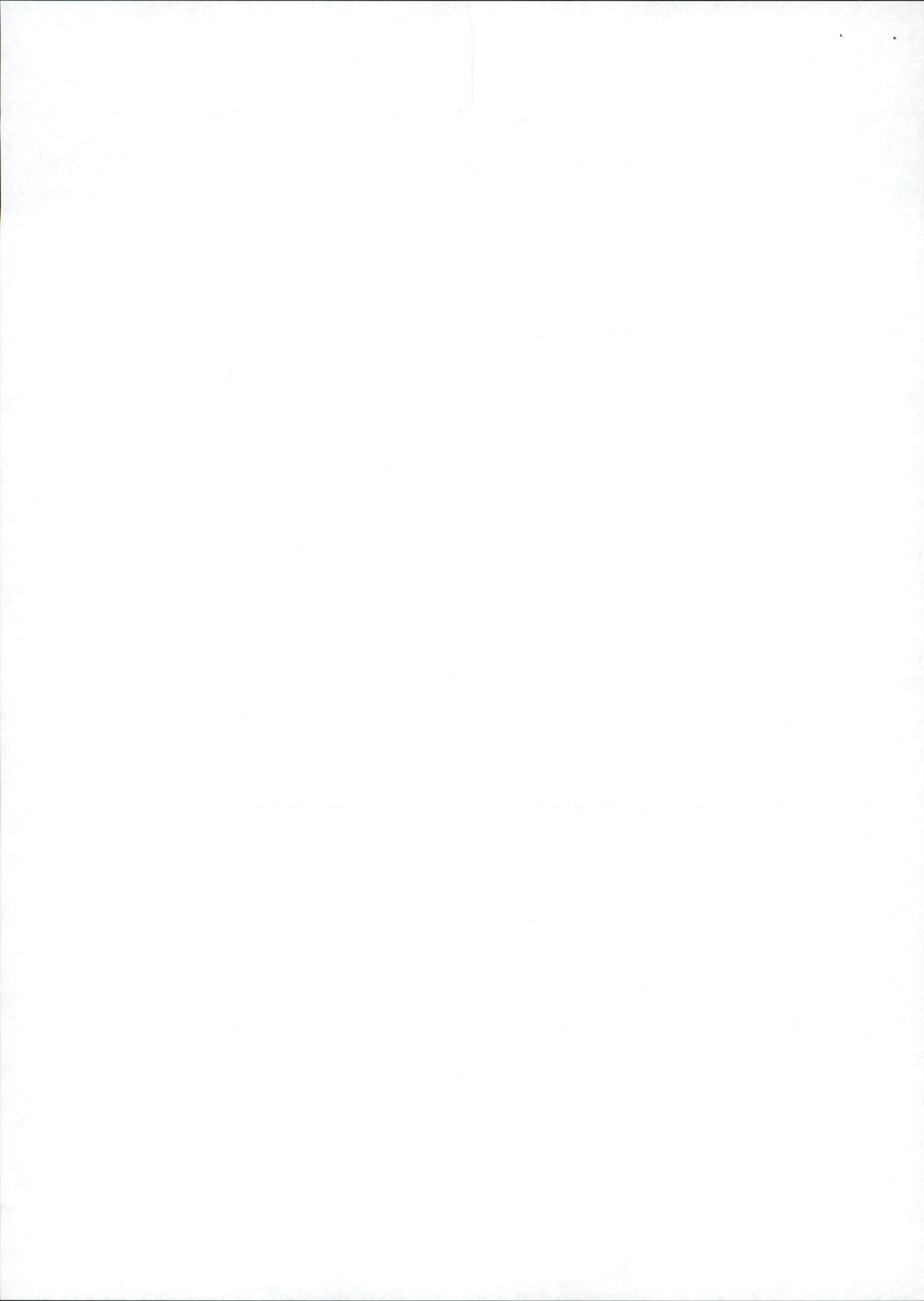


- proceedings which are withdrawn at the last minute, after detailed and time consuming preparation has been undertaken by other parties.

The Medical Board drew attention to this anomaly in a case where a former medical practitioner whose name had been removed from the register following a Medical Tribunal hearing, had brought proceedings under section 92 of the Act for a review of his deregistration. The application was rejected, and when the question of costs was considered it was noted that, as the person was not now a registered medical practitioner nor a person granted leave to appear, there was no power to award costs even if the Tribunal had wished to do so. This is inconsistent with the Tribunal's discretion to award costs as it sees fit against any other person appearing before it, depending on the individual circumstances of the case.

The amendment makes it clear that the Tribunal may award costs against any persons appearing before the Tribunal, whether under a grant of leave or as of right, such as deregistered medical practitioners. The power to award costs is available against all other parties. It is seen as a significant deterrent to vexatious proceedings. The amendment was sought in 1994 by the then Chairperson of the Medical Tribunal and by the President of the Medical Board.

Schedule 2 of the Bill amends the Poisons Act 1966, to put beyond doubt the Governor's power to make regulations under the Act concerning the withdrawal or limitation of certain practitioners' authority to prescribe drugs of addiction.



