



New South Wales

Health Practitioner Legislation Amendment Act 2024 No 26

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Health Practitioner Legislation Amendment Act 2024 No 26

Act No 26, 2024

An Act to make miscellaneous amendments to the *Health Care Complaints Act 1993* and the *Health Practitioner Regulation (Adoption of National Law) Act 2009*. [Assented to 31 May 2024]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Health Practitioner Legislation Amendment Act 2024*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Health Care Complaints Act 1993 No 105

[1] Section 3A Outline of role and principles of Commission and related government agencies in health care system

Omit “relevant professional councils” from section 3A(2).

Insert instead “appropriate professional councils”.

[2] Section 14 Suspension of action by professional council

Omit section 14(2). Insert instead—

- (2) However, subsection (1) does not limit the powers of a professional council to take action under the *Health Practitioner Regulation National Law (NSW)*, Part 8, Division 3, Subdivision 7.

Note— Under the *Health Practitioner Regulation National Law (NSW)*, Part 8, Division 3, Subdivision 7, a professional council must, in certain circumstances, take action for the protection of the public.

[3] Section 15 Provision of information to professional councils

Omit “relevant professional council” from the note.

Insert instead “appropriate professional council”.

[4] Section 18 Can a complaint be withdrawn?

Omit section 18(1). Insert instead—

- (1) A complainant may withdraw the complainant’s complaint at any time—
- (a) by written notice to the Commission, or
 - (b) if the Commission considers it appropriate to accept the withdrawal of the complaint orally—by oral notice to the Commission.
- (1A) If the Commission accepts the withdrawal of a complaint orally, the Commission must, as soon as practicable after receiving the oral notice, make a written record of the complaint having been withdrawn.

[5] Section 30 Expert assistance

Omit the section.

[6] Section 39 What action is taken after an investigation?

Insert “, if any,” after “appropriate professional council” in section 39(2).

[7] Section 41A Prohibition orders and public statements

Omit “relevant professional council” in section 41A(3).

Insert instead “appropriate professional council”.

[8] Section 90B Functions of Director of Proceedings

Omit section 90B(1)(a1). Insert instead—

- (a1) if the Director determines the complaint should be prosecuted before a disciplinary body by the Commission—
- (i) to prosecute the complaint before the disciplinary body, or
 - (ii) to vary the decision to prosecute the complaint, including after the prosecution has commenced, or

- (iii) to withdraw or discontinue the prosecution of the complaint, including after the prosecution has commenced,

[9] Section 91A

Insert after section 91—

91A Expert assistance

- (1) The Commission may obtain a report from a person (an *expert*), including a registered health practitioner, who, in the Commission’s opinion, is sufficiently qualified or experienced to give expert advice on the matter the subject of the complaint.
- (2) The Commission must not obtain a report from an expert who has a financial connection with the health practitioner against whom the complaint is made.
- (3) If the Commission seeks to obtain a report from an expert under this section in relation to a complaint, the Commission must provide the expert with all the relevant information about the complaint that is in the Commission’s possession.
- (4) The expert must include in the expert’s report, or annex to the report, a statement in the following form, completed as appropriate—
I *have/do not have* a personal, financial or professional connection with the person against whom the complaint is made. Particulars of the connection are as follows—
.....
.....
.....
Dated—
Signature
- (5) The expert’s report—
 - (a) may be used in—
 - (i) proceedings under this Act, or
 - (ii) disciplinary or related proceedings under the *Health Practitioner Regulation National Law (NSW)*, but
 - (b) may not be admitted or used in any other proceedings before a court, tribunal or body, except with the consent of—
 - (i) the expert, and
 - (ii) the complainant, and
 - (iii) the person against whom the complaint is made.
- (6) The expert, the Commission or the Commissioner may not be compelled to—
 - (a) produce the report in proceedings before a court, tribunal or body, other than—
 - (i) proceedings under this Act, or
 - (ii) disciplinary or related proceedings under the *Health Practitioner Regulation National Law (NSW)* or this Act.
 - (b) give evidence in relation to the report or the report contents in proceedings before a court, tribunal or body, other than—
 - (i) proceedings under this Act, or
 - (ii) disciplinary or related proceedings under the *Health Practitioner Regulation National Law (NSW)*.

- (7) In this section—
report includes—
- (a) a copy, a reproduction and a duplicate, and
 - (b) a part of the report, copy, reproduction or duplicate.

[10] Section 99B Disclosure of information to certain persons or bodies

Insert “or another jurisdiction” after “Australia” in section 99B(1)(c).

Schedule 2 Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86

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

Insert after Schedule 1[15], section 149C(4)—

- (4A) If the Tribunal decides under subsection (4)(a) that if the person were still registered the Tribunal would have suspended the person's registration, the person may not apply for registration in the health profession during the period for which the person would have been suspended if registered.

