



# 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

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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]

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**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.

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## **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 Practitioner 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.

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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.

### **Section 69**

Omit the section. Insert instead:

### **[2] 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.

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## **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

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

Health Legislation Amendment Act 1995 No 9

Schedule 4 Amendments relating to standards for control of infection

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**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]