



New South Wales

Health Legislation Amendment Bill 2009

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Drug and Alcohol Treatment Act 2007*:
 - (i) to remove the requirement that a medical practitioner who grants a person a leave of absence from a treatment centre must be satisfied that the person is medically fit, and
 - (ii) to include a transitional provision that allows persons who have been detained for treatment under the *Inebriates Act 1912*, within an area that is subsequently prescribed for the purposes of the *Drug and Alcohol Treatment Act 2007*, to continue to be detained under the *Inebriates Act 1912*, and
 - (b) to amend the *Health Administration Act 1982* to provide that members of the Medical Services Committee may be appointed for 3 terms of office, with each term of office being 4 years, and
 - (c) to amend the *Health Care Complaints Act 1993*:
 - (i) to provide that the Health Care Complaints Commission (the **Commission**) may compel a person to give information, produce
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- documents or answer questions that would assist the Commission in assessing a complaint or carrying out an investigation, and
- (ii) to provide that following the assessment of a complaint the Commission is not required to give notice of its decision to a person in certain circumstances, and
 - (iii) to provide that following the investigation of a complaint the Commission may provide the outcomes of the investigation to certain persons and a report of the outcome of the investigation to the complainant, and
 - (iv) to provide that in circumstances in which the Director of Proceedings determines that a complaint should not be prosecuted before a disciplinary body, the Director may refer the complaint to the Commission for alternative action, and
 - (v) to provide that the Director of Proceedings may give notice of the Director's decision about whether or not to prosecute a complaint to certain persons, and
 - (vi) to provide that the Director of Proceedings may delegate his or her functions with respect to a particular complaint to an officer of the Commission, and
 - (vii) to provide that the Director of Proceedings may undertake functions imposed on the Commission by Acts other than the *Health Care Complaints Act 1993*, and
 - (viii) to provide that a person cannot be compelled to give evidence about, or produce documents containing, information obtained in exercising a function under the Act except in limited circumstances, and
 - (ix) to provide that the Commission, or a member of staff of the Commission, may disclose information obtained in exercising a function under the Act to certain persons, and
- (d) to amend the *Health Services Act 1997*:
- (i) to provide that if a board governed health corporation under that Act has fewer than 50 staff members there is no requirement to appoint a member of the NSW Health Service to the health corporation's board, and
 - (ii) to clarify that if the position of chief executive of a board governed health corporation is an executive position within the meaning of Part 3 of Chapter 9 of that Act, the chief executive is to be appointed under that Part, and
 - (iii) to provide that the protection from liability given to a person who provides expert advice or assistance in a review of the conduct of a visiting practitioner or a member of the NSW Health Service extends to a review of the conduct of an employee of a non-declared affiliated health organisation who is employed in relation to a recognised establishment or recognised service of the organisation, and

- (e) to amend the *Medical Practice Act 1992* to provide that at an inquiry conducted by a Professional Standards Committee, the medical practitioner concerned and any complainant are entitled to attend and to be represented by an Australian legal practitioner or another adviser, and
- (f) to amend the *Mental Health Act 2007*:
 - (i) to clarify that, in respect of an application for a further community treatment order under that Act, the requirement to give 14 days notice does not apply, and
 - (ii) to provide that the President of the Mental Health Review Tribunal may be appointed as a full-time or part-time member. A consequential amendment is made to the *Statutory and Other Offices Remuneration Act 1975*.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act, other than Schedule 1.5, on the date of assent to the proposed Act. Schedule 1.5 will commence on a day to be appointed by proclamation.

Schedule 1 Amendment of Acts

Schedule 1.1 Drug and Alcohol Treatment Act 2007 No 7

Schedule 1.1 [2] amends the *Drug and Alcohol Treatment Act 2007* by removing the requirement that a person, subject to involuntary detention and treatment, must be medically fit before the person may be granted a leave of absence from a treatment centre.

Schedule 1.1 [3] provides that a person detained for treatment under the *Inebriates Act 1912* is to continue to be subject to that Act, notwithstanding that the area in which the person is being treated has subsequently been prescribed for the purpose of the *Drug and Alcohol Treatment Act 2007*. It also provides that in such circumstances the *Drug and Alcohol Treatment Act 2007* is not to apply in relation to that person. **Schedule 1.1 [1]** is consequential on Schedule 1.1 [3].

