



New South Wales

Health Practitioner Regulation National Law (NSW) Amendment (Review) Act 2016 No 4

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Health Practitioner Regulation National Law (NSW) Amendment (Review) Act 2016 No 4

Act No 4, 2016

An Act to make miscellaneous amendments to the *Health Practitioner Regulation (Adoption of National Law) Act 2009* in relation to health practitioners and associated matters. [Assented to 17 March 2016]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Health Practitioner Regulation National Law (NSW) Amendment (Review) Act 2016*.

2 Commencement

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

Schedule 1 Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86

[1] Schedule 1 Modification of Health Practitioner Regulation National Law

Omit section 41E from Schedule 1 [8]. Insert instead:

41E Membership of Councils [NSW]

Each Council consists of the members prescribed by the NSW regulations.

[2] Schedule 1 [8], section 41NA

Insert after section 41N:

41NA Special provisions relating to non-financially viable Councils [NSW]

- (1) The Minister may, if satisfied that a Council is not financially viable, make either or both of the following directions—
 - (a) a direction in writing to the Council that the Council delegate such of its functions as are specified in the direction to another Council, or to a person, designated by the Minister in the direction;
 - (b) a direction in writing to the Executive Officer of the Council that the Executive Officer delegate such of the Executive Officer's functions as are specified in the direction to a person designated by the Minister in the direction.

The Council or Executive Officer must comply with any such direction.

- (2) The NSW regulations may modify the functions of a Council (including modification of any of the Council's auditing or reporting requirements) as a consequence of—
 - (a) any direction under subsection (1), or
 - (b) the financial non-viability of the Council.
- (3) Any such regulation may not be made in relation to a Council unless the Minister has certified that, in the opinion of the Minister, the Council is not financially viable.
- (4) Any direction by the Minister under subsection (1) is to be made publicly available.

[3] Schedule 1 [13] (sections 139B (1) (i) and (2) and 139D (1) (c) and (e), (2) (a) and (3)) and Schedule 1 [25] (Schedule 5C, clause 16 and Schedule 5F, except the definition of "pecuniary interest" in clause 1)

Omit "pecuniary interest" and "pecuniary interests" wherever occurring.

Insert instead "financial interest" and "financial interests" respectively.

[4] Schedule 1 [13], section 139I

Insert after section 139H:

139I Notifications under section 130 [NSW]

A notice under section 130 is taken to be a complaint both for the purposes of this Part and for the purposes of the *Health Care Complaints Act 1993* (including sections 96 and 98 of that Act).

[5] Schedule 1 [15], section 145D, note

Insert at the end of the section:

Note. A referral under this section is an application made to the Tribunal for a general decision for the purposes of the *Civil and Administrative Tribunal Act 2013*.

[6] Schedule 1 [15], sections 145F, 146D (1), 148G (1) (a) and 152B

Omit “sufficient physical and mental capacity” wherever occurring.

Insert instead “sufficient physical or mental capacity”.

[7] Schedule 1 [15], section 146B (1) (b)

Omit the paragraph. Insert instead:

(b) impose the conditions it considers appropriate on the practitioner’s registration;

[8] Schedule 1 [15], section 147B (1)

Omit the subsection. Insert instead:

(1) If a complaint is referred to a Committee, the Committee must investigate the complaint.

[9] Schedule 1 [15], section 148E (1) (c)

Omit the paragraph. Insert instead:

(c) impose the conditions it considers appropriate on the practitioner’s registration;

[10] Schedule 1 [15], section 148E (2) (b)

Omit the paragraph. Insert instead:

(b) impose the conditions it considers appropriate on the student’s registration;

[11] Schedule 1 [15], section 151 (1)

Omit “becomes a mentally incapacitated person or is involuntarily admitted to a mental health facility”.

Insert instead “is found to be a mentally ill person or a mentally disordered person in accordance with section 27 of the *Mental Health Act 2007*”.

[12] Schedule 1 [15], section 152F (2)

Insert at the end of section 152F:

(2) Subsection (1) does not apply if the Commission agrees to the continuation of the investigation or other action to be taken.

[13] Schedule 1 [15], section 155C (1) (f)

Omit “counselling.” from section 155C (1) (e). Insert instead:

counselling; or

(f) impose on the practitioner’s registration, with the consent of the practitioner, the conditions the Council considers appropriate.

[14] Schedule 1 [15], section 159 (3)

Omit the subsection. Insert instead:

- (3) The appeal is to be dealt with by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence that was before the Council, may be given.

[15] Schedule 1 [15], section 159A (3A)

Insert after section 159A (3):

- (3A) The appeal is to be dealt with by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence that was before the Council, may be given.

[16] Schedule 1 [15], section 160 (1), note

Insert after section 160 (1):

Note. An appeal under this section is an external appeal to the Tribunal for the purposes of the *Civil and Administrative Tribunal Act 2013*.

[17] Schedule 1 [15], section 160 (2)

Omit the subsection. Insert instead:

- (2) The appeal is to be dealt with by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence that was before the Performance Review Panel, may be given.

