

**MEDICAL PRACTITIONERS AND NEW SOUTH
WALES STATE CANCER COUNCIL (AMENDMENT)
ACT.**

New South Wales



ANNO SEXTO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 49, 1967.

An Act to make further provisions relating to the prohibition of the treatment of certain diseases by persons not registered under the Medical Practitioners Act, 1938-1965; to provide for the establishment of a Cancer Investigation Committee; for these and other purposes to amend the Medical Practitioners Act, 1938-1965, and the New South Wales State Cancer Council Act, 1955-1965; and for purposes connected therewith. [Assented to, 17th October, 1967.]

BE

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(Amendment).*

BE it enacted by the Queen's Most Excellent Majesty, by No. 49, 1967 and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Medical Practitioners and New South Wales State Cancer Council (Amendment) Act, 1967". Short title and citation.

(2) The Medical Practitioners Act, 1938, as amended by subsequent Acts and by this Act, may be cited as the Medical Practitioners Act, 1938–1967.

(3) The New South Wales State Cancer Council Act, 1955, as amended by subsequent Acts and by this Act, may be cited as the New South Wales State Cancer Council Act, 1955–1967.

2. The Medical Practitioners Act, 1938–1965, is amended— Amendment of Act No. 37, 1938.

(a) by omitting from section 39A the words "subsection two of section 41A, section 41B and paragraph (a) of subsection two of section forty-two" and by inserting in lieu thereof the words "subsections two and four of section 41A, section 41B and paragraphs (a) and (a1) of subsection two of section forty-two"; Sec. 39A. (Provisions applicable to corporations.)

(b) (i) by omitting from subsection two of section 41A the words "to a penalty not exceeding two hundred dollars" and by inserting in lieu thereof the words "on indictment to a penalty not exceeding two thousand dollars or to imprisonment for any term not exceeding two years, or to both such penalty and such imprisonment"; Sec. 41A. (Unregistered person not to treat certain diseases.)

(ii)

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(ii) by inserting in subsection three of the same section after the words "prosecuted under" the words "subsection two of";

(iii) by inserting at the end of the same section the following new subsection :—

(4) (a) No person shall sell or supply to or give any person any substance or article in respect of which there is a representation by the manufacturer, seller, supplier or giver thereof indicating expressly or impliedly that such substance or article has or is likely to have curative or alleviating powers when taken or used in the treatment of, or may be taken or used for the prevention of, cancer unless the sale, supply or giving is to or on behalf of a person who has been expressly authorised by a registered person to take or use such substance or article.

(b) In this subsection—

"representation" includes advertisement, recommendation, statement or document including circular, label, notice, wrapper or any announcement made orally or by means of producing or transmitting light or sound;

"sell" includes offer or attempt to sell or have in possession for sale or expose for sale;

"substance" includes drug, mixture, medicine, compound, nostrum or device.

(c) Any person who contravenes any of the provisions of this subsection shall be guilty of an offence and shall be liable on conviction on indictment to a penalty not exceeding two thousand dollars or to imprisonment

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imprisonment for any term not exceeding two years, or to both such penalty and such imprisonment. No. 49, 1967

- (c) (i) by omitting paragraph (a) of subsection two of section forty-two and by inserting in lieu thereof the following paragraphs :— Sec. 42 (2).
(No unregis-
tered person
to
advertise.)

(a) Any person, not registered under this Act, who advertises or holds himself out to be entitled, qualified, able or willing to diagnose, treat, alleviate or cure any disease to which section 41A of this Act applies shall be guilty of an offence and shall be liable on conviction on indictment to a penalty not exceeding two thousand dollars or to imprisonment for any term not exceeding two years, or to both such penalty and such imprisonment.

(a1) Any person, not registered under this Act, who advertises or holds himself out to be entitled, qualified, able or willing to practise medicine or surgery in any of its branches or to give or perform any medical or surgical advice, service, attendance or operation shall where such advertisement or holding out is not of the nature referred to in paragraph (a) of this subsection be guilty of an offence and shall be liable on conviction to a penalty not exceeding one hundred dollars.

- (ii) by inserting in subsection three of the same section after the word "advertisement" the words "or holding out";

- (d) by inserting next after subsection one of section forty-three the following new subsections :— Sec. 43.
(Penalties
for certain
offences.)

