



New South Wales

# Health Legislation Amendment Act 2007 No 89

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New South Wales

## **Health Legislation Amendment Act 2007 No 89**

Act No 89, 2007

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An Act to amend various Acts and regulations to make provision with respect to health professional disciplinary tribunals and certain mental health matters relating to medical or dental students, to make miscellaneous amendments; and for other purposes. [Assented to 13 December 2007]

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**The Legislature of New South Wales enacts:****1 Name of Act**

This Act is the *Health Legislation Amendment Act 2007*.

**2 Commencement**

- (1) Except as provided by subsections (2) and (3), this Act commences on the date of assent to this Act.
- (2) Schedule 2.1 [1] commences on 1 July 2008.
- (3) Schedule 2.13 [4] commences on a day or days to be appointed by proclamation.

**3 Amendments relating to disciplinary tribunals**

The Acts specified in Schedule 1 are amended as set out in that Schedule.

**4 Other amendments**

The Acts and instruments specified in Schedule 2 are amended as set out in that Schedule.

**5 Repeal of Act**

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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## **Schedule 1      Amendments relating to disciplinary tribunals**

(Section 3)

### **1.1      Chiropractors Act 2001 No 15**

#### **[1]      Section 100 Chairperson and Deputy Chairpersons of the Tribunal**

Insert after section 100 (4):

- (4A) If the period of a person's appointment as Chairperson or a Deputy Chairperson expires while the person is sitting on the Tribunal for the purposes of an inquiry or an appeal, the person may, despite that expiry, continue to sit on the Tribunal for the purpose of that inquiry or appeal (the *continuing inquiry or appeal*).
- (4B) For the purposes of the conduct or hearing of the continuing inquiry or appeal (and any provision of this Act or the regulations with respect to such an inquiry or an appeal), the person referred to in subsection (4A):
  - (a) is taken to be a Deputy Chairperson, and
  - (b) has and may exercise only the functions conferred or imposed on a Deputy Chairperson under this Act, and
  - (c) may exercise those functions only in respect of the continuing inquiry or appeal.

#### **[2]      Schedule 5 Proceedings before the Tribunal**

Insert after clause 6 (3):

- (3A) For the purposes of this clause, a reference to the name of any person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

### **1.2      Dental Practice Act 2001 No 64**

#### **[1]      Section 121 Chairperson and Deputy Chairpersons of the Tribunal**

Insert after section 121 (4):

- (4A) If the period of a person's appointment as Chairperson or a Deputy Chairperson expires while the person is sitting on the Tribunal for the purposes of an inquiry or an appeal, the person

may, despite that expiry, continue to sit on the Tribunal for the purpose of that inquiry or appeal (the *continuing inquiry or appeal*).

- (4B) For the purposes of the conduct or hearing of the continuing inquiry or appeal (and any provision of this Act or the regulations with respect to such an inquiry or an appeal), the person referred to in subsection (4A):
- (a) is taken to be a Deputy Chairperson, and
  - (b) has and may exercise only the functions conferred or imposed on a Deputy Chairperson under this Act, and
  - (c) may exercise those functions only in respect of the continuing inquiry or appeal.

**[2] Schedule 5 Proceedings before the Tribunal**

Insert after clause 6 (3):

- (3A) For the purposes of this clause, a reference to the name of any person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

**1.3 Medical Practice Act 1992 No 94**

**[1] Section 148 Chairperson and Deputy Chairpersons of the Tribunal**

Insert after section 148 (4):

- (4A) If the period of a person's appointment as Chairperson or a Deputy Chairperson expires while the person is sitting on the Tribunal for the purposes of an inquiry or an appeal, the person may, despite that expiry, continue to sit on the Tribunal for the purpose of that inquiry or appeal (the *continuing inquiry or appeal*).
- (4B) For the purposes of the conduct or hearing of the continuing inquiry or appeal (and any provision of this Act or the regulations with respect to such an inquiry or an appeal), the person referred to in subsection (4A):
- (a) is taken to be a Deputy Chairperson, and
  - (b) has and may exercise only the functions conferred or imposed on a Deputy Chairperson under this Act, and
  - (c) may exercise those functions only in respect of the continuing inquiry or appeal.

