

Passed by both Houses



New South Wales

Health Practitioner Regulation Legislation Amendment Bill 2014

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2014



New South Wales

Health Practitioner Regulation Legislation Amendment Bill 2014

Act No , 2014

An Act to make miscellaneous amendments to various Acts that relate to health practitioners.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Health Practitioner Regulation Legislation Amendment Act 2014*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 1 [4] and [7] commence on the date of assent to this Act.

Schedule 1 Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86

[1] Schedule 1 Modification of Health Practitioner Regulation National Law

Insert after section 145B in Schedule 1 [15]:

145BA Notification of outcomes of complaints to complainants [NSW]

- (1) This section applies to a Council for a health profession with respect to any of the following outcomes (a *notifiable outcome*) concerning complaints against health practitioners or students—
 - (a) if the Council deals with a complaint by inquiry at a meeting of the Council under section 145B (1) (e)—the result of the inquiry;
 - (b) if the Council refers a health practitioner (or a matter concerning the practitioner’s health or professional performance) for assessment under section 145B (1) (f)—any action resulting from the assessment (including the imposition of conditions on the health practitioner’s registration);
 - (c) a decision of the Council to take action under section 145B (1) (g), (h), (i) or (j) in respect of a complaint.
- (2) The Council must give the complainant notice in writing of a notifiable outcome within 30 days after the outcome.
- (3) The Council may include such other information in the notice in addition to indicating the outcome as it considers appropriate.
- (4) However, the Council must not disclose confidential information in a notice unless it considers that the public interest in disclosing the information outweighs the public interest in protecting the confidentiality of the information and the privacy of any person to whom it relates.
- (5) For avoidance of doubt, section 145B (3) does not affect the obligation of a Council under this section to give notice of a notifiable outcome of the kind referred to in subsection (1) (b).

[2] Schedule 1 [15], section 146E (2)

Omit “or a Committee by this Subdivision”. Insert instead “by Subdivision 6”.

[3] Schedule 1 [15], section 149C (5A)

Insert after section 149C (5):

- (5A) The power of the Tribunal to make a prohibition order under subsection (5) extends to a person who is no longer registered if the Tribunal decides under subsection (4) that it would have suspended or cancelled the person’s registration if the person were still registered.

[4] Schedule 1 [15], section 149E

Insert after section 149D:

149E Effect of cancellation and disqualification decisions of Tribunal [NSW]

- (1) Despite any other provision of this Law, each of the following persons cannot make an application for registration as a health practitioner unless the Tribunal has made a reinstatement order under section 163B with respect to the person—

- (a) a person whose registration as such a health practitioner has been cancelled by the Tribunal under this Law;
 - (b) a person who has been disqualified from being registered as such a health practitioner by the Tribunal under this Law.
- (2) Subsection (1) and Division 8 continue to apply in respect of a disqualified person and the disqualification order even if the period of disqualification has expired or specified conditions for the cessation of the disqualification have been complied with.

[5] Schedule 1 [15], section 150FA

Insert after section 150F:

150FA Critical impairment conditions [NSW]

- (1) This section applies if a Council imposes or alters a condition under this Law on the registration of a health practitioner because of the impairment of the practitioner.

Note. In relation to the alteration of conditions—see, for example, section 152K.

- (2) The Council may order that a contravention of a condition on the registration of a health practitioner that it imposes or alters because of the impairment of the practitioner will result in the contravention being referred to the Commission to be dealt with as a complaint against the practitioner. Any such condition is then a *critical impairment condition*.
- (3) If a Council for a health profession is satisfied a health practitioner registered in the profession has contravened a critical impairment condition—
- (a) the Council must refer the matter to the Commission; and
 - (b) the matter may be dealt with by the Commission as a complaint made to the Commission against the practitioner.
- (4) If the Commission decides to deal with the matter as a complaint, the Commission must investigate the complaint or cause it to be investigated and, as soon as practicable after the investigation is completed, consult with the Council about how the matter is to be dealt with, including, for example, by referring the complaint to the Tribunal or a Committee for the health profession in which the health practitioner is registered.
- Note.** See section 145D which provides that both a Council and the Commission have a duty to refer a complaint to the Tribunal if, at any time, either of them is of the opinion the complaint, if substantiated, would provide grounds for the suspension or cancellation of the health practitioner's or student's registration.
- (5) This section has effect despite anything to the contrary in this Law.

[6] Schedule 1 [15], section 176BA

Insert after section 176B:

176BA Council to notify employers and accreditors about conditions concerning health, conduct or performance of health practitioners [NSW]

- (1) This section applies if a Council makes any of the following decisions (a *condition decision*) with respect to a registered health practitioner under this Law—
- (a) to impose conditions on the practitioner's registration concerning the health, conduct or performance of the practitioner;