(1A) Where an offence has been committed against subsection two or four of section 41A or paragraph (a) or (a1) of subsection two of section forty-two of this Act, by a body corporate, each director

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director of the body corporate at the time when the offence was committed and each person holding a managerial post or concerned with the management of the body corporate at that time, whether any such person is described as manager, sales manager, secretary, accountant or otherwise, shall be guilty of the like offence unless he proves that he exercised all due diligence to prevent the act or omission constituting the offence.

(1B) Any term of imprisonment imposed on any person by a court in respect of the non-payment of a penalty for an offence against subsection two or four of section 41A or paragraph (a) of subsection two of section forty-two of this Act, may be ordered to commence at the expiration of any term of imprisonment imposed on that person for the same offence in addition to that penalty.

Amendment
of Act No.
25, 1955.

3. The New South Wales State Cancer Council Act, 1955-1965, is amended—

New sec.
10A.

(a) by inserting next after section ten the following new section :—

Cancer
Investigation
Committee.

10A. (1) The Council may from time to time establish a Cancer Investigation Committee (hereinafter referred to as the "committee"). The provisions of subsection two of section ten of this Act shall not apply to the establishment of the committee.

(2) The functions of the committee shall be—

(a) whenever it deems necessary, to arrange for the investigation and testing of the content, method of preparation, efficacy, or use of any substance or article in respect of which there is a representation by the manufacturer, seller, supplier or giver thereof indicating

indicating expressly or impliedly that such substance or article has or is likely to have curative or alleviating powers when taken or used in the treatment of, or may be taken or used for the prevention of, cancer ;

- (b) whenever it deems necessary, to cause investigation to be made and to ascertain whether any person sells, supplies or gives away any substance or article in respect of which there is a representation by the manufacturer, seller, supplier or giver thereof indicating expressly or impliedly that such substance or article has or is likely to have curative or alleviating powers when taken or used in the treatment of, or may be taken or used for the prevention of, cancer ;
- (c) where any person, not being a legally qualified medical practitioner, advertises, or holds himself out to be entitled, qualified, able or willing to diagnose, treat, alleviate or cure cancer and the committee considers it advisable to investigate the matter the committee may make such investigation as it deems necessary ;
- (d) to furnish reports to the Council in respect of the functions carried out by it pursuant to the foregoing provisions of this subsection.

(3) For the purpose of any investigation under this Act the committee—

- (a) shall have the same powers and authority to summon witnesses, and receive evidence, as are conferred upon a Commissioner appointed under Division 1 of Part II of the Royal Commissions Act, 1923, as amended

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amended by subsequent Acts; and the said Act, subsection two of section eleven, section thirteen and Division 2 of Part II excepted, shall, mutatis mutandis, apply to any witness;

(b) may use the services of and obtain advice from any person;

(c) may require any person not being a legally qualified medical practitioner to furnish to the committee—

(i) such sample as the committee may require of any substance or article in his possession in respect of which there is a representation of the nature referred to in subsection two of this section or which is used by any person to whom paragraph (c) of that subsection applies in connection with the diagnosis, treatment, alleviation or cure of cancer;

(ii) the whole of the particulars concerning the formula, recipe, constitution or nature of any such substance or article; and

(iii) such additional information as the committee may require concerning the composition, method of preparation and the use to which any such substance or article is put.

(4) Any person who fails to comply with any requisition of the committee pursuant to paragraph (c) of subsection three of this section shall be guilty of an offence against this Act and shall be liable on summary conviction to a penalty not exceeding four hundred dollars.

(5)

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(5) The Council shall recommend to the Minister the action which it considers should be taken consequent upon the exercise and performance by the committee of its functions and powers under this section. **No. 49, 1967**

(6) In this section "representation", "sell" and "substance" have the meanings ascribed thereto respectively in subsection four of section 41A of the Medical Practitioners Act, 1938, as amended by subsequent Acts.

(b) by inserting next after paragraph (c) of subsection four of section eleven the following new paragraph :— **Sec. 11.**

(d) in meeting the costs of investigations conducted by a Cancer Investigation Committee. **(New South Wales State Cancer Council Account.)**