Under the Poisons Regulation, action is taken by the Director-General of the Health Department when the conduct of practitioners who may prescribe drugs of addiction (medical practitioners, dentists and veterinarians) comes to the Health Department's notice through unsound practices of prescription of those drugs to addicts or through self-administration.

In the majority of such cases, practitioners voluntarily agree to the imposition of controls on their authorities in relation to drugs of addiction. This may be by either total withdrawal of the authority to prescribe or imposition of conditions on prescription of those drugs.

This power has operated in relation to these practitioners for many years without challenge, under the previous 1967 Poisons Regulations.

The Poisons Regulation was remade on 1 September 1994, as a result of the review required by the Subordinate Legislation Act 1989. However, in the process of remaking the Regulation, the Parliamentary Counsel's Office expressed doubt as to the certainty of the statutory power under the Regulation to withdraw or restrict practitioners' authority to prescribe drugs of addiction.

Schedule 2 of the Bill makes minor amendments to section 24 of the Poisons Act to clarify that the Regulations may "prohibit" the right of medical practitioners, dentists and veterinarians to prescribe drugs of addiction in addition to regulating practitioners' authorities to prescribe.

As the amendment merely clarifies the power for the existing Regulation and confirms long-standing practice relating to prescribers' rights, there will be no change to existing procedures under this provision and no need to amend the Regulation itself.

Mr President, I turn now to the amendments to the Public Health Act contained in Schedule 3 of the Bill. The amendments will improve procedures for the notification of diseases by hospitals.

Section 69 of the Public Health Act places a duty on the chief executive of a hospital to provide the Director-General of the Health Department with information concerning persons suffering from a notifiable disease. This provision targets all hospitals in NSW, both public and private, and is designed to ensure that action can be taken as soon as possible to protect the health of the community from the spread of notifiable diseases.

However, as currently drafted, the provision is unclear as to the nature and extent of hospitals' notification obligations. Specifically, the current provision does not provide a clear trigger for notification, a time frame for notification or adequate sanctions when a hospital chief executive officer fails to notify.

Advice from the Department indicates that the inexactitude of these provisions has caused delays and other difficulties in the notification of diseases under section 69 of Act and has made the provision difficult to enforce.

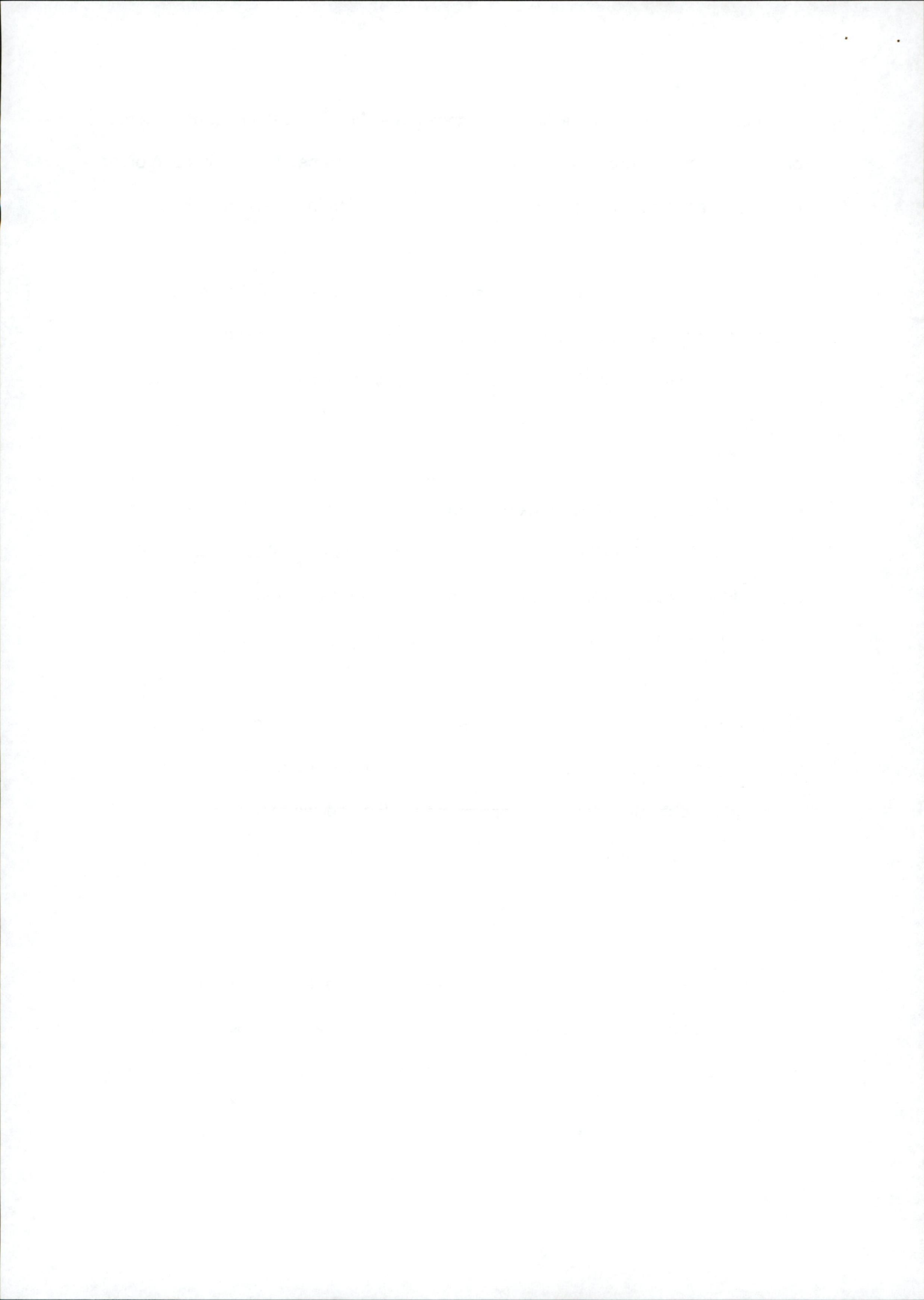
Many conditions of public health significance have short incubation periods - some only a few hours, others a few days. Public Health Units need early notice in order to respond effectively to minimise the spread of infection in the community.

