



New South Wales

Health Legislation Amendment Act 1997 No 87

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New South Wales

Health Legislation Amendment Act 1997 No 87

Act No 87, 1997

An Act to amend the *Dental Technicians Registration Act 1975* in relation to the making or fitting of mouthguards; the *Drug Misuse and Trafficking Act 1985* and the *Poisons and Therapeutic Goods Act 1966* in relation to the possession and administration by persons of lawfully prescribed drugs; the *New South Wales Institute of Psychiatry Act 1964* in relation to the constitution, membership and committees of the Institute; the *Private Hospitals and Day Procedure Centres Act 1988* to clarify certain provisions of that Act; and for other purposes. [Assented to 21 October 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Health Legislation Amendment Act 1997*.

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 1–5 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.

Schedule 1 Amendment of Dental Technicians Registration Act 1975

(Section 3)

[1] Section 5 Definitions

Insert “or mouthguards” after “artificial dentures” wherever occurring in section 5 (3) (a), (b) and (c).

[2] Section 5 (3)

Insert “or mouthguard” after “artificial denture” wherever occurring.

[3] Section 26 Practice by unregistered persons

Insert “or that involves the insertion of mouthguards” after “technical work” in section 26 (2).

Explanatory note

The proposed amendments contained in items [1] and [2] put it beyond doubt that dental prosthetists may make or fit mouthguards in healthy human mouths as well as give related advice. Item [3] contains a consequential amendment.

Schedule 2 Amendment of Drug Misuse and Trafficking Act 1985

(Section 3)

[1] Section 10 Possession of prohibited drugs

Omit “or” where secondly occurring in section 10 (2) (b).

[2] Section 10 (2) (d)

Insert at the end of section 10 (2) (c):

, or

(d) a person who:

- (i) has the care of, or is assisting in the care of, another person for or to whom the prohibited drug has been lawfully prescribed or supplied, and
- (ii) has the prohibited drug in his or her possession for the sole purpose of administering, or assisting in the self-administration of, the prohibited drug to the other person in accordance with the prescription or supply.

[3] Section 25 Supply of prohibited drugs

Insert after section 25 (4):

- (5) Nothing in this section renders unlawful the administration of a prohibited drug to a person being cared for by another person in the circumstances described in section 10 (2) (d).

Explanatory note

Item [2] of the proposed amendments makes it clear that persons who are caring for, or assisting in caring for, another person may be in possession of a lawfully prescribed or supplied prohibited drug for the sole purpose of administering, or assisting in the self-administration of, the drug in accordance with the prescription or supply to the person being cared for. Item [3] makes it clear that a person who is caring for, or assisting in caring for, another person is not guilty of an offence of supplying prohibited drugs if that person administers the drug to the person being cared for in the circumstances described in proposed section 10 (2) (d). Item [1] contains a consequential amendment.

Schedule 3 Amendment of New South Wales Institute of Psychiatry Act 1964

(Section 3)

[1] Section 2 Definitions

Insert in alphabetical order:

appointed member means a member appointed by the Minister.

Director means the Director of the Institute holding office as such under Part 2 of the *Public Sector Management Act 1988*.

General Committee means a committee established under section 15 (2A).

House Committee means the New South Wales Institute of Psychiatry House Committee.

[2] Section 5

Omit section 5. Insert instead:

5 Members of the Institute

- (1) The Institute is to consist of:
 - (a) the Director of the Institute, and
 - (b) 10 members who are to be appointed by the Minister.
- (2) Of the members appointed by the Minister:
 - (a) 3 are to be:
 - (i) a person appointed, in and by the person's instrument of appointment, as the chairperson of the Institute, and
 - (ii) a member of the business community, and
 - (iii) a person who, in the opinion of the Minister, has a demonstrated interest in mental health, appointed to represent consumer interests, and

- (b) 6 are to be:
 - (i) a psychiatrist selected from a panel of 3 persons nominated by the NSW Branch of the Royal Australian and New Zealand College of Psychiatrists, and
 - (ii) a health professional engaged in mental health services work selected from 2 nominees from each of the NSW Branch of the Australian Psychological Society, the NSW Branch of the Australian Association of Social Workers, and the Australian Association of Occupational Therapists, and
 - (iii) a mental health nurse nominated by the Australian and New Zealand College of Mental Health Nurses, and
 - (iv) 3 academic psychiatrists selected from a panel of persons consisting of up to 2 nominees each of the University of Newcastle, the University of New South Wales and the University of Sydney, and
 - (c) 1 is to be a senior officer of the Department of Health, or a chief executive officer of an area health board constituted under the *Area Health Services Act 1986*.
- (3) The academic psychiatrists selected under subsection (2) (b) (iv) are to be from different universities.
 - (4) If, for the purposes of this section, a nomination of a person for appointment as a member, or a panel of such persons, is not made within the time or in the manner specified by the Minister in a notice in writing given to the body entitled to make the nomination, the Minister may appoint any person to be a member instead of the person required to be appointed on that nomination or from that panel.
 - (5) A person is not eligible to be appointed as chairperson if the person is employed by, or is a member of the governing body of, any of the bodies referred to in subsection (2) (b).