Schedule 1.2 Health Administration Act 1982 No 135

Schedule 1.2 [2] amends the *Health Administration Act 1982* to provide that the Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of Schedule 1.2 to the proposed Act. **Schedule 1.2 [1] and [3]** make amendments consequent on Schedule 1.2 [2].

Schedule 1.2 [5] increases the term for which a person may be appointed as a member of the Medical Services Committee from 2 to 4 years.

Schedule 1.2 [6] decreases the number of consecutive terms a person may hold office as a member of the Medical Services Committee from 5 to 3.

Schedule 1.2 [4] provides for transitional arrangements consequent on Schedule 1.2 [5] and [6]. Specifically, it provides that a person who held office as a member of the Medical Services Committee immediately before the commencement of the proposed Act holds office for 4 years, in accordance with the amendment made by Schedule 1.2 [5], and that, despite the amendment made by Schedule 1.2 [6], the person may complete the person's term of office even if the person has already served 3 consecutive terms of office.

Schedule 1.3 Health Care Complaints Act 1993 No 105

Schedule 1.3 [1] amends the *Health Care Complaints Act 1993* with respect to the powers of the Health Care Complaints Commission in assessing a complaint. In particular, the limitation on the Commission's power to obtain information, records and evidence for the purposes of assessing a complaint so that only hospital and medical records, and documents relating to a health practitioner's practice, could be obtained is removed. **Schedule 1.3 [7]** is consequential on Schedule 1.3 [1] and clarifies that the protection from incrimination for persons giving information, answering questions or producing documents under the Act extends not only to persons who do so in the course of an investigation of a complaint but also to persons who do so in the course of an assessment of a complaint.

Schedule 1.3 [2] provides for circumstances in which the Health Care Complaints Commission is not required to give notice of the outcomes of an assessment of a complaint to third parties who may have an interest in the complaint, including a person not a party to the complaint but who is receiving treatment the subject of a complaint. The circumstances in which the Commission is not required to give the notice include circumstances in which the Commission reasonably believes that giving the notice will prejudice the investigation of the complaint, or place the health or safety of a client at risk. Further provision is made requiring the Commission to review a decision not to give the notice, as well as enabling an amended form of notice to be given. These amendments bring the notification of third parties in line with similar notification provisions with respect to actual parties to a complaint under section 28 of the *Health Care Complaints Act 1993*.

Schedule 1.3 [3]–[6] extend the Health Care Complaints Commission's powers to compel the provision of information, documents or evidence, from only persons who are a party to the complaint or a health service provider, to any person whatsoever. It also creates an offence for circumstances in which information, documents or evidence is provided with the knowledge that it is false or misleading.

Schedule 1.3 [8] extends the persons to whom the Health Care Complaints Commission may notify the results of an investigation, the action to be taken as a result of the investigation and the reasons for taking that action. Those persons may include any third party to the complaint to whom the Commission could have given notice under section 28A of the *Health Care Complaints Act 1993* and any other relevant person or body.

Schedule 1.3 [9] amends a requirement that must be satisfied before the Health Care Complaints Commission may issue a prohibition order or public statement, or both.

Specifically, the requirement that the Commission may issue a prohibition order or public statement only if in the Commission's opinion the health practitioner poses a substantial risk to the health of members of the public is replaced with a lesser and broader requirement that in the Commission's opinion the practitioner poses a risk to the health or safety of members of the public.

Schedule 1.3 [10] extends the persons to whom the Health Care Complaints Commission may provide the results of an investigation into a health organisation. They will include any third party to the complaint to whom the Commission could have given notice under section 28A of the *Health Care Complaints Act 1993* and any other relevant person or body. It also inserts proposed section 45 (2A) that enables the Commission to provide the complainant with a copy of the report produced with respect to their complaint.

Schedule 1.3 [11] provides that the Commission's discretion to provide the results of an investigation of a complaint to certain persons does not authorise the release of a report prepared under section 42 (2) of the *Health Care Complaints Act 1993*, other than as provided by section 44 or 45 (2A).

Schedule 1.3 [12] and [14] expand the functions the Director of Proceedings may exercise to include those conferred or imposed on the Health Care Complaints Commission by an Act other than the *Health Care Complaints Act 1993*. The amendments provide that the Director is not empowered to exercise a function conferred or imposed on the Commission, as opposed to the Director, other than those referred to in subsection (1) or proposed subsection (2A) of section 90B of the *Health Care Complaints Act 1993*.

