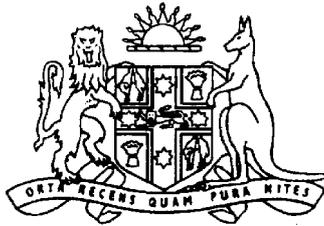


New South Wales

Health Legislation Amendment Act 2003 No 52

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New South Wales

Health Legislation Amendment Act 2003 No 52

Act No 52, 2003

An Act to make miscellaneous amendments to various Acts relating to health and associated matters; and for other purposes. [Assented to 23 October 2003]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Health Legislation Amendment Act 2003*.

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 1–7 is amended as set out in those Schedules.

Schedule 1 Amendment of Health Services Act 1997 No 154

(Section 3)

[1] Section 49 Membership of health corporation board

Omit section 49 (2). Insert instead:

- (2) Of the persons appointed by the Minister, 1 is to be a person elected or, in the case of a statutory health corporation that has fewer than 50 employees, elected or appointed, in the manner prescribed by clause 2 of Schedule 5 or regulations made under that clause.

[2] Section 85 When can medical practitioners elect to provide their services through their practice companies?

Omit section 85 (2). Insert instead:

- (2) However, no such election may be made unless the medical practitioner's practice company:
 - (a) carries public liability insurance to a level approved by the Director-General from time to time, and
 - (b) carries medical indemnity insurance.
- (3) Subsection (2) (b) does not apply to the extent that the medical practitioner's practice company is exempt under section 19 (4) of the *Health Care Liability Act 2001* from the requirement to be covered by approved professional indemnity insurance in respect of medical services to be provided under the relevant service contract.
- (4) In this section:

medical indemnity insurance means approved professional indemnity insurance within the meaning of the *Health Care Liability Act 2001*.

[3] Schedule 5 Provisions relating to members and procedure of area health boards and health corporation boards

Insert "(other than an elected staff member appointed under subclause (11))" after "office of an elected staff member" in clause 2 (9).

[4] Schedule 5, clause 2

Insert after clause 2 (10):

- (11) If a statutory health corporation has fewer than 50 employees:
 - (a) the Minister may direct that an election for an appointed staff member of the Board for the corporation not be held and the Minister may appoint any person to be an appointed member, and
 - (b) that person is, on being appointed, taken to be a person elected in the manner prescribed by the regulations made under this clause.
- (12) If a vacancy occurs in the office of a member appointed under subclause (11) otherwise than by reason of the expiration of the period for which the member was appointed:
 - (a) the Minister may appoint any person to hold, subject to this Schedule, the office for a term commencing on the date of appointment or a later date specified in the relevant instrument of appointment and ending on the commencement of the term of office of the next member elected or appointed under this clause, and
 - (b) the person is, on being so appointed, taken to be a person elected in the manner prescribed by the regulations made under this clause.

Schedule 2 Amendment of Mental Health Act 1990 No 9
(Section 3)

[1] Section 252 Constitution of the Tribunal

Insert “or part-time” after “full-time” in section 252 (2) (b).

[2] Section 252A

Insert after section 252:

252A Part-time arrangements

A Deputy President, although not appointed on a part-time basis, may, by agreement in writing entered into with the President, exercise the functions of Deputy President on a part-time basis.

Schedule 3 Amendment of New South Wales Institute of Psychiatry Act 1964 No 44

(Section 3)

[1] Section 4 Objects of the Institute

Insert after section 4 (2):

- (2A) Without limiting subsection (2), the Institute may charge such fees as are reasonable in respect of the programmes of training conducted by the Institute.

[2] Section 22

Insert after section 21:

22 Recovery of fees

Any fee due or payable to the Institute may be recovered by the Institute as a debt in a court of competent jurisdiction.

Schedule 4 Amendment of Poisons and Therapeutic Goods Act 1966 No 31

(Section 3)

[1] Section 16 Offences relating to prescribed restricted substances

Omit the matter relating to the maximum penalty from section 16 (1).

Insert instead:

Maximum penalty:

- (a) for an offence relating to a prescribed restricted substance that is an anabolic or androgenic steroidal agent, 20 penalty units or imprisonment for 2 years, or both, and
- (b) for an offence relating to a prescribed restricted substance other than an anabolic or androgenic steroidal agent, 20 penalty units or imprisonment for 6 months, or both.

[2] Section 28A Approval of prescribers of drugs of addiction

Omit “for the purposes of section 29 (2) (b)” from section 28A (1).

[3] Section 28A (7)

Insert “or before referring the matter to the Medical Committee for a recommendation if the circumstances are sufficiently urgent to require immediate action” after “subsection (6)”.