Some examples of highly infectious diseases which require a rapid response by public health units and which are dealt with under the notification requirements are acute viral hepatitis (including hepatitis B and C), bacterial meningitis, cholera and plague.

Problems with section 69 were highlighted by a case of transmission of hepatitis C at a private hospital. In December 1993 the Health Department was notified of two cases of hepatitis C linked to an operating list ten months earlier. The delay in notification by the hospital prevented an effective public health response.

The amendments contained in the Bill improve notification procedures by redrafting the duties imposed under section 69 into a clearer, more workable form. The provision will also allow for regulations to set out the specific reporting requirements for individual diseases, including the required time period for notification.

The Bill also creates an offence under the Act for a hospital chief executive officer to fail to notify the Director-General of the required information immediately the chief executive officer becomes aware of a person with a notifiable disease, related to treatment at the hospital.



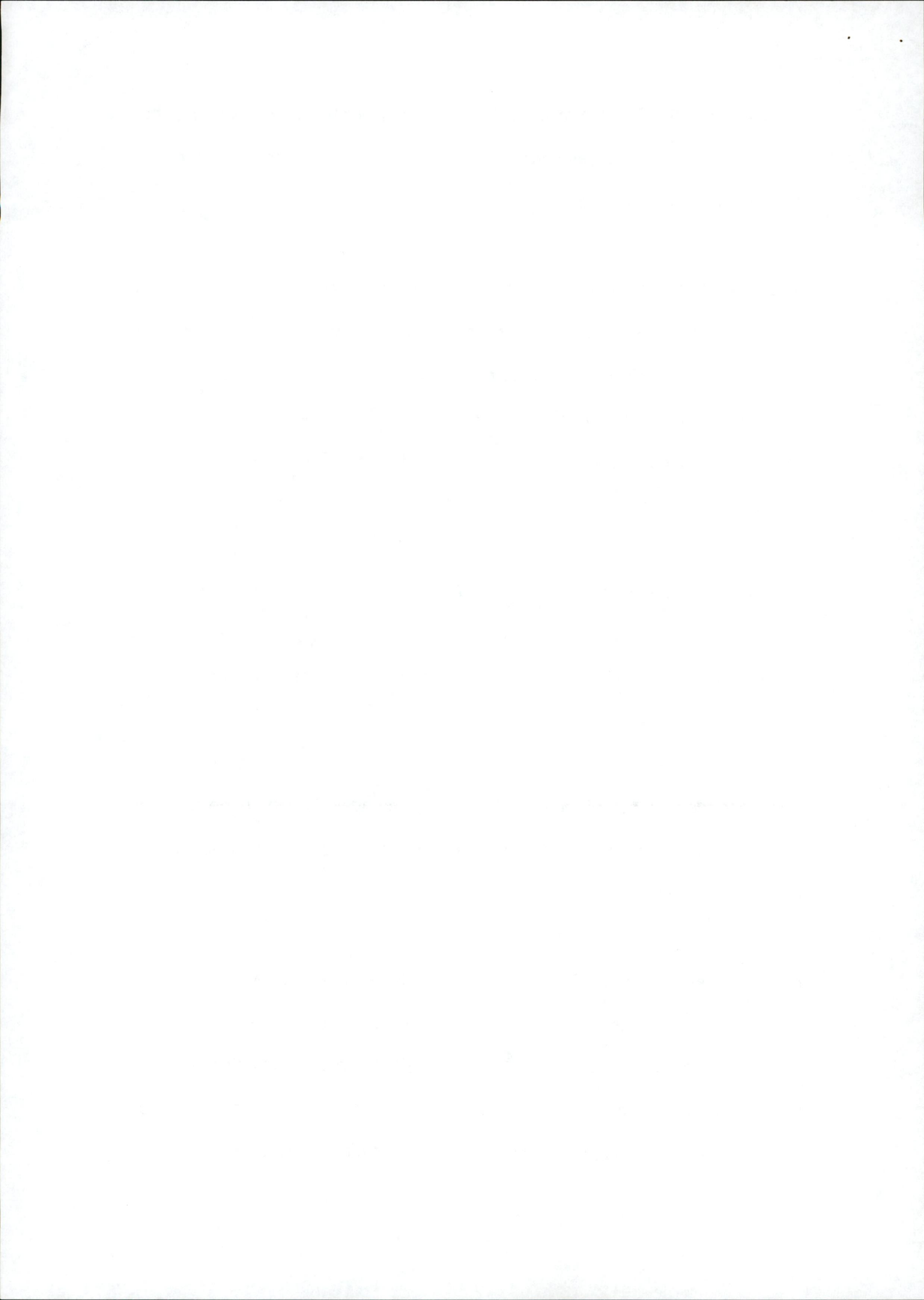
Schedule 3 of the Bill also extends the time within which prosecutions must be taken in respect of offences under the Public Health Act relating to legionella and the notification of diseases.

