



New South Wales

Health Registration Legislation Amendment Act 2004 No 99

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Health Registration Legislation Amendment Act 2004 No 99

Act No 99, 2004

An Act to amend various Acts relating to the regulation of health professionals in relation to complaints; and for other purposes. [Assented to 15 December 2004]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Health Registration Legislation Amendment Act 2004*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendments to health registration Acts

Each Act specified in Schedule 1 is amended as set out in that Schedule.

Schedule 1 Amendments to health registration Acts

(Section 3)

1.1 Chiropractors Act 2001 No 15

[1] Section 25 Meaning of “unsatisfactory professional conduct”

Omit section 25 (a). Insert instead:

- (a) any conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the chiropractor in the practice of chiropractic is significantly below the standard reasonably expected of a chiropractor of an equivalent level of training or experience,

[2] Section 25 (d1)

Insert after section 25 (d):

- (d1) a contravention by the chiropractor of section 34A (4) (Power of Commission to obtain information, records and evidence) of the *Health Care Complaints Act 1993*,

[3] Section 25A

Insert after section 25:

25A References to “complaint”

In section 36 and Divisions 3, 4 and 5 of this Part and Divisions 1 and 2 of Part 6 (Appeals and review of disciplinary action), a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

[4] Section 30 Form of complaint

Omit section 30 (2).

[5] Section 32 Board to notify person against whom complaint is made

Omit the section.

[6] Section 35 How complaints are dealt with

Omit “for conciliation in accordance with section 13 (2)” from section 35 (1) (b).

Insert instead “to the Commission for conciliation or to be dealt with under Division 9 of Part 2”.

1.2 Dental Practice Act 2001 No 64

[1] Section 41 Meaning of “unsatisfactory professional conduct”—dentists

Omit section 41 (1) (a). Insert instead:

- (a) any conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the dentist in the practice of dentistry is significantly below the standard reasonably expected of a dentist of an equivalent level of training or experience,

[2] Section 41 (1) (f)

Insert after section 41 (1) (e):

- (f) a contravention by the dentist of section 34A (4) (Power of Commission to obtain information, records and evidence) of the *Health Care Complaints Act 1993*,

[3] Section 42 Meaning of “unsatisfactory professional conduct”—dental auxiliaries

Omit section 42 (a). Insert instead:

- (a) any conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the dental auxiliary in the carrying out of dental auxiliary activities is significantly below the standard reasonably expected of a dental auxiliary of an equivalent level of training or experience,

[4] Section 42 (d1)

Insert after section 42 (d):

- (d1) a contravention by the dental auxiliary of section 34A (4) (Power of Commission to obtain information, records and evidence) of the *Health Care Complaints Act 1993*,

[5] Section 43

Insert after section 42:

43 References to “complaint”

In section 54, Divisions 3, 4 and 5 of this Part and Divisions 1 and 2 of Part 7 (Appeals and review of disciplinary action), a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

[6] Section 48 Form of complaint

Omit section 48 (2).

[7] Section 50 Board to notify person against whom complaint is made

Omit the section.

[8] Section 53 How complaints are dealt with

Omit “for conciliation in accordance with section 13 (2)” from section 53 (1) (b).

Insert instead “to the Commission for conciliation or to be dealt with under Division 9 of Part 2”.

1.3 Medical Practice Act 1992 No 94

[1] Section 36 Meaning of “unsatisfactory professional conduct”

Omit section 36 (1) (a). Insert instead:

(a) Conduct significantly below reasonable standard

Any conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the practitioner in the practice of medicine is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

[2] Section 36 (1) (d1)

Insert after section 36 (1) (d):

(d1) Contravention of requirement under Health Care Complaints Act 1993

A contravention by the practitioner of section 34A (4) (Power of Commission to obtain information, records and evidence) of the *Health Care Complaints Act 1993*.