[3] Section 6

Omit the section. Insert instead:

6 Term of office

An appointed member holds office for such period not exceeding 3 years as is specified by the member's instrument of appointment but is eligible, if otherwise qualified, for reappointment for such period not exceeding 3 years as is specified by the instrument of reappointment.

[4] Section 7

Omit the section. Insert instead:

7 Public Sector Management Act 1988 not to apply to members other than Director

Except as provided by section 20, the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of any appointed member, and an appointed member is not, in the member's capacity as such a member, subject to the provisions of that Act.

[5] Section 9 Chairperson and deputy chairperson of the Institute

Omit "five years" from section 9 (3). Insert instead "3 years".

[6] Section 10 Vacation of office

Omit "Governor" wherever occurring. Insert instead "Minister".

[7] Section 11 Casual vacancy

Omit "Governor" from section 11 (1). Insert instead "Minister".

[8] Section 11 (2) (a)

Omit "section 5 (2) (a) or (e)".

Insert instead "section 5 (2) (a) or (b)".

[9] Section 12 Alternate member

Omit “Governor” from section 12 (1). Insert instead “Minister”.

[10] Section 12 (2) (a)

Omit “or (b)”. Insert instead “or (c)”.

[11] Section 12 (2) (c)

Omit “section 5 (2) (e)”. Insert instead “section 5 (2) (b)”.

[12] Section 15 Committees

Insert after section 15 (2):

(2A) The Institute is to establish the following committees (referred to in this section as General Committees) within 3 months after the commencement of this subsection:

- (a) Psychiatrist Training Committee,
- (b) Research Committee,
- (c) Multidisciplinary Programs Committee,
- (d) Community Education and Outreach Committee.

The General Committees are to have such functions as are conferred by the Institute.

(2B) A person sitting on a General Committee holds office for a period not exceeding 3 years but is eligible (if otherwise qualified) for reappointment for a period not exceeding 3 years.

(2C) The procedure for the calling of meetings of any of the General Committees and for the conduct of business at those meetings is, subject to this Act, to be determined by the Institute or (subject to any determination of the Institute) by the committee concerned.

(2D) A person sitting on a General Committee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of that person.

[13] Section 15 (4A)

Insert after section 15 (4):

(4A) However, a General Committee is to include at least one member of the Institute who is to be the chairperson of that committee.

[14] Section 20 Officers and employees

Omit section 20 (1). Insert instead:

(1) Subject to subsection (3), the Director of the Institute and such other staff of the Institute as are necessary are to be employed under Part 2 of the *Public Sector Management Act 1988*.

[15] Sections 20 (2), (3) and (4)

Omit “Public Service Board” wherever occurring.
Insert instead “Public Employment Office”.

[16] Section 25 and Schedule 1

Insert after section 24:

25 Savings and transitional provisions

Schedule 1 has effect.

Schedule 1 Savings and transitional provisions

(Section 25)

Part 1 Preliminary

1 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts or provisions of Acts:

Schedule 3 to the *Health Legislation Amendment Act 1997*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of Health Legislation Amendment Act 1997

2 Definitions

In this Part:

amending Act means the *Health Legislation Amendment Act 1997*.

new Institute means the Institute as constituted after the commencement of Schedule 3 [2] to the amending Act.

old Institute means the Institute as constituted immediately before the commencement of Schedule 3 [2] to the amending Act.

3 Members of Institute

- (1) A person who, immediately before the commencement of Schedule 3 [2] to the amending Act held office as a member of the old Institute:
 - (a) ceases to hold that office on that commencement, and
 - (b) is eligible (if otherwise qualified) to be appointed as a member of the new Institute.

- (2) A person who ceases to hold office as a member of the old Institute because of the operation of the amending Act is not entitled to be paid any remuneration or compensation because of ceasing to hold that office.

4 Continuity of Institute

Anything done by, to or in relation to the old Institute is taken to have been done by, to or in relation to the new Institute.

5 Appointments before commencement

For the purpose only of enabling the new Institute to be constituted in accordance with this Act on or after (but not before) the commencement of Schedule 3 [2] to the amending Act, appointments may be made under this Act (and anything else may be done) before that commencement as if the whole of the amending Act commenced on the date of assent, but so that no appointment as a member of the new Institute as so constituted takes effect before that commencement.

Explanatory note

Definitions (Item [1])

Definitions of **appointed member**, **Director**, **General Committee** and **House Committee** are to be inserted in section 2 to assist in the operation of the proposed amendments to sections 5 and 15.

Membership of the Institute (Items [2] and [14])

The proposed amendment contained in item [2] reduces the membership of the Institute from 12 members to 11 members. The composition of the Institute is also altered so that representatives are chosen from a wider field.

