



New South Wales

Health Legislation Amendment Act 2009 No 15

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Health Legislation Amendment Act 2009 No 15

Act No 15, 2009

An Act to make miscellaneous amendments to various Acts administered by the Minister for Health; and for other purposes. [Assented to 13 May 2009]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Health Legislation Amendment Act 2009*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1.5 commences on a day to be appointed by proclamation.

Schedule 1 Amendment of Acts

1.1 Drug and Alcohol Treatment Act 2007 No 7

[1] Section 4 Application of Act

Insert at the end of section 4 (1):

Note. See section 55A which provides that the *Inebriates Act 1912* continues to apply in relation to a person detained under an order made under that Act immediately before the commencement of a regulation made under subsection (1).

[2] Section 21 Leave of absence on compassionate, medical or other grounds

Omit “the person is medically fit and,” from section 21 (3).

[3] Section 55A

Insert after section 55:

55A Transitional provision for declaration of areas

- (1) This section applies if:
 - (a) an area is prescribed under section 4 (1), and
 - (b) immediately before the area is prescribed, a person is detained in an institution in that area under an order made under the *Inebriates Act 1912*.
- (2) Despite section 4, while the order remains in force:
 - (a) the *Inebriates Act 1912* continues to apply to the person, and
 - (b) this Act does not apply in relation to the person.

1.2 Health Administration Act 1982 No 135

[1] Schedule 2 Savings, transitional and other provisions

Insert before clause 1:

Part 1 Provisions consequent on enactment of this Act

[2] Schedule 2, Clause 13 Regulations

Omit “enactment of the cognate Acts (other than Schedule 3 to this Act).” from clause 13 (1).

Insert instead:

enactment of:
the cognate Acts (other than Schedule 3 to this Act)
Health Legislation Amendment Act 2009 (but only to the extent that it amends this Act)

[3] Schedule 2, Clause 13 (4)

Omit “foregoing”.

[4] Schedule 2, Part 2

Insert after clause 13:

Part 2 Provisions consequent on enactment of Health Legislation Amendment Act 2009

14 Terms of office

- (1) This clause applies to a person who, immediately before the commencement of this clause, held office as a member of the Medical Services Committee.
- (2) The person’s appointment to the office is taken to be for a period of 4 years, starting from the date on which the person was appointed under the instrument, as if the appointment had been made after the commencement.
- (3) Despite clause 4 (2) of Schedule 4, if the person has held the office for more than 3 consecutive terms the person may continue to hold the office until the end of the period specified in subclause (2).
- (4) Subclauses (2) and (3) do not prevent the member otherwise vacating office under clause 8 of Schedule 4.

[5] Schedule 4 Medical Services Committee

Omit “2 years” from clause 4 (1). Insert instead “4 years”.

[6] Schedule 4, Clause 4 (2)

Omit “5”. Insert instead “3”.

1.3 Health Care Complaints Act 1993 No 105

[1] Section 21A

Omit the section. Insert instead:

21A Power of Commission to obtain information, records and evidence

- (1) If the Commission is assessing a complaint and is of the opinion that a person is capable of giving information, producing documents (including medical records) or giving evidence that would assist in the assessment, the Commission may, by written notice given to the person, require the person to do any one or more of the following:
 - (a) to give the Commission, in writing signed by the person (or, in the case of a corporation, by a competent officer of the corporation), and within the reasonable time and in the way specified in the notice, any such information of which the person has knowledge,
 - (b) to produce to the Commission, in accordance with the notice, any such documents,
 - (c) to appear before the Commissioner, or a member of staff of the Commission authorised by the Commissioner, at a time and place specified in the notice that is reasonable and give any such evidence, either orally or in writing, and produce any such documents.
- (2) Information and documents may be given or provided to the Commission in compliance with this section despite any other Act or law (but not despite a provision of Division 8 of this Part or Division 6B or 6C of Part 2 of the *Health Administration Act 1982*).
- (3) A person who is subject to a requirement under subsection (1) must not, without reasonable excuse, fail to comply with the requirement.

Maximum penalty: 20 penalty units.