[3] Section 38A

Insert after section 38:

38A References to “complaint”

In Divisions 3 and 4 of this Part and in Divisions 1 and 2 of Part 6 (Appeals and review), a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

- [4] Section 47 Board to notify person against whom complaint is made of complaint**
Omit the section.
- [5] Section 50 Courses of action available to Board on a complaint**
Omit section 50 (1) (d). Insert instead:
(d) the Board may refer the complaint to the Commission for conciliation or to be dealt with under Division 9 of Part 2 of the *Health Care Complaints Act 1993*,
- [6] Section 51 Courses of action available to the Commission on a complaint**
Omit “(but may not refer it to an Impaired Registrants Panel or refer the professional performance of the practitioner concerned for assessment under Part 5A)” from section 51 (1) (a).
- [7] Section 51 (1) (b)**
Omit the paragraph. Insert instead:
(b) the Commission may refer the complaint for conciliation or deal with the complaint under Division 9 of Part 2 of the *Health Care Complaints Act 1993*,
- [8] Section 53 Complaint cannot be referred without statutory declaration by complainant**
Omit the section.
- [9] Section 66B Referral of matter to Commission**
Insert “and if it considers it appropriate to do so” after “investigation” in section 66B (3).
- [10] Section 71 Referral of matters by courts**
Insert after section 71 (3):
(4) The Coroner is not the complainant in relation to a complaint that is taken to have been made under subsection (3) and sections 43 (1), 44 and 45 do not apply to such a complaint.
- [11] Sections 86D (1) (b), 86J (2) (b), 86M (1) (b) and 86N (3) (b)**
Omit “of a significant nature” wherever occurring.

[12] Section 147 Tribunal to be constituted to deal with complaints etc

Omit section 147 (4). Insert instead:

- (4) A person is not to be appointed to sit on the Tribunal if the person is a member of the Board.

[13] Section 169 Membership of Committee

Omit section 169 (3). Insert instead:

- (3) A person who is a member of the Board may not be appointed to sit on a Committee.

[14] Section 177 Representation at inquiry

Insert “, except as provided by subsection (2)” after “other adviser” in section 177 (1).

[15] Section 177 (2) and (2A)

Omit section 177 (2). Insert instead:

- (2) An adviser (other than a barrister or solicitor) of a practitioner may represent the practitioner before the Committee at an inquiry.
- (2A) Subsection (2) does not prevent the Committee from addressing questions directly to the practitioner.

[16] Section 190A Medical reports

Insert at the end of section 190A (1) (b):

, or

- (c) a request made by the person to his or her treating practitioner in connection with a matter being dealt with by an Impaired Registrants Panel.

[17] Section 191B Notification of orders to practitioner’s employer and others

Insert after section 191B (3):

- (4) A reference in this section to the employer of a practitioner:
 - (a) is a reference to the employer at the time of the relevant conduct of the practitioner concerned that gave rise to the order made or conditions imposed by the Board, and
 - (b) includes a reference to any subsequent employer of the practitioner that the Board considers appropriate.

- (5) A reference in this section to a body in respect of which a practitioner is accredited:
 - (a) is a reference to the body in respect of which the practitioner concerned was accredited at the time of the relevant conduct of the practitioner that gave rise to the order made or conditions imposed by the Board, and
 - (b) includes a reference to any body in respect of which the practitioner is subsequently accredited that the Board considers appropriate.
- (6) The Board may, in a particular case, dispense with the giving of notice under this section if the Board considers that the exceptional circumstances of the case warrant that decision.
- (7) In this section, *employer* of a practitioner includes any person who engages the practitioner to perform work (whether or not under a contract of employment).

[18] Schedule 3A Provisions relating to performance assessments

Insert “to” before “answer” where secondly occurring in clause 2 (6).

1.4 Nurses Amendment Act 2003 No 45

Schedule 1 Amendment of Nurses Act 1991

Omit Schedule 1 [99] and [100].