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**[2] Schedule 2 Proceedings before a Committee or the Tribunal**

Insert after clause 6 (3):

- (3A) For the purposes of this clause, a reference to the name of any person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

**1.4 Nurses and Midwives Act 1991 No 9**

**[1] Section 60 Chairperson and Deputy Chairpersons of the Tribunal**

Insert after section 60 (4):

- (4A) If the period of a person's appointment as Chairperson or a Deputy Chairperson expires while the person is sitting on the Tribunal for the purposes of an inquiry or an appeal, the person may, despite that expiry, continue to sit on the Tribunal for the purpose of that inquiry or appeal (the *continuing inquiry or appeal*).
- (4B) For the purposes of the conduct or hearing of the continuing inquiry or appeal (and any provision of this Act or the regulations with respect to such an inquiry or an appeal), the person referred to in subsection (4A):
- (a) is taken to be a Deputy Chairperson, and
  - (b) has and may exercise only the functions conferred or imposed on a Deputy Chairperson under this Act, and
  - (c) may exercise those functions only in respect of the continuing inquiry or appeal.

**[2] Schedule 2 Proceedings before a Committee and the Tribunal**

Insert after clause 6 (3):

- (3A) For the purposes of this clause, a reference to the name of any person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

**[3] Schedule 2, clause 6**

Omit the penalty provision at the end of the clause. Insert instead:

Maximum penalty: 150 penalty units in the case of a corporation and 20 penalty units in any other case.

## **1.5 Optometrists Act 2002 No 30**

### **[1] Section 104 Chairperson and Deputy Chairpersons of the Tribunal**

Insert after section 104 (4):

- (4A) If the period of a person's appointment as Chairperson or a Deputy Chairperson expires while the person is sitting on the Tribunal for the purposes of an inquiry or an appeal, the person may, despite that expiry, continue to sit on the Tribunal for the purpose of that inquiry or appeal (the *continuing inquiry or appeal*).
- (4B) For the purposes of the conduct or hearing of the continuing inquiry or appeal (and any provision of this Act or the regulations with respect to such an inquiry or an appeal), the person referred to in subsection (4A):
  - (a) is taken to be a Deputy Chairperson, and
  - (b) has and may exercise only the functions conferred or imposed on a Deputy Chairperson under this Act, and
  - (c) may exercise those functions only in respect of the continuing inquiry or appeal.

### **[2] Schedule 5 Proceedings before the Tribunal**

Insert after clause 6 (3):

- (3A) For the purposes of this clause, a reference to the name of any person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

## **1.6 Osteopaths Act 2001 No 16**

### **[1] Section 100 Chairperson and Deputy Chairpersons of the Tribunal**

Insert after section 100 (4):

- (4A) If the period of a person's appointment as Chairperson or a Deputy Chairperson expires while the person is sitting on the Tribunal for the purposes of an inquiry or an appeal, the person may, despite that expiry, continue to sit on the Tribunal for the purpose of that inquiry or appeal (the *continuing inquiry or appeal*).
- (4B) For the purposes of the conduct or hearing of the continuing inquiry or appeal (and any provision of this Act or the regulations with respect to such an inquiry or an appeal), the person referred to in subsection (4A):

- (a) is taken to be a Deputy Chairperson, and
- (b) has and may exercise only the functions conferred or imposed on a Deputy Chairperson under this Act, and
- (c) may exercise those functions only in respect of the continuing inquiry or appeal.