The case of transmission of hepatitis C at a private hospital highlighted the fact that the current limit of six months, within which a prosecution must be commenced, may limit the Department's ability to act in the interests of public health. With offences relating to legionella and the notification of diseases, the facts of the breach and the consequences may often take more than six months to appear, thereby rendering prosecution impossible because it is out of time.

The Bill provides a maximum time period of two years to commence a prosecution under Part 4 of the Public Health Act (which governs offences relating to legionella) and where hospitals fail to comply with notification requirements under the new section 69.

Subject to the passage of the Bill, an education campaign will be undertaken by my administration to ensure that the obligations of practitioners and hospitals are understood clearly.

Finally, Schedule 4 of the Bill contains amendments to the regulation-making powers under the Podiatrists Act 1989, the Physiotherapists Registration Act 1945 and the Dental Technicians Registration Act 1975 to enable regulations to be made for the adoption of infection control standards relating to procedures or treatments performed by podiatrists, physiotherapists and dental technicians respectively.



It is important to consider these amendments in the context of the Government's integrated approach to infection control. The Government is committed to providing an environment in the NSW health system which is as safe as possible for patients and health care workers. To this end, the Minister for Health has accelerated the process for implementation of infection control regulations under health professional registration legislation and the implementation of a revised NSW Health Department Infection Control Policy.

The NSW Health Infection Control Policy has been revised after an extensive consultation process involving learned colleges, health care workers' professional organisations, industrial organisations and other key stakeholders in the Department and health system. The Policy will be released as a Departmental Circular to complement the introduction of regulations. The Policy will apply to all public health care facilities. Private hospitals, nursing homes and day procedure centres will be required to implement infection control policy as a condition of licensing. Regulations to this effect are presently being drafted.

The Department has developed an implementation strategy for the infection control policy. The strategy incorporates provisions for the development and implementation of training strategies; the establishment of statewide nosocomial and occupational exposure surveillance systems; the establishment of a 24 hour needlestick support, information and referral service for health care workers; the establishment of an infection control reference centre; and the revision of skin penetration guidelines.

In relation to health professionals, a regulation-making power under the Nurses Act 1991 enables infection control standards to be established for all nurses, including those who may operate independently, such as midwives.

In addition, in 1994 amendments were made to the regulation-making powers contained in the Medical Practice Act 1992, the Dentists Act 1989 and the Dental Technicians Registration Act 1975, to allow for the enforcement of such standards of infection control for medical, surgical, dental and related procedures performed by medical practitioners, dentists and dental prosthetists respectively. Infection control standards for dental hygienists and dental therapists will be covered under the Dentists Act regulation-making powers, as their work constitutes a part of the practice of dentistry.