[2] Section 28A Notification of other persons following assessment

Insert after section 28A (5):

- (6) This section does not require the Commission to give notice of the outcomes of the assessment of a complaint if it appears to the Commission, on reasonable grounds, that the giving of the notice will:
 - (a) prejudice the investigation of the complaint, or

- (b) place the health or safety of a client at risk, or
 - (c) place the complainant or another person at risk of intimidation or harassment, or
 - (d) unreasonably prejudice the employment of the health practitioner in the case of a health practitioner who has provided the health service in the capacity of an employee.
- (7) Despite subsection (6), the Commission must give the notice if the Commission considers on reasonable grounds that:
- (a) it is essential, having regard to the principles of natural justice, that the notice be given, or
 - (b) the giving of the notice is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.
- (8) If the Commission decides that subsection (6) applies to a complaint but that some form of notice could be given of the complaint without affecting the health or safety of a client or putting any person at risk of intimidation or harassment, the Commission may give that form of notice.
- (9) On the expiration of each consecutive period of 60 days after the Commission has decided to investigate a complaint, the Commission must undertake a review of a decision not to give notice under this section (or to give notice in some other form as referred to in subsection (8)), unless notice under this section has already been given or the Commission has discontinued dealing with the complaint.

[3] Section 34A Power of Commission to obtain information, records and evidence

Omit “request” from section 34A (1). Insert instead “require”.

[4] Section 34A (2)

Omit the subsection.

[5] Section 34A (4)

Omit the subsection. Insert instead:

- (4) A person who is subject to a requirement under subsection (1) must not, without reasonable excuse, fail to comply with the requirement.

Maximum penalty: 20 penalty units.

[6] Section 34A (4), note

Omit “request”. Insert instead “requirement”.

[7] Section 37A Protection from incrimination

Omit “section 34A” wherever occurring. Insert instead “section 21A or 34A”.

[8] Section 41 (2) (c) and (d)

Insert at the end of section 41 (2) (b):

, or

- (c) any person to whom it could have given notice under section 28A of its assessment of the complaint, or
- (d) any other person or body that is, in the Commission’s opinion, a relevant person or body.

[9] Section 41A Prohibition orders and public statements

Omit “substantial risk to the health” from section 41A (1) (c).

Insert instead “risk to the health or safety”.

[10] Section 45 Notification of results of investigation

Omit section 45 (2). Insert instead:

- (2) The Commission may, at its discretion, also provide the results of its investigation to:
 - (a) any person or body it could have referred the matter to under section 26, or
 - (b) any person to whom it could have given notice under section 28A of its assessment of the complaint, or
 - (c) any other person or body that is, in the Commission’s opinion, a relevant person or body.

- (2A) The Commission may, at its discretion, also give a copy of a report prepared under section 42 (2) on the matter the subject of the complaint to the complainant.

[11] Section 45 (3)

Insert “subsection (2A) or” after “provided by”.

[12] Section 90B Functions of Director of Proceedings

Insert after section 90B (2):

- (2A) Without limiting subsection (2), the Director of Proceedings may exercise any other functions conferred or imposed on the Commission by another Act and delegated to the Director under section 84.

[13] Section 90B (3A)

Insert after section 90B (3):

- (3A) If the Director determines that a complaint should not be prosecuted before a disciplinary body, the Director may refer the complaint back to the Commission for action to be taken under section 39 (1) (c)–(g).

[14] Section 90B (5)

Insert “or (2A)” after “subsection (1)”.

[15] Section 90CA

Insert after section 90C:

90CA Notice of determination

The Director of Proceedings may give notice of the Director’s determination as to whether or not a complaint should be prosecuted before a disciplinary body to the following persons:

- (a) the parties to the complaint,
- (b) the appropriate registration authority (if any),
- (c) any other person or body whom the Commission could notify under section 45 of the results of an investigation of the complaint.

[16] Section 90E

Insert after section 90D:

90E Delegation of functions

- (1) The Director of Proceedings may delegate the Director’s functions with respect to a particular complaint, other than this power of delegation, to any officer of the Commission.
- (2) An officer of the Commission to whom functions are delegated under subsection (1) is not, in the exercise of the functions, subject to the direction and control of the Commissioner.

[17] Section 99A Offence: improper disclosure of information

Insert at the end of section 99A:

- (2) A person may not be compelled in any legal proceedings to give evidence about, or produce documents containing, any information obtained in exercising a function under this Act.
- (3) Subsection (2) does not apply to the following proceedings:
 - (a) proceedings under the *Royal Commissions Act 1923*,
 - (b) proceedings before the Independent Commission Against Corruption,
 - (c) proceedings under Part 3 of the *Special Commissions of Inquiry Act 1983*,
 - (d) an inquiry under the *Ombudsman Act 1974*.