1.5 Nurses and Midwives Act 1991 No 9

[1] Section 3 Definitions

Omit “person” from the definition of *nurse practitioner* in section 3 (1).

Insert instead “nurse”.

[2] Section 4 Meaning of “professional misconduct” and “unsatisfactory professional conduct”

Omit section 4 (2) (a). Insert instead:

- (a) any conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the nurse or midwife in the practice of nursing or midwifery is significantly below the standard reasonably expected of a nurse or midwife of an equivalent level of training or experience,

[3] Section 4 (2) (d1)

Insert after section 4 (2) (d):

- (d1) a contravention by the nurse or midwife of section 34A (4) (Power of Commission to obtain information, records and evidence) of the *Health Care Complaints Act 1993*,

[4] Section 4C

Insert after section 4B:

4C References to “complaint”

In Part 5 (except section 44 and Divisions 4 and 5), a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

[5] Section 44 Complaints

Omit section 44 (3) (c).

[6] Section 51 Constitution of Committees

Omit section 51 (3). Insert instead:

- (3) A person who is a member of the Board may not be appointed to sit on a Committee.

[7] Section 53 Representation before a Committee

Insert “(1A) or” after “subsection” in section 53 (1).

[8] Section 53 (1A) and (1B)

Insert after section 53 (1):

- (1A) An adviser (other than a barrister or solicitor) of a nurse or midwife may represent the nurse or midwife before the Committee at an inquiry.
- (1B) Subsection (1A) does not prevent the Committee from addressing questions directly to the nurse or midwife.

1.6 Optometrists Act 2002 No 30

[1] Section 29 Meaning of “unsatisfactory professional conduct”

Omit section 29 (1) (a). Insert instead:

- (a) any conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the optometrist

in the practice of optometry is significantly below the standard reasonably expected of an optometrist of an equivalent level of training or experience,

[2] Section 29 (1) (g)

Insert after section 29 (1) (f):

- (g) a contravention by the optometrist of section 34A (4) (Power of Commission to obtain information, records and evidence) of the *Health Care Complaints Act 1993*,

[3] Section 29A

Insert after section 29:

29A References to “complaint”

In section 40 and Divisions 3, 4 and 5 of this Part and Divisions 1 and 2 of Part 6 (Appeals and review of disciplinary action), a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

[4] Section 34 Form of complaint

Omit section 34 (2).

[5] Section 36 Board to notify person against whom complaint is made

Omit the section.

[6] Section 39 How complaints are dealt with

Omit “for conciliation in accordance with section 13 (2)” from section 39 (1) (b).

Insert instead “to the Commission for conciliation or to be dealt with under Division 9 of Part 2”.

1.7 Osteopaths Act 2001 No 16

[1] Section 25 Meaning of “unsatisfactory professional conduct”

Omit section 25 (a). Insert instead:

- (a) any conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the osteopath in the practice of osteopathy is significantly below the standard reasonably expected of an osteopath of an equivalent level of training or experience,

[2] Section 25 (d1)

Insert after section 25 (d):

- (d1) a contravention by the osteopath of section 34A (4) (Power of Commission to obtain information, records and evidence) of the *Health Care Complaints Act 1993*,

[3] Section 25A

Insert after section 25:

25A References to “complaint”

In section 36 and Divisions 3, 4 and 5 of this Part and Divisions 1 and 2 of Part 6 (Appeals and review of disciplinary action), a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

[4] Section 30 Form of complaint

Omit section 30 (2).

[5] Section 32 Board to notify person against whom complaint is made

Omit the section.

[6] Section 35 How complaints are dealt with

Omit “for conciliation in accordance with section 13 (2)” from section 35 (1) (b).

Insert instead “to the Commission for conciliation or to be dealt with under Division 9 of Part 2”.