**[2] Schedule 5 Proceedings before the Tribunal**

Insert after clause 6 (3):

- (3A) For the purposes of this clause, a reference to the name of any person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

**1.7 Pharmacy Act 1964 No 48**

**Schedule 2 Inquiries by the Board or a Committee**

Insert after clause 6 (3):

- (3A) For the purposes of this clause, a reference to the name of any person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

**1.8 Pharmacy Practice Act 2006 No 59**

**[1] Section 113 Chairperson and Deputy Chairpersons of the Tribunal**

Insert after section 113 (4):

- (4A) If the period of a person's appointment as Chairperson or a Deputy Chairperson expires while the person is sitting on the Tribunal for the purposes of an inquiry or an appeal, the person may, despite that expiry, continue to sit on the Tribunal for the purpose of that inquiry or appeal (the *continuing inquiry or appeal*).
- (4B) For the purposes of the conduct or hearing of the continuing inquiry or appeal (and any provision of this Act or the regulations with respect to such an inquiry or an appeal), the person referred to in subsection (4A):
  - (a) is taken to be a Deputy Chairperson, and
  - (b) has and may exercise only the functions conferred or imposed on a Deputy Chairperson under this Act, and



- (c) may exercise those functions only in respect of the continuing inquiry or appeal.

**[2] Schedule 6 Proceedings before Tribunal**

Insert after clause 6 (3):

- (3A) For the purposes of this clause, a reference to the name of any person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

**1.9 Physiotherapists Act 2001 No 67**

**[1] Section 101 Chairperson and Deputy Chairpersons of the Tribunal**

Insert after section 101 (4):

- (4A) If the period of a person's appointment as Chairperson or a Deputy Chairperson expires while the person is sitting on the Tribunal for the purposes of an inquiry or an appeal, the person may, despite that expiry, continue to sit on the Tribunal for the purpose of that inquiry or appeal (the *continuing inquiry or appeal*).
- (4B) For the purposes of the conduct or hearing of the continuing inquiry or appeal (and any provision of this Act or the regulations with respect to such an inquiry or an appeal), the person referred to in subsection (4A):
  - (a) is taken to be a Deputy Chairperson, and
  - (b) has and may exercise only the functions conferred or imposed on a Deputy Chairperson under this Act, and
  - (c) may exercise those functions only in respect of the continuing inquiry or appeal.

**[2] Schedule 5 Proceedings before the Tribunal**

Insert after clause 6 (3):

- (3A) For the purposes of this clause, a reference to the name of any person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

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## 1.10 Podiatrists Act 2003 No 69

### [1] Section 100 Chairperson and Deputy Chairpersons of the Tribunal

Insert after section 100 (4):

- (4A) If the period of a person's appointment as Chairperson or a Deputy Chairperson expires while the person is sitting on the Tribunal for the purposes of an inquiry or an appeal, the person may, despite that expiry, continue to sit on the Tribunal for the purpose of that inquiry or appeal (the *continuing inquiry or appeal*).
- (4B) For the purposes of the conduct or hearing of the continuing inquiry or appeal (and any provision of this Act or the regulations with respect to such an inquiry or an appeal), the person referred to in subsection (4A):
  - (a) is taken to be a Deputy Chairperson, and
  - (b) has and may exercise only the functions conferred or imposed on a Deputy Chairperson under this Act, and
  - (c) may exercise those functions only in respect of the continuing inquiry or appeal.

### [2] Schedule 5 Proceedings before the Tribunal

Insert after clause 6 (3):

- (3A) For the purposes of this clause, a reference to the name of any person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

## 1.11 Psychologists Act 2001 No 69

### [1] Section 100 Chairperson and Deputy Chairpersons of the Tribunal

Insert after section 100 (4):

- (4A) If the period of a person's appointment as Chairperson or a Deputy Chairperson expires while the person is sitting on the Tribunal for the purposes of an inquiry or an appeal, the person may, despite that expiry, continue to sit on the Tribunal for the purpose of that inquiry or appeal (the *continuing inquiry or appeal*).
- (4B) For the purposes of the conduct or hearing of the continuing inquiry or appeal (and any provision of this Act or the regulations with respect to such an inquiry or an appeal), the person referred to in subsection (4A):

- (a) is taken to be a Deputy Chairperson, and
- (b) has and may exercise only the functions conferred or imposed on a Deputy Chairperson under this Act, and
- (c) may exercise those functions only in respect of the continuing inquiry or appeal.