[18] Section 99B

Insert after section 99A:

99B Disclosure of information to certain persons or bodies

- (1) The Commission or a member of staff of the Commission may, at the Commission's discretion, disclose information obtained in exercising a function under this Act to any of the following:
 - (a) the Minister,
 - (b) any court, tribunal or other person acting judicially,
 - (c) any person or body regulating health service providers in Australia,
 - (d) any officer of, or Australian legal practitioner instructed by, any of the following:
 - (i) any authority regulating health service providers in Australia,
 - (ii) the Commonwealth or a State or Territory,
 - (iii) an authority of the Commonwealth or of a State or Territory,
 - (e) any investigative or prosecuting authority established by or under legislation,
 - (f) a police officer if the Commission suspects on reasonable grounds that the information relates to an offence that may have been committed,
 - (g) an investigator carrying out an investigation, examination or audit in relation to a health service provider,

- (h) a health service provider that is the subject of an investigation under this Act,
 - (i) a client of a health service provider that has been the subject of an investigation under this Act, but only to the extent the information relates to that client.
- (2) The Commission may exercise its discretion under subsection (1) to disclose, or authorise a member of the Commission's staff to disclose, information only if:
- (a) the Commission considers the public interest in disclosing the information outweighs the public interest in protecting the confidentiality of the information and the privacy of any person to whom the information relates, and
 - (b) the Commission has had due regard to the principle set out in section 3 (2).

[19] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Health Legislation Amendment Act 2009 (but only to the extent that it amends this Act)

1.4 Health Services Act 1997 No 154

[1] Section 49 Membership of health corporation board

Insert after section 49 (2):

- (3) Subsection (2) does not apply to a health corporation board if less than 50 members of the NSW Health Service are employed to enable the board governed health corporation concerned to exercise its functions.

[2] Section 51 Appointment of chief executive

Omit section 51 (1)–(3). Insert instead:

- (1) There is to be a chief executive for each board governed health corporation.
- (2) If the position of chief executive is an executive position within the meaning of Part 3 of Chapter 9, the appointment and employment of the chief executive is subject to that Part.
- (3) If the position of chief executive is not an executive position within the meaning of Part 3 of Chapter 9:
 - (a) the chief executive is to be appointed by the Minister, and

- (b) the chief executive is, while holding that office, to be employed under Part 1 of Chapter 9 in the NSW Health Service.

[3] Section 139 Liability of persons conducting performance reviews etc

Omit “member of the NSW Health Service” from section 139 (1).

Insert instead “relevant employee”.

[4] Section 139 (5)

Insert after section 139 (4):

- (5) In this section:

relevant employee means:

- (a) a member of the NSW Health Service, or
- (b) a person who:
 - (i) is an employee of an affiliated health organisation that is not a declared affiliated health organisation, and
 - (ii) is employed in relation to a recognised establishment or recognised service of the organisation.

[5] Schedule 7 Savings and transitional provisions

Insert at the end of clause 1 (1):

Health Legislation Amendment Act 2009 (but only to the extent that it amends this Act)

1.5 Medical Practice Act 1992 No 94

[1] Section 177 Representation at inquiry

Omit section 177 (1)–(2A). Insert instead:

- (1) At an inquiry conducted by a Committee, the practitioner concerned and any complainant are entitled to attend and to be represented by an Australian legal practitioner or another adviser.
- (2) To remove any doubt, the Committee is not prevented from addressing questions directly to the practitioner if the practitioner is represented by an Australian legal practitioner or another adviser.

[2] Section 177 (3)

Omit “(except an Australian legal practitioner or another adviser representing any person)”.

[3] Schedule 5 Savings and transitional provisions

Insert after clause 49:

Part 9 Provisions consequent on enactment of Health Legislation Amendment Act 2009

50 Professional Standards Committees

- (1) This clause applies if, immediately before the commencement of this clause, a Professional Standards Committee had started but not finalised an inquiry.
- (2) Section 177, as in force immediately before the commencement, continues to apply to the inquiry as if Schedule 1.5 [1] and [2] to the *Health Legislation Amendment Act 2009* had not commenced.

1.6 Mental Health Act 2007 No 8

[1] Section 52 Notice of applications

Omit “This section” from section 52 (4). Insert instead “Subsection (3)”.

[2] Section 141 Membership of Tribunal

Insert “or part-time” after “full-time” in section 141 (1) (a).

[3] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Health Legislation Amendment Act 2009 (but only to the extent that it amends this Act)

1.7 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

Schedule 2 Public offices

Omit “President of the Mental Health Review Tribunal” from Part 1.

Insert instead “Full-time or part-time President of the Mental Health Review Tribunal”.

[Agreement in principle speech made in Legislative Assembly on 25 March 2009
Second reading speech made in Legislative Council on 5 May 2009]

BY AUTHORITY