[18] Schedule 1 [15], section 163C (4)

Insert after section 163C (3):

- (4) A Council and the Commission are entitled to appear at any inquiry conducted by the Tribunal under this Division.

[19] Schedule 1 [15], section 165B (2)

Omit “and (5)”. Insert instead “, (5) and (5A)”.

[20] Schedule 1 [15], section 165B (5A)

Insert after section 165B (5):

- (5A) The Tribunal, when constituted to make an ancillary decision or an interlocutory decision within the meaning of the *Civil and Administrative Tribunal Act 2013*, is to be constituted by the Tribunal List Manager or the member referred to in subsection (2) (a).

[21] Schedule 1 [15], section 165L (3)

Insert after section 165L (2):

- (3) The Tribunal may, during any proceedings under this Law, suspend a registered health practitioner’s or student’s registration if—
- (a) it has found the subject-matter of the complaint against the practitioner or student to have been proved; and
 - (b) the complaint has not yet been finally disposed of; and
 - (c) it is satisfied that it is appropriate to do so for the protection of the health or safety of any person or persons (whether or not a particular person or persons) or the action is otherwise in the public interest.

[22] Schedule 1 [15], section 165M (5)

Insert after section 165M (4):

- (5) This section applies to a decision on an inquiry that is conducted into a complaint referred to the Tribunal under this Law where the subject-matter of the complaint is admitted in writing to the Tribunal.

[23] Schedule 1 [15], section 170A (2)

Insert at the end of section 170A:

- (2) The Chairperson of a Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

[24] Schedule 1 [15], section 170D (1) (c)

Omit “inquiry.” from section 170D (1) (b). Insert instead:

- inquiry;
- (c) the power to make a decision concerning any interlocutory issue before the Committee.

[25] Schedule 1 [15], section 170E

Insert after section 170D:

170E Effect of vacancy on Committee [NSW]

- (1) If one of the members (other than the Chairperson of the Committee) constituting a Committee for the purpose of conducting an inquiry under this Law vacates office for any reason before the inquiry is completed or a determination in respect of the inquiry is made, the inquiry may be continued and a determination made by the remaining members of the Committee.
- (2) If more than one of the members vacate office, or the Chairperson of the Committee vacates office, for any reason before the Committee has completed an inquiry or made a determination in respect of an inquiry, the inquiry is terminated.
- (3) When an inquiry is terminated, the Committee may be reconstituted in accordance with this Division for the purposes of conducting a new inquiry in respect of the matter concerned.

[26] Schedule 1 [15], section 171G

Insert after section 171F:

171G Record of inquiry [NSW]

- (1) Proceedings on any inquiry of the Committee under this Subdivision are to be recorded.
- (2) The NSW regulations may prescribe the manner in which the evidence may be recorded.

[27] Schedule 1 [15], section 172B (1)

Omit “appointed by the Minister”. Insert instead “appointed by the Council”.

[28] Schedule 1 [15], section 175 (3)

Insert after section 175 (2):

- (3) The appeal is to be dealt with by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence that was before the National Board, may be given.

[29] Schedule 1 [25], Schedule 5A

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provision consequent on enactment of Health Practitioner Regulation National Law (NSW) Amendment (Review) Act 2016 [NSW]

Application of amendment concerning membership of Committee [NSW]

Any person appointed by the Minister under section 172B (1) (as in force immediately before its amendment by the *Health Practitioner Regulation National Law (NSW) Amendment (Review) Act 2016*) is taken to have been appointed by the relevant Council.

[30] Schedule 1 [25], Schedule 5C, Part 1

Omit the Part.

[31] Schedule 1 [25], Schedule 5C, clause 19 (2)

Insert at the end of clause 19:

- (2) If a Council has more than 4 members, the quorum for a meeting of the Council for the purpose of dealing with a complaint about a registered health practitioner or student by inquiry is 3.

[32] Schedule 1 [25], Schedule 5D, clause 13 (3A)

Insert after clause 13 (3):

- (3A) The Tribunal may fix the amount of costs itself or order that the amount of costs be assessed by a costs assessor under the legal costs legislation (as defined in section 3A of the *Legal Profession Uniform Law Application Act 2014*) or on any other basis.

[33] Schedule 1 [25], Schedule 5F, clause 1

Insert in alphabetical order:

financial interest has the meaning given by clause 2.

[34] Schedule 1 [25], Schedule 5F, clause 1

Omit the definition of *pecuniary interest*.

[35] Schedule 1 [25], Schedule 5F, clause 12 (5)

Omit “decided by the Council”. Insert instead “prescribed by the NSW regulations”.

[36] Schedule 1 [25], Schedule 5F, Part 4, heading

Omit “Returns”. Insert instead “Declarations”.

[37] Schedule 1 [25], Schedule 5F, clause 15

Omit “return” wherever occurring. Insert instead “declaration”.

[Second reading speech made in—
Legislative Assembly on 24 February 2016
Legislative Council on 9 March 2016]