**[2] Schedule 5 Proceedings before the Tribunal**

Insert after clause 6 (3):

- (3A) For the purposes of this clause, a reference to the name of any person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

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## Schedule 2 Other amendments

(Section 4)

### 2.1 Dental Practice Act 2001 No 64

**[1] Section 33 Restrictions on dental auxiliaries**

Omit section 33 (2).

**[2] Section 39 Referral of mental health matters to Registrar**

Insert “or dental student” after “registered dental care provider”.

### 2.2 Dental Practice Regulation 2004

**Clause 25 Notice of mental incapacity of registered dental care provider or dental student**

Insert “or dental student” after “registered dental care provider” wherever occurring.

### 2.3 Fines Act 1996 No 99

**Schedule 1 Statutory provisions under which penalty notices issued**

Insert in appropriate order:

*Smoke-free Environment Act 2000*, section 20A

### 2.4 Health Administration Act 1982 No 135

**Section 13A Corporation to manage accounts of health professional boards**

Omit section 13A (3). Insert instead:

- (3) The Corporation may pay out of such an account:
  - (a) amounts required to meet the costs incurred in the administration or execution of the Act establishing the board in respect of which the account is kept and the regulations made under that Act, and
  - (b) amounts necessary to meet any costs associated with the employment of NSW Health Service staff to enable the Corporation to exercise its functions in respect of that board.

## 2.5 Health Services Act 1997 No 154

### [1] Sections 67AA and 67AB

Insert before section 67A:

#### 67AA Definition

In this Chapter, *appointed body* means a committee, board or other body appointed by the Director-General under section 67AB.

#### 67AB Appointed body

- (1) The Director-General may appoint a committee, board or other body as an appointed body for the purposes of this Chapter.
- (2) An appointed body is to consist of such members appointed by the Director-General as the Director-General thinks fit.
- (3) The procedure of an appointed body is to be determined by the Director-General or (subject to any determination of the Director-General) by the appointed body.
- (4) A member of an appointed body holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (5) The Director-General may terminate the appointment of a member of an appointed body at any time for any or no reason by notice in writing to the member.
- (6) A member of an appointed body is entitled to such fees and allowances as the Director-General may determine from time to time.
- (7) A member of an appointed body is not personally liable for any act or omission done or omitted to be done in good faith for the purposes of this Chapter.
- (8) If subsection (7) prevents liability attaching to a member of an appointed body, the liability attaches instead to the Director-General.

### [2] Section 67B Provision etc of ambulance services

Insert after section 67B (2):

- (3) The Director-General may delegate the exercise of any function of the Director-General under this section (other than this power of delegation) to an appointed body.

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**[3] Section 67C Ambulance Services Advisory Council**

Omit section 67C (5). Insert instead:

- (5) The function of the Advisory Council is to provide advice to the Director-General or to an appointed body in relation to the exercise of functions under this Chapter in respect of the provision of ambulance services.

**[4] Section 112 Determination of appeal**

Insert after section 112 (1):

- (1A) Following its determination of an appeal, if a Committee considers on reasonable grounds that:
- (a) serious concerns exist in relation to the performance or competence of the appellant, or
  - (b) the appellant has engaged in conduct that may constitute professional misconduct or unsatisfactory professional conduct under the health registration Act under which the appellant is registered, or
  - (c) if the appellant is a medical practitioner—the appellant may suffer from an impairment (within the meaning of the *Medical Practice Act 1992*), or
  - (d) if the appellant is a dentist—the appellant may suffer from an impairment as a dentist (within the meaning of the *Dental Practice Act 2001*),

the Chairperson of the Committee may refer the matter to the New South Wales Medical Board to be dealt with as a complaint under Part 4 of the *Medical Practice Act 1992* (in the case of a medical practitioner) or to the Dental Board to be dealt with as a complaint under Part 5 of the *Dental Practice Act 2001* (in the case of a dentist).