The proposed amendment contained in item [14] provides for the Director of the Institute (as well as any other staff that are necessary) to be employed under Part 2 of the *Public Sector Management Act 1988*.

Term of office (Item [3])

The proposed substitution of section 6 will reduce the term of office for a member of the Institute (with the exception of the Director of the Institute) from 5 years to 3 years. A member will be eligible for reappointment for a further term provided that the member is otherwise qualified for reappointment.

Committees (Items [12] and [13])

The proposed amendments provide for the establishment of the following committees:

- (a) Psychiatrist Training Committee,
- (b) Research Committee,
- (c) Multidisciplinary Programs Committee,
- (d) Community Education and Outreach Committee.

The terms of office of the members of these committees will be limited to a maximum of 3 years and to two consecutive terms of office. Each committee is to be chaired by a member of the Institute. Procedures for the calling of meetings are to be determined by the Institute or (subject to any determination by the Institute) by the committee.

Savings and transitional provisions (Item [16])

Part 1 of proposed Schedule 1 enables the making of regulations containing provisions of a savings or transitional nature that are consequential on the enactment of Schedule 3 to the proposed Act.

Part 2 of proposed Schedule 1 provides that current members of the Institute cease to be members on the commencement of Schedule 3 to the proposed Act, but are eligible, if otherwise qualified, to hold office under the proposed new structure. Anything done by or in relation to the old Institute is taken to be done by or in relation to the new Institute.

Appointments to the Institute may be made before the commencement of Schedule 3 [2] to the proposed Act to facilitate the operation of the new Institute.

Consequential amendments (Items [4]–[11] and [15])

The amendments contained in items [4]–[11] are consequential on the amendments contained in items [2] and [14]. Item [15] makes a statute law revision amendment by updating a reference to a body.

Schedule 4 Amendment of Poisons and Therapeutic Goods Act 1966

(Section 3)

[1] Section 10 Prohibition on supply of certain substances otherwise than by wholesale

Insert after section 10 (4) (c):

- (c1) by a person who has the care of, or is assisting in the care of, another person (for or to whom the supply of the substance has been authorised by the prescription of a medical practitioner or dentist) and who administers the restricted substance to the other person in accordance with that prescription, or

[2] Section 16 Offences relating to prescribed restricted substances

Omit “or” where lastly occurring in section 16 (1) (d).

[3] Section 16 (1) (d)

Insert after section 16 (1) (d):

- (d1) the person is a person who has the care of, or is assisting in the care of, another person (for or to whom the supply of the substance has been authorised by the prescription of a medical practitioner or dentist) and has the prescribed restricted substance in his or her possession for the sole purpose of administering, or assisting in the self-administration of, the substance to the other person in accordance with that prescription, or

[4] Section 23

Insert before section 24:

23 Possession and supply of drugs of addiction by carers

Despite any other provision of or made under this or any other Act, a person who has the care of, or is assisting in the care of, another person (for or to whom the supply of

a drug of addiction has been authorised by the prescription of a medical practitioner or dentist) is not guilty of an offence in relation to the possession or supply of the drug if the person is in possession of the drug for the sole purpose of administering, or assisting in the self-administration of, the drug to the other person and does so in accordance with that prescription.

Explanatory note

The proposed amendments make it clear that a person caring for, or assisting in caring for, another person may be in possession of lawfully prescribed restricted substances and drugs of addiction for the purpose of administering, or assisting in the self-administration of, that substance or drug to the person being cared for in accordance with the prescription. The amendments also make it clear that a person is not guilty of an offence of supplying a prescribed restricted substance or drug of addiction if the person does so in the circumstances set out in proposed sections 16 (1) (d1) and 23.

Schedule 5 Amendment of Private Hospitals and Day Procedure Centres Act 1988

(Section 3)

[1] Section 3 Definitions.

Omit “patients are” wherever occurring from the definitions of *day procedure centre* and *private hospital* in section 3 (1).

Insert instead “any patient is”.

[2] Section 3 (1)

Omit “(for fee, gain or reward)” from the definition of *day procedure centre*.

[3] Section 3 (1A)

Insert after section 3 (1):

- (1A) A reference in this Act to medical, surgical or other treatment includes a reference to a diagnosis for the purposes of any such treatment.

Explanatory note

Section 3 is to be amended so as:

- (a) to amend references to “patients” in the definitions of *day procedure centre* and *private hospital* to put it beyond doubt that the Act also applies to treatment provided to only one patient in a day procedure centre or private hospital, and
- (b) to remove references to “fee, gain or reward” in the definition of *day procedure centre* to make it clear that the Act applies to **all** medical, surgical and other treatments conducted at a day procedure centre.

References in the Act to medical, surgical or other treatment are to be clarified to make it clear that medical, surgical or other treatment includes a diagnosis for the purposes of medical, surgical or other treatment. Consequently, licensing standards under the Act will apply equally to diagnostic services as well as to other forms of treatment.

[Minister’s second reading speech made in—
Legislative Assembly on 18 June 1997
Legislative Council on 24 September 1997]