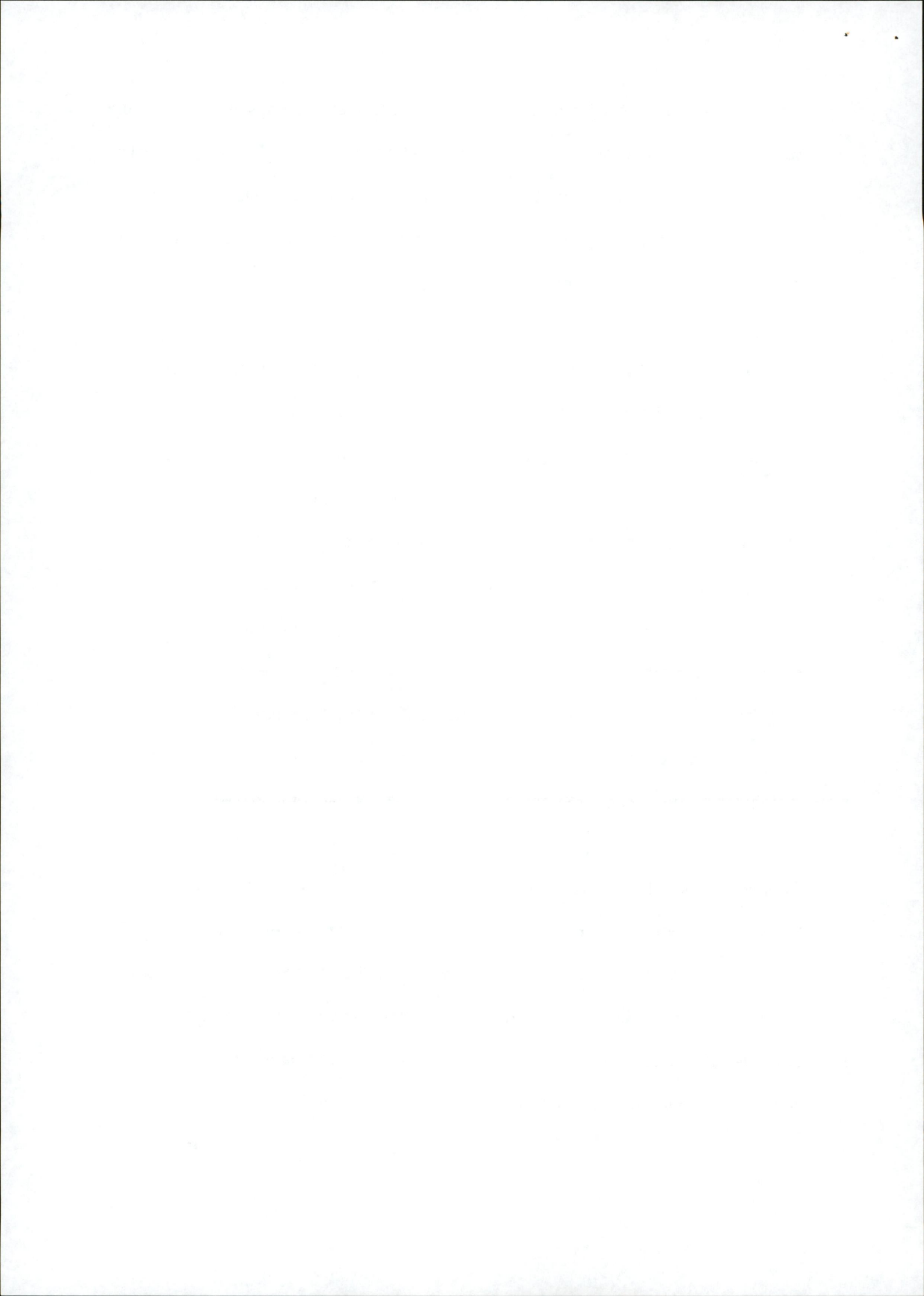
The Minister for Health directed the Department to expedite the development of regulations for these health professionals in order to enhance public protection in line with the Government's integrated approach to infection control. Regulations have now been drafted for incorporation under the regulations for these health professionals. Final consultation on these regulations is currently being undertaken by the Department with the Medical Services Committee and the Dental Board of NSW.

However, there is currently no statutory provision which allows for the enforcement of such standards of infection control for other registered health professionals whose practice could potentially include risks of cross-infection: podiatrists, physiotherapists and dental technicians.

Podiatrists perform invasive procedures on patients' feet and physiotherapists work with patients with infectious lung conditions and open wounds. The amendments to the regulation-making powers for podiatrists and physiotherapists contained in Schedule 4 of the Bill will ensure that appropriate standards of public protection are provided and can be enforced.

It should be noted that the Dental Technicians Registration Act 1975 provides for the regulation of both dental prosthetists and dental technicians. Amendments to the regulation-making power under this Act in 1994 in relation to infection control standards only applied to dental prosthetists, who have a direct clinical role in constructing and fitting patients' dentures. While dental technicians do not have direct patient contact, the Dental Technicians Registration Board and the Association of Dental Prosthetists Inc. expressed strong concern about the potential risk of cross infection which could be passed on to other patients or dental technicians. One example is when blood or saliva containing harmful bacteria are transmitted to a dental technician's laboratory by way of impressions and other materials that have been in a patient's mouth and not decontaminated.

At present this Act only allows regulations which specifically apply to dental technicians to cover hygiene to be observed by practitioners performing technical work. Earlier this year the Minister for Health undertook to seek an amendment to the Act, to ensure that the protection afforded by infection control legislation to other dental practitioners is extended to cover dental technicians. This amendment is incorporated in Schedule 4 of the Bill.



During development of the proposals contained in the Bill, the Health Department consulted with a range of organisations, including health professional and medical associations and certain industry groups, which have an interest in various aspects of the proposed amendments. Each of these proposed amendments has been endorsed by the Medical Services Committee, which includes representation from the major medical professional organisations.

In particular, the proposed amendments to the Medical Practice Act are supported by the Medical Board and the Medical Tribunal, as the regulatory authorities administering the Act. The Medical Practice Act amendments are also supported by the Health Care Complaints Commission. The amendments to existing regulation-making powers in the Podiatrists Act, Physiotherapists Registration Act and Dental Technicians Registration Act have been sought by the respective registration Boards.