**[5] Section 139**

Insert after section 138:

**139 Liability of persons conducting performance reviews etc**

- (1) This section applies with respect to the provision of expert advice or assistance by a person, for or on behalf of a public health organisation or the Director-General and in the person's professional capacity, in connection with:
- (a) a review of the performance or conduct of, or

- (b) a review to determine whether to take disciplinary action in relation to,  
any visiting practitioner or member of the NSW Health Service.
- (2) No matter or thing done by the person in providing the advice or assistance subjects the person personally to any action, liability, claim or demand if the matter or thing was done by the person in good faith for the purposes of executing this or any other Act.
- (3) If subsection (2) prevents liability attaching to a person, the liability attaches instead to the public health organisation concerned or the Director-General (as the case may be).
- (4) A reference in this section to the Director-General is a reference to the Director-General in respect of the provision of ambulance services under Chapter 5A or the provision of health support services under Part 1A of Chapter 10.

**[6] Dictionary**

Insert after paragraph (e) in the definition of *health service* in Part 1:

- (e1) the supply or fitting of any prosthesis or therapeutic device,

**2.6 Medical Practice Act 1992 No 94**

**[1] Section 4 Entitlement to general registration based on qualifications and training**

Omit section 4 (2) and (3). Insert instead:

- (2) A person has *recognised medical qualifications* if the person:
  - (a) is a graduate of a Medical School (whether within or outside Australia) accredited by the Australian Medical Council, or
  - (b) has successfully completed examinations held by that Council for the purposes of registration as a medical practitioner, or
  - (c) has received a certificate or other kind of qualification in accordance with a process approved by the Board for the purpose of qualifying a person for registration as a medical practitioner.
- (3) The entitlement under this section is an entitlement to general registration.

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**[2] Section 54 Board may require practitioner to undergo examination**

Omit “a medical examination by a specified registered medical practitioner” from section 54 (1).

Insert instead “an examination by a specified registered medical practitioner or a specified registered health practitioner”.

**[3] Section 54 (2)**

Omit “a medical examination”.

Insert instead “an examination under subsection (1)”.

**[4] Section 55 Result of failure to attend counselling or examination**

Omit “under this Division to attend counselling or undergo a medical examination”.

Insert instead “under section 50 to attend counselling or under section 54 to undergo an examination”.

**[5] Section 70 Referral of mental health matters to Registrar**

Insert “or medical student” after “registered medical practitioner”.

**[6] Section 78A Board may require practitioner to undergo examination**

Omit “a medical examination by a specified registered medical practitioner” from section 78A (1).

Insert instead “an examination by a specified registered medical practitioner or a specified registered health practitioner”.

**[7] Section 78A (2) and (3)**

Omit “a medical examination” wherever occurring.

Insert instead “an examination under subsection (1)”.

**[8] Section 79 Board may require student to undergo examination**

Omit “a medical examination by a specified registered medical practitioner” from section 79 (1).

Insert instead “an examination by a specified registered medical practitioner or a specified registered health practitioner”.

**[9] Section 79 (2) and (3)**

Omit “a medical examination” wherever occurring.

Insert instead “an examination under subsection (1)”.



**[10] Section 136 Delegation by Board and Registrar**

Insert after section 136 (2):

- (3) In this section, a reference to a person includes a reference to a group of persons, including a committee established under section 133.

**[11] Section 190A Reports of medical or health practitioners**

Omit “a medical examination of a person (*a medical report*)” from section 190A (1).

Insert instead “an examination of a person by a registered medical practitioner or a registered health practitioner (a *health or medical report*)”.

**[12] Section 190A (2), (3) and (4)**

Omit “medical report” wherever occurring.

Insert instead “health or medical report”.