Schedule 1.3 [13] enables the Director of Proceedings to refer a complaint to the Health Care Complaints Commission for action under section 39 (1) (c), (d), (e), (f) or (g) if the Director determines the complaint should not be prosecuted before a disciplinary body.

Schedule 1.3 [15] gives the Director of Proceedings power to notify specified persons of the Director's determination as to whether or not a complaint should be prosecuted before a disciplinary body.

Schedule 1.3 [16] enables the Director of Proceedings to delegate his or her functions with respect to a complaint, other than the power of delegation, to an officer of the Health Care Complaints Commission.

Schedule 1.3 [17] provides that a person is not compellable in legal proceedings to give evidence or produce documents relating to the exercise of a function under the *Health Care Complaints Act 1993*. Exceptions are provided with respect to an inquiry under the *Ombudsman Act 1974*, proceedings before the Independent Commission Against Corruption and under the *Royal Commissions Act 1923* and Part 3 of the *Special Commissions of Inquiry Act 1983*.

Schedule 1.3 [18] gives the Health Care Complaints Commission a discretion to disclose information obtained in the exercise of a function under the *Health Care Complaints Act 1993* to specified persons. However, the discretion may be exercised only if the Commission considers that it is in the public interest to do so and having regard to the principle set out in section 3 (2) of that Act.

Schedule 1.3 [19] provides that the Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of Schedule 1.3 to the proposed Act.

Schedule 1.4 Health Services Act 1997 No 154

Schedule 1.4 [1] amends the *Health Services Act 1997* to exempt board governed health corporations of the NSW Health Service that have fewer than 50 employees from the requirement that one member of that board, appointed by the Minister for Health, is to be an employee of the NSW Health Service.

Schedule 1.4 [2] clarifies that the manner in which an appointment to the office of chief executive of a board governed health corporation is to be made is based on whether or not that office is an executive position within the meaning of Part 3 of Chapter 9 of the *Health Services Act 1997*. An appointment in circumstances in which the position is an executive position is subject to Part 3 of Chapter 9. An appointment in circumstances in which the position is not classified as an executive position is made by the Minister for Health.

Schedule 1.4 [3] and [4] extend the protection from personal liability provided by the *Health Services Act 1997* to cover specified reviews of a person who is an employee of a non-declared affiliated health organisation who is employed in relation to a recognised establishment or recognised service of the organisation.

Schedule 1.4 [5] provides that the Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of Schedule 1.4 to the proposed Act.

Schedule 1.5 Medical Practice Act 1992 No 94

Schedule 1.5 [1] amends the *Medical Practice Act 1992* to provide that at an inquiry conducted by a Professional Standards Committee, the medical practitioner the subject of the inquiry and any complainant are entitled to attend and to be represented by an Australian legal practitioner or another adviser. The fact that a medical practitioner is represented at an inquiry conducted by a Professional Standards Committee does not prevent the Committee from addressing questions directly to the practitioner.

Schedule 1.5 [2] is consequent on the amendment made by Schedule 1.5 [1] and provides that a Professional Standards Committee may grant leave to any person to appear at an inquiry conducted by the Committee if the Committee considers it appropriate.

Schedule 1.5 [3] provides for transitional arrangements consequent on Schedule 1.5 [1]. An inquiry conducted by a Professional Standards Committee that had started, and not been finalised, before the commencement of the proposed Act is to continue in accordance with the *Medical Practice Act 1992* as it applied at the time the inquiry started.

Schedule 1.6 Mental Health Act 2007 No 8

Schedule 1.6 [1] amends the *Mental Health Act 2007* to make clear, in respect of an application for a further community treatment order regarding a person the subject of a current community treatment order, that it is only the requirement to give a specified period of notice which is dispensed with. The requirement to give notice in writing to the affected person, as well as information as to the proposed treatment plan, will still apply.

Schedule 1.6 [2] enables the President of the Mental Health Review Tribunal to be appointed as either a full-time or part-time member.

Schedule 1.6 [3] provides that the Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of Schedule 1.6 to the proposed Act.

Schedule 1.7 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

Schedule 1.7 amends the *Statutory and Other Offices Remuneration Act 1975* as a consequence of Schedule 1.6 [2] to enable the Statutory and Other Offices Remuneration Tribunal to make a determination about the remuneration of the President of the Mental Health Review Tribunal, regardless of whether the President is appointed on a full-time or part-time basis.