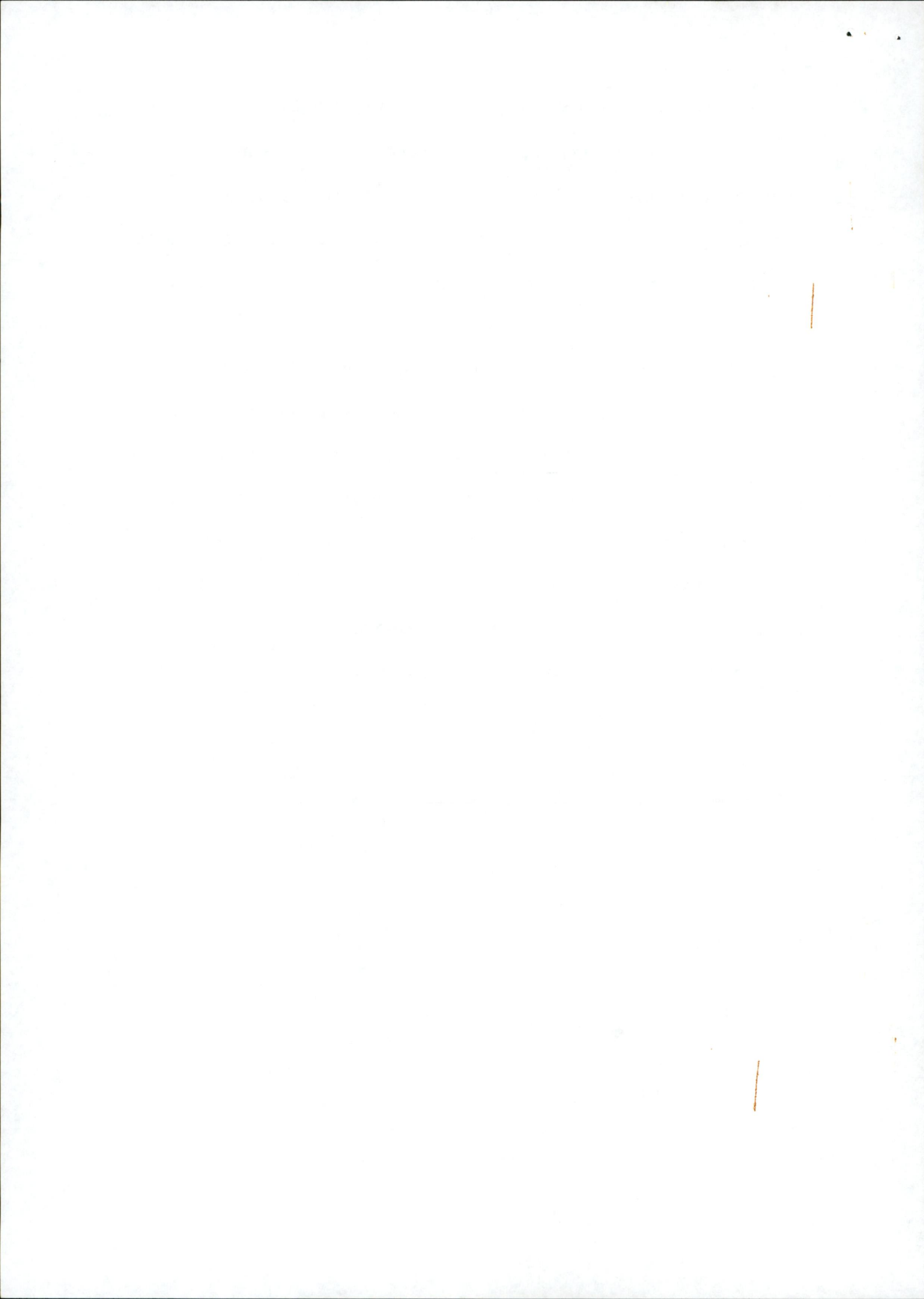
In summary, the provisions of the Bill will clarify and improve the effectiveness of the relevant principal Acts, which operate to promote or protect public health and safety. In particular, the Medical Practice Act amendments relating to the Tribunal's power to suspend or deregister a medical practitioner provide an important mechanism for public protection and are consistent with the former legislation regulating this profession and other health professional registration legislation.

The Poisons Act amendments, while minor drafting changes, clarify a significant aspect of the regulation of authorities to prescribe drugs of addiction.

The amendments to the Public Health Act in the Bill will assist public health action to protect the community from the spread of highly infectious diseases. The amendments will assist the Health Department to investigate possible breaches of notification provisions by hospitals and to prosecute offences relating to legionella bacteria and any failures by hospitals to notify specified infectious diseases.

Finally, the amendments to the regulation-making powers in legislation regulating podiatrists, physiotherapists and dental technicians are required in the interests of public health as part of the Government's integrated strategy on infection control, to provide the Governor with the same statutory power to make regulations concerning the standards of infection control to be followed by podiatrists, physiotherapists and dental technicians as the existing powers in other health registration Acts. The amendments will enhance protection of patients against HIV infection, other blood borne diseases and other types of infection.

I commend the Bill.