**[13] Schedule 1 Registration procedure**

Omit “medical” from the heading to clause 17.

**[14] Schedule 1, clause 17 (1)**

Omit “a medical examination by a registered medical practitioner”.

Insert instead “an examination by a specified registered medical practitioner or a specified registered health practitioner”.

**[15] Schedule 5 Savings and transitional provisions**

Insert after clause 35:

**Part 7 Provisions consequent on enactment of Health Legislation Amendment Act 2007**

**36 Delegations by Board**

Anything done or purported to be done under section 136 before the commencement of amendments to that section by the *Health Legislation Amendment Act 2007* that would have been validly done had those amendments been in force when it was done is validated.

**[16] Dictionary**

Insert in alphabetical order:

*registered health practitioner* means a person registered under a health registration Act.

**2.7 Medical Practice Regulation 2003**

**Clause 11 Notice of mental incapacity of registered medical practitioner or medical student**

Insert “or medical student” after “medical practitioner” wherever occurring.

**2.8 New South Wales Institute of Psychiatry Act 1964 No 44**

**Section 5 Members of the Institute**

Omit “or a chief executive officer of an area health board constituted under the *Health Services Act 1997*” from section 5 (2) (c).

Insert instead “a senior employee of a statutory health corporation constituted under the *Health Services Act 1997* or a member of the Health Executive Service within the meaning of that Act”.

**2.9 Nurses and Midwives Act 1991 No 9**

**[1] Section 77 Protection from liability**

Insert after section 77 (b):

(b1) an assessor, or

**[2] Section 77**

Insert “, the assessor” after “Registrar” where secondly occurring.

**2.10 Optometrists Act 2002 No 30**

**Section 21 Authority for use of drugs by optometrists**

Insert after section 21 (2):

(2A) An application for an optometrists drug authority is to be accompanied by such fee (if any) as is determined by the Minister in consultation with the Board.

## 2.11 Pharmacy Practice Act 2006 No 59

### Section 155 Regulations

Insert after section 155 (2) (l):

- (m) infection control standards to be followed by persons in the practice of pharmacy.

## 2.12 Poisons and Therapeutic Goods Act 1966 No 31

### [1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

*midwife* means a registered midwife within the meaning of the *Nurses and Midwives Act 1991*.

*nurse* has the same meaning as it has in the *Nurses and Midwives Act 1991*.

*podiatrist* means a podiatrist registered under the *Podiatrists Act 2003*.

### [2] Section 18AA

Insert after section 18:

#### 18AA Director-General may restrict possession or supply

- (1) In this section, *relevant person* means a medical practitioner, a nurse, a midwife, a dentist, an optometrist, a pharmacist, a podiatrist or a veterinary practitioner.
- (2) The Director-General may, by order in writing served on a relevant person, prohibit or restrict the person from possessing, supplying or prescribing a substance specified in Schedule 2, 3 or 4 of the Poisons List that the person:
  - (a) possesses, supplies or prescribes in the practice of the person's profession as a relevant person, or
  - (b) is licensed or authorised by or under this Act to possess, supply or prescribe.
- (3) Such an order may be made for any one or more of the following reasons:
  - (a) the person has requested or agreed in writing to the making of the order,
  - (b) the person is convicted of an offence against this Act or the regulations made under this Act, or of an offence against the *Drug Misuse and Trafficking Act 1985* or the

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regulations made under that Act, or an order has been made against the person under section 10 (1) of the *Crimes (Sentencing Procedure) Act 1999* in respect of such an offence,