[4] Section 28A (10)

Insert after section 28A (9):

- (10) For the purposes of subsection (7), the circumstances are sufficiently urgent to require immediate action with respect to a medical practitioner’s approval if the Director-General is of the opinion that the action is necessary for the purpose of protecting the life, or the physical or mental health, of the medical practitioner or any other person (whether or not any other such person is identifiable).

[5] Section 29 Director-General may authorise prescription or supply of drugs of addiction

Omit section 29 (1). Insert instead:

- (1) An application for the authority of the Director-General referred to in section 28 is to be in a form approved by the Director-General.

[6] Section 29 (5) (a)

Omit “quantity”. Insert instead “maximum quantity”.

[7] Section 29 (5) (d)

Omit the paragraph. Insert instead:

- (d) is to be in a form approved by the Director-General.

[8] Section 29 (6)

Insert “or by electronic communication” after “in writing”.

[9] Section 30AA

Insert after section 30:

30AA Power of Medical Committee to obtain information

- (1) This section applies if:
 - (a) under section 28A (8) the Director-General refers an approval to the Medical Committee for review, and
 - (b) the review of the approval is with respect to a possible contravention of this Act or the regulations, or a failure to comply with any conditions to which the approval is subject.
- (2) For the purposes of conducting the review and preparing its report and the recommendation, the Medical Committee may require the Health Care Complaints Commission or New South Wales Medical Board to provide the Medical Committee with any information in the Commission’s or Board’s possession that is relevant to the Medical Committee’s review.
- (3) A requirement made by the Medical Committee under this section must be made in writing.

-
- (4) The Health Care Complaints Commission or New South Wales Medical Board must comply with any reasonable requirement given to the Commission or Board under this section.
- (5) This section applies despite any provision of:
- (a) the *Health Care Complaints Act 1993*, or
 - (b) the *Medical Practice Act 1992*, including section 190B of that Act.

[10] Section 43 Powers of entry and seizure

Insert “, or any condition of an approval, authority or licence given or issued for the purposes of this Act or the regulations,” after “regulations” where firstly occurring in section 43 (2).

[11] Section 43 (2) (h)

Insert “, or a condition of an approval, authority or licence given or issued for the purposes of this Act or the regulations,” after “regulations”.

[12] Section 43 (2) (i) and (j)

Insert after section 43 (2) (h):

- (i) examine any records (including prescriptions), that may be relevant to investigating or auditing compliance with an approval given, or authority or licence issued, for the purposes of Part 4 or with respect to a prescribed restricted substance,
- (j) remove any records referred to in paragraph (i).

[13] Section 43 (8), definition of “prescribed restricted substance”

Insert in alphabetical order:

prescribed restricted substance means a substance listed in Appendix D to the *Poisons and Therapeutic Goods Regulation 2002*.

**Schedule 5 Amendment of Royal Society for the
Welfare of Mothers and Babies'
Incorporation Act 1919 No 52**

(Section 3)

[1] Section 11 By-laws and rules

Omit all the words from “It” to “particular:” from section 11 (1).

Insert instead “The body corporate may make by-laws and rules, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed and, in particular, for or with respect to the following:”.

[2] Section 11 (1) (a) and (b)

Omit “as to” wherever occurring.

[3] Section 11 (2) (iii)

Omit the paragraph.

[4] Section 11 (4)

Insert after section 11 (3):

- (4) A by-law or rule made by the Governor and in force immediately before the commencement of Schedule 5 [1] to the *Health Legislation Amendment Act 2003* continues in force after that commencement as if the by-law or rule had been made by the body corporate.

Schedule 6 Amendment of Smoke-free Environment Act 2000 No 69

(Section 3)

[1] Section 11 Exempt premises

Omit section 11 (1) (d). Insert instead:

- (d) any part of the premises of a casino or casino environs that is used solely for the purposes of gaming machines or solely for the purposes of a bar (whether or not such gaming machines are situated in the bar area),

[2] Section 11 (3)

Insert after section 11 (2):

- (3) In this section:

casino has the same meaning as in the *Casino Control Act 1992*.

casino environs means the whole or a specified part of premises the subject of an order under section 89 (3) of the *Casino Control Act 1992*.

gaming machine has the same meaning as in the *Casino Control Act 1992*.

Health Legislation Amendment Act 2003 No 52

Schedule 7 Amendment of Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

**Schedule 7 Amendment of Statutory and Other Offices
Remuneration Act 1975 (1976 No 4)**

(Section 3)

Schedule 2 Public offices

Omit “Deputy President of the Mental Health Review Tribunal” from Part 1.

Insert instead:

Full-time Deputy President of the Mental Health Review
Tribunal

Part-time Deputy President of the Mental Health Review
Tribunal

[Second reading speech made in—
Legislative Assembly on 30 April 2003
Legislative Council on 16 September 2003]

BY AUTHORITY