- (b) to alter or remove conditions that the Council has imposed on the practitioner's registration concerning the health, conduct or performance of the practitioner.
 - (2) The Council must, as soon as practicable after it makes a condition decision with respect to a registered health practitioner, give written notice of the decision to each employer or accreditor of the practitioner.
 - (3) The Council may also, if it considers it appropriate, give written notice of a condition decision with respect to a registered health practitioner to an entity that becomes the practitioner's employer or accreditor after the decision is made.
 - (4) The notice must include the details of the conditions that have been imposed or removed or the alterations that have been made to conditions that have been imposed.
 - (5) If the notice given by the Council is about a condition that is imposed, altered or removed because of an impairment of the registered health practitioner, the practitioner's employer or accreditor must ensure that the nominated or agreed information recipient discloses or uses information about the impairment only for the purpose of—
 - (a) the supervision or oversight of the practitioner during the course of the practitioner's work for the employer or accreditor; or
 - (b) ensuring the safety of patients at premises used by the practitioner during the course of the practitioner's work for the employer or accreditor.
- Maximum penalty (subsection (5))—
- (a) in the case of an individual—20 penalty units; or
 - (b) in the case of a body corporate—50 penalty units.
- (6) An employer or accreditor of a registered health practitioner may nominate another person to be the nominated information recipient for the purposes of subsection (5), but only if the person is—
 - (a) involved in the supervision or oversight of registered health practitioners of the kind concerned during the course of their work; or
 - (b) responsible for ensuring the safety of patients at premises used by registered health practitioners of the kind concerned during the course of their work.
 - (7) If an employer or accreditor has not nominated a person to be the nominated information recipient for the purposes of subsection (5), the Council may, after consulting the employer or accreditor (and, if it considers it appropriate, the registered health practitioner concerned), provide information about the impairment to an agreed information recipient who is a person of a kind referred to in subsection (6) (a) or (b).
 - (8) In this section—

accreditor, in relation to a registered health practitioner, means a licensee for a private health facility under the *Private Health Facilities Act 2007* that has accredited the health practitioner to provide services at the facility.

employer, in relation to a registered health practitioner, means an entity that has—

 - (a) employed the health practitioner or other person under a contract of employment to provide services to or for the entity; or

- (b) appointed or engaged the health practitioner or other person under any other kind of contract or agreement to provide services to or for the entity.

[7] Schedule 1 [25], Schedule 5A

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provision consequent on enactment of Health Practitioner Regulation Legislation Amendment Act 2014

Application of amendment concerning requirement for reinstatement order before registration

- (1) Without limiting section 287, section 149E, as inserted by the *Health Practitioner Regulation Legislation Amendment Act 2014*, extends to persons whose registrations as health practitioners were cancelled, or who were disqualified from being registered as health practitioners, by the Tribunal (or a predecessor of the Tribunal) before the commencement of section 149E.

Note. Section 287 makes provision for cancellations of registration and disqualifications from registration made under corresponding prior Acts to continue to have effect under this Law as if they were decisions made by the responsible tribunal under this Law. As a result, subclause (1) includes such cancellations and disqualifications as well as cancellations and disqualifications under this Law. The subclause also extends to decisions made by the former health practitioner tribunals before their abolition and replacement by the Tribunal.

- (2) However, subclause (1) does not affect any application for registration that was made and granted before the commencement of section 149E.

[8] Schedule 1 [25], Schedule 5C

Insert “(excluding any period served because of the operation of clause 8 (2) (a) of Schedule 5A)” after “9 years” in clause 12 (2).

Schedule 2 Amendment of other Acts

2.1 Health Services Act 1997 No 154

Section 133C

Insert after section 133B:

133C Sharing or exchange of information about health practitioner appointments

- (1) A public health organisation may share or exchange appointment information about a health practitioner with a private health facility licensee if the public health organisation:
 - (a) reasonably believes that the health practitioner practises at the private health facility, and
 - (b) reasonably considers that the disclosure of that information to the licensee is necessary because it raises serious concerns about the safety of patients.
- (2) Information is *appointment information* about a health practitioner for the purposes of this section if:
 - (a) the health practitioner practises (or formerly practised) at a hospital or health institution of the public health organisation (whether under a service contract or otherwise), and
 - (b) the information relates to the variation, suspension or termination by the public health organisation of clinical privileges of the health practitioner.
- (3) Without limiting section 133B, the disclosure of appointment information about a health practitioner by a public health organisation (or a person acting at the direction of the organisation) to a private health facility licensee does not, if the disclosure was made in good faith, subject the organisation or person personally to any action, liability, claim or demand.
- (4) Nothing in this section limits the ability of public health organisations to share or exchange appointment information about health practitioners with each other or with the Health Secretary or Minister.
- (5) In this section:
 - clinical privileges* has the same meaning as it has in Part 4 of Chapter 8.
 - health practitioner* has the same meaning as in the *Health Practitioner Regulation National Law (NSW)*.
 - private health facility licensee* means a licensee for a private health facility under the *Private Health Facilities Act 2007*.

2.2 Private Health Facilities Act 2007 No 9

Section 58A

Insert after section 58:

58A Sharing or exchange of information about health practitioner appointments

- (1) A licensee may share or exchange appointment information about a health practitioner with another licensee or a public health organisation if the licensee:

- (a) reasonably believes that the health practitioner practises at the private health facility of the other licensee or at a hospital or health institution of the public health organisation, and
 - (b) reasonably considers that the disclosure of that information to the other licensee or the public health organisation is necessary because it raises serious concerns about the safety of patients.
- (2) Information is **appointment information** about a health practitioner for the purposes of this section if:
- (a) the health practitioner practises (or formerly practised) at the private health facility of the licensee (whether under a contract or otherwise), and
 - (b) the information relates to the variation, suspension or termination by the licensee of clinical privileges of the health practitioner.
- (3) The disclosure of appointment information about a health practitioner by a licensee (or a person acting at the direction of the licensee) to another licensee or a public health organisation does not, if the disclosure was made in good faith, subject the licensee or person personally to any action, liability, claim or demand.
- (4) In this section:
- clinical privileges** has the same meaning as it has in Part 4 of Chapter 8 of the *Health Services Act 1997*.
- health practitioner** has the same meaning as in the *Health Practitioner Regulation National Law (NSW)*.
- hospital, health institution** and **public health organisation** have the same meanings as they have in the *Health Services Act 1997*.