- (c) the person has, in the opinion of the Director-General, failed to comply with any prohibition, restriction or condition imposed on the person by an order under this section,
  - (d) the person is, in the opinion of the Director-General, a person who should be restricted or prohibited from possessing, supplying or prescribing such a substance for the purpose of protecting the life, or the physical or mental health, of that or any other person (whether or not any other such person is identifiable).
- (4) An order that restricts a person as referred to in subsection (2):
- (a) may be made unconditionally or subject to conditions, and
  - (b) may apply generally or be limited in its application by reference to specified exceptions or factors, and
  - (c) may apply differently according to different factors of a specified kind.
- (5) An order under this section must specify the grounds on which it is made.
- (6) An order under this section takes effect:
- (a) in the case of an order made on the grounds referred to in subsection (3) (d), when the order is served on the person against whom it is made, or
  - (b) in any other case, on the date specified in the order in that regard.
- (7) Except in the case of an order that is made on the ground referred to in subsection (3) (a), the date referred to in subsection (6) (b) must be a date occurring not less than 14 days after the date on which the order is served on the person against whom it is made.
- (8) A person must not contravene any order in force under this section.

Maximum penalty: 20 penalty units.

## **2.13 Public Health Act 1991 No 10**

### **[1] Section 16 Notification of test results—Category 3 medical condition**

Insert after section 16 (4):

- (5) On receiving a report under subsection (1) that appears to the Director-General to be incomplete or contain incorrect information, the Director-General may require a medical practitioner involved in the treatment of the person the subject of the report to provide any information required to complete the report or correct the information.
- (6) A medical practitioner who is subject to a requirement made under subsection (1) may comply with the requirement despite any other Act or law.

### **[2] Part 6, Division 2, heading**

Omit the heading. Insert instead:

## **Division 2 Tobacco products and sales**

### **[3] Section 54A**

Insert after section 54:

#### **54A Prohibited tobacco products**

- (1) The Minister may, by notice published in the Gazette, declare that a tobacco product, or a class of tobacco products, specified in the notice is a prohibited tobacco product or are prohibited tobacco products.
- (2) The Minister must not make a declaration under subsection (1) unless the Minister is satisfied that the tobacco product or products, or the smoke of the product or products, has a distinctive fruity, sweet or confectionery-like character that might encourage a minor to smoke.
- (3) The Minister may, by further notice published in the Gazette, vary or revoke a notice under this section.
- (4) A person who sells a prohibited tobacco product is guilty of an offence.  
Maximum penalty: 50 penalty units.

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**[4] Section 57A**

Insert after section 57:

**57A Sale of tobacco products by certain means and from certain premises prohibited**

- (1) A person (*the vendor*) who carries a tobacco product in any public place for the purpose of the sale of the product by retail to persons in the place is guilty of an offence.
- (2) A person who causes or permits a vendor to carry a tobacco product in contravention of subsection (1) on premises under the person's control is guilty of an offence.
- (3) If a vendor contravenes subsection (1):
  - (a) a person who is the employer of the vendor in the person's capacity as vendor, or
  - (b) a person who has entered into a contract with the vendor in the performance of which the vendor engaged in the activity that constituted the contravention,is also guilty of an offence.
- (4) A person who sells a tobacco product by retail from:
  - (a) any booth, tent or other temporary enclosure (including a market stall or stand), whether or not part of the booth, tent or enclosure is permanent, or
  - (b) any mobile structure, vehicle or vessel,is guilty of an offence.
- (5) A person who causes or permits a person to sell a tobacco product in contravention of subsection (4):
  - (a) on premises under the person's control, or
  - (b) on premises being used for a concert or other event organised by the person,is guilty of an offence.
- (6) In this section:

*public place* means a place or vehicle that the public, or a section of the public, is entitled to use or that is open to, or is being used by, the public or a section of the public (whether on payment of money, by virtue of membership of a club or other body, or otherwise).
- (7) Maximum penalty: 50 penalty units.

## **2.14 Smoke-free Environment Act 2000 No 69**

### **Section 20A**

Insert after section 20:

#### **20A Penalty notices**

- (1) An inspector may serve a penalty notice on a person if it appears to the inspector that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.

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- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

[Agreement in principle speech made in Legislative Assembly on 30 November 2007  
Second reading speech made in Legislative Council on 5 December 2007]

BY AUTHORITY