New South Wales

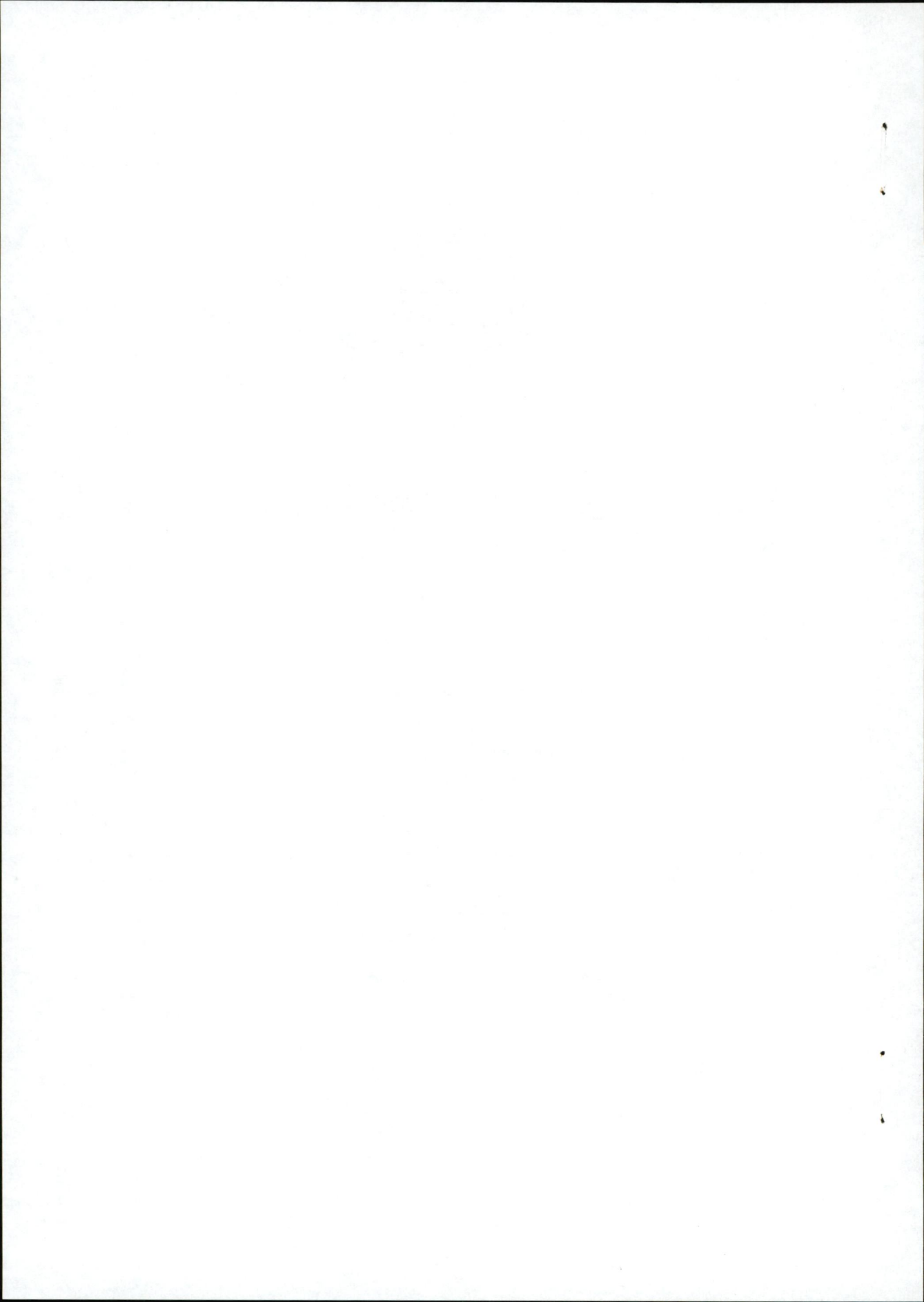
Health Legislation Amendment Act 1995 No 9

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New South Wales

Health Legislation Amendment Act 1995 No 9

Act No 9, 1995

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 and notifications of notifiable diseases, and various other Acts in relation to infection control standards; and for other purposes. [Assented to 9 June 1995]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Health Legislation Amendment Act 1995*.

2 Commencement

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

3 Amendment of various Acts

Each Act specified in Schedules 1–4 is amended as set out in those Schedules.

4 Explanatory notes

The matter appearing under the heading “Explanatory note” in any of the Schedules to this Act does not form part of this Act.

Schedule 1 Amendment of Medical Practice Act 1992

(Section 3)

[1] Section 64 Tribunal can suspend or deregister in certain cases

Insert at the end of section 64 (1) (b):

, or

- (c) that the person has been convicted of an offence (either in or outside New South Wales) and the circumstances of the offence render the person unfit in the public interest to practise medicine, or
- (d) that the person is not of good character.

[2] Schedule 2 Proceedings before a committee or the Tribunal

Omit "granted leave to appear" from clause 13 (1).

Insert instead "entitled to appear (whether as of right or because leave to appear has been granted)".

[3] Schedule 5 Savings and transitional provisions

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:

 this Act

 the Health Legislation Amendment Act 1995.

[4] Schedule 5, clause 2 (2)

Omit "this Act". Insert instead "the Act concerned".

[5] Schedule 5, Part 4

Insert after clause 19:

**Part 4 Provisions consequent on enactment of the
Health Legislation Amendment Act 1995**

20 Definition

In this Part, *the Act* means the *Health Legislation Amendment Act 1995*.