1.8 Physiotherapists Act 2001 No 67

[1] Section 26 Meaning of “unsatisfactory professional conduct”

Omit section 26 (a). Insert instead:

- (a) any conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the physiotherapist in the practice of physiotherapy is significantly below the standard reasonably expected of a physiotherapist of an equivalent level of training or experience,

[2] Section 26 (d1)

Insert after section 26 (d):

- (d1) a contravention by the physiotherapist of section 34A (4) (Power of Commission to obtain information, records and evidence) of the *Health Care Complaints Act 1993*,

[3] Section 26A

Insert after section 26:

26A References to “complaint”

In section 37 and Divisions 3, 4 and 5 of this Part and Divisions 1 and 2 of Part 6 (Appeals and review of disciplinary action), a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

[4] Section 31 Form of complaint

Omit section 31 (2).

[5] Section 33 Board to notify person against whom complaint is made

Omit the section.

[6] Section 36 How complaints are dealt with

Omit “for conciliation in accordance with section 13 (2)” from section 36 (1) (b).

Insert instead “to the Commission for conciliation or to be dealt with under Division 9 of Part 2”.

1.9 Podiatrists Act 1989 No 23

[1] Section 3 Definitions

Insert after paragraph (c) of the definition of *professional misconduct* in section 3 (1):

- (c1) a registered podiatrist’s contravention of section 34A (4) (Power of Commission to obtain information, records and evidence) of the *Health Care Complaints Act 1993*, and

[2] Section 14 Complaints

Omit section 14 (2) (c).

[3] Section 16 Consequence of misconduct or other wrongdoing

Insert after section 16 (3):

- (4) In this section, *complaint* includes a matter arising out of the investigation of a complaint in accordance with this or any other Act.

1.10 Podiatrists Act 2003 No 69

[1] Section 25 Meaning of “unsatisfactory professional conduct”

Omit section 25 (a). Insert instead:

- (a) any conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the podiatrist in the practice of podiatry is significantly below the standard reasonably expected of a podiatrist of an equivalent level of training or experience,

[2] Section 25 (d1)

Insert after section 25 (d):

- (d1) a contravention by the podiatrist of section 34A (4) (Power of Commission to obtain information, records and evidence) of the *Health Care Complaints Act 1993*,

[3] Section 25A

Insert after section 25:

25A References to “complaint”

In section 36 and Divisions 3, 4 and 5 of this Part and Divisions 1 and 2 of Part 6 (Appeals and review of disciplinary action), a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

[4] Section 30 Form of complaint

Omit section 30 (2).

[5] Section 32 Board to notify person against whom complaint is made

Omit the section.

[6] Section 35 How complaints are dealt with

Omit “for conciliation in accordance with section 13 (2)” from section 35 (1) (b).

Insert instead “to the Commission for conciliation or to be dealt with under Division 9 of Part 2”.

1.11 Psychologists Act 2001 No 69

[1] Section 25 Meaning of “unsatisfactory professional conduct”

Omit section 25 (a). Insert instead:

- (a) any conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the psychologist in the practice of psychology is significantly below the standard reasonably expected of a psychologist of an equivalent level of training or experience,

[2] Section 25 (d1)

Insert after section 25 (d):

- (d1) a contravention by the psychologist of section 34A (4) (Power of Commission to obtain information, records and evidence) of the *Health Care Complaints Act 1993*,

[3] Section 25A

Insert after section 25:

25A References to “complaint”

In section 36 and Divisions 3, 4 and 5 of this Part and Divisions 1 and 2 of Part 6 (Appeals and review of disciplinary action), a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

[4] Section 30 Form of complaint

Omit section 30 (2).

[5] Section 32 Board to notify person against whom complaint is made

Omit the section.

[6] Section 35 How complaints are dealt with

Omit “for conciliation in accordance with section 13 (2)” from section 35 (1) (b).

Insert instead “to the Commission for conciliation or to be dealt with under Division 9 of Part 2”.

[Second reading speech made in—

Legislative Assembly on 26 October 2004

Legislative Council on 17 November 2004]

BY AUTHORITY