21 Suspension or deregistration

- (1) A finding referred to in section 64 (1) (c) and made after the commencement of Schedule 1 (1) to the Act authorises the making of an order under section 64 (1) even if:
 - (a) the finding is made in relation to an offence that was committed, or
 - (b) the complaint concerned was made, before that commencement.
- (2) However, subclause (1) does not apply if the offence 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) to the Act.
- (3) A finding referred to in section 64 (1) (d) does not authorise the making of an order under section 64 (1) if the complaint concerned was made before the commencement of Schedule 1 (1) to the Act.

Explanatory note

Suspension or deregistration (item (1))

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.

Item (1) of the proposed amendments establishes a situation similar to the situation that prevailed under the old *Medical Practitioners Act 1938* by providing that a person's criminal conviction (where the circumstances of the offence render the person unfit to practise medicine) or lack of good character also constitute grounds for suspension or deregistration.

Award of costs (item (2))

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.

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 (items (3)–(5))

Item (3) 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 (4) makes a consequential amendment.

Item (5) 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 an offence, where the circumstances render the person unfit to practise medicine, or a finding that the practitioner is not of good character, and are similar to the grounds for suspension or deregistration under the old *Medical Practitioners Act 1938*.)

Item (5) provides that a finding made after the enactment of Schedule 1 (1) relating to an offence 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.

However, such a finding will not operate to authorise the making of such an order if the offence 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 an offence than the penalty applicable at the time the offence was committed. Item (5) 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 of the new provisions.

Schedule 2 Amendment of Poisons Act 1966

(Section 3)

Section 24 Regulations under Division 1 of Part 4

Insert "prohibiting or" before "regulating" in section 24 (1) (d).

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.

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.

Schedule 3 Amendment of Public Health Act 1991

(Section 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.

[2] Section 69

Omit the section. Insert instead:

69 Chief executive officer to provide information

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

- (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.
- (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.
- (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.

[3] Section 79 Proceedings for offences

Omit section 79 (2). Insert instead:

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

[4] Schedule 4 Savings and transitional provisions

Insert after clause 1 (2):

- (2A) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Health Legislation Amendment Act 1995*.
- (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 Amendment Act 1995* or a later date.

[5] Schedule 4, clause 1 (3)

Insert "or (2A)" after "subclause (1)".

[6] Schedule 4, Part 3

Insert after clause 9:

Part 3 Provisions consequent on enactment of the Health Legislation Amendment Act 1995

10 Definition

In this Part, *the Act* means the *Health Legislation Amendment Act 1995*.

11 Proceedings for offences under Part 4 (section 50)

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) to the Act, continues to apply in respect of any such offence as if it had not been replaced.

12 Chief executive officer to provide information (section 69)

- (1) The duty, under section 69 (1), as inserted by Schedule 3 (2) to the Act, of a person who is providing professional care or treatment at a hospital does not apply in respect of a period during which a person was a patient at the hospital before the commencement of Schedule 3 (2) to the Act.
- (2) The obligation, under section 69 (2), as inserted by Schedule 3 (2) to the Act, of the chief executive officer of a hospital does not apply in respect of a period during which a person was a patient at the hospital before the commencement of Schedule 3 (2) to the Act. However, section 69, as in force immediately before the commencement of Schedule 3 (2) to the Act, 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

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.

Notifications to Director-General in relation to certain medical conditions (item (2))

Item (2) 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.

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.

Consequential amendment (item (3))

Item (3) is consequential on item (1) and part of item (2).

Savings and transitional provisions (item (4))

Item (4) of the proposed amendments empowers the making of regulations containing provisions of a savings or transitional nature that are consequential on the enactment of this Act. Item (5) makes a consequential amendment.

Item (6) ensures that the amendments made to sections 50 and 69 do not have retrospective effect.

Schedule 4 Amendments relating to standards for control of infection

(Section 3)

4.1 Dental Technicians Registration Act 1975 No 40

Section 35 Regulations

Insert "and by dental technicians in carrying out technical work" after "prosthetics" in section 35 (2) (j).

4.2 Physiotherapists Registration Act 1945 No 9

Section 33 Regulations

Insert after section 33 (1) (h):

- (i) for or with respect to infection control standards to be followed by physiotherapists in the practice of physiotherapy.

4.3 Podiatrists Act 1989 No 23

Section 34 Regulations

Insert at the end of section 34 (2) (k):

, and

- (l) infection control standards to be followed by registered podiatrists in the practice of podiatry.

Explanatory note

Infection control standards (Schedule 4))

The amendments to the *Dental Technicians Registration Act 1975*, the *Physiotherapists Registration Act 1945* and the *Podiatrists Act 1989* enable regulations to be made concerning the standards for controlling infection that must be followed by dental technicians, physiotherapists and podiatrists. This regulation making power is designed, in particular, to enhance protection against HIV infection and other infectious diseases.

[Minister's second reading speech made in—
Legislative Assembly on 23 May 1995
Legislative Council on 6 June 1995]

BY AUTHORITY