[2] Schedule 1[15], section 150(6)

Omit the subsection. Insert instead—

- (6) If a Council takes action under this section in relation to a registered health practitioner or student, the Council must give written notice of the following to the practitioner or student—
- (a) the action taken under this section;
 - (b) the reasons for the action.
- (6A) A written notice under subsection (6)(b) about the reasons for action taken under this section is not admissible in evidence in—
- (a) civil or criminal proceedings in a court of law, other than proceedings under this Law; or
 - (b) an inquest or inquiry under the *Coroners Act 2009*.

[3] Schedule 1[15], section 150A(5)

Insert after section 150A(4)—

- (5) If a Council makes a decision under subsection (2)(a) or (3) in relation to a registered health practitioner or student, the Council must give written notice of the following to the registered health practitioner or student —
- (a) the decision;
 - (b) the reasons for the decision.
- (6) A written notice under subsection (5)(b) about the reasons for a decision under this section is not admissible in evidence in—
- (a) civil or criminal proceedings in a court of law, other than proceedings under this Law; or
 - (b) an inquest or inquiry under the *Coroners Act 2009*.

[4] Schedule 1[15], section 150B(2)

Insert “, or a transcript of a recording,” after “recording”.

[5] Schedule 1[15], section 152IA

Insert after section 152I—

152IA Referral to Panel for reconsideration [NSW]

- (1) This section applies if, after considering a written report given to the Council by an Impaired Registrants Panel, the Council considers it appropriate for the Panel to further consider any recommendations in the report.

- (2) The Council may decide to refer the matter to the Impaired Registrants Panel to—
 - (a) further consider the Panel’s recommendations, having regard to any matters specified in the referral; and
 - (b) if appropriate, vary the recommendations.
- (3) The Impaired Registrants Panel must give the Council a further written report about the matter.
- (4) The report must include—
 - (a) the results of the Impaired Registrants Panel’s further consideration of the recommendations; and
 - (b) details of any variations in the recommendations to the Council the Panel considers appropriate.
- (5) The Impaired Registrants Panel may decide to recommend variations in the recommendations to the Council only if the registered health practitioner or student the subject of the inquiry has been given an opportunity to make oral or written submissions to the panel about the matters the subject of the Panel’s further consideration.

[6] Schedule 1[25], Schedule 5B, clause 2A

Insert after clause 2—

2A Powers to obtain information and records [NSW]

- (1) If, in an assessor’s opinion, a person is capable of giving relevant information or relevant records in relation to a registered health practitioner that would assist the assessor in conducting a performance assessment of the practitioner, the assessor may, by written notice given to the person, require the person—
 - (a) to answer questions in writing, within the time and in the way specified in the notice, in relation to the relevant information of which the person has knowledge; or
 - (b) to produce to the assessor, in accordance with the notice, the relevant records that are in the possession or under the control of the person.
- (2) Relevant information and relevant records may be given to the assessor in compliance with this section despite any other Act or law.
- (3) A person who is subject to a requirement made under subsection (1) must not, without reasonable excuse, fail to comply with the requirement.
Maximum penalty—20 penalty units.
- (4) In this section—

relevant information, in relation to a registered health practitioner, means information relating to the carrying out of the practitioner’s professional practice.

relevant record, in relation to a registered health practitioner, means a record relating to the carrying out of the practitioner’s professional practice.

[7] Schedule 1[25], Schedule 5B, clause 4

Omit the heading. Insert instead—

4 Production of information and records [NSW]

- [8] Schedule 1[25], Schedule 5B, clause 4(1)**
Omit “information furnished by a person in answering a question asked by an assessor”.
Insert instead “information or a record given by a person to an assessor”.
- [9] Schedule 1[25], Schedule 5B, clause 4(2)**
Omit “information furnished”. Insert instead “information or a record given”.
- [10] Schedule 1[25], Schedule 5B, clause 5(c)**
Omit “information knowing it”.
Insert instead “information or a record knowing the information or record”.
- [11] Schedule 1[25], Schedule 5C, clause 15(1)(f1)**
Insert after clause 15(1)(f)—
(f1) for a member whose nomination was made on a basis that included the member’s principal place of practice was in the State—is removed from office by the Minister under subclause (1A); or
- [12] Schedule 1[25], Schedule 5C, clause 15(1)(f1)**
Insert after clause 15(1)—
(1A) The Minister may, by written notice given to a member, remove the member from office but only if—
(a) the member’s nomination for appointment to the Council was made on a basis that included the member’s principal place of practice was in the State; and
(b) the member’s principal place of practice ceases to be in the State.
- [13] Schedule 1[25], Schedule 5D, clause 5(1)(e1) and (e2)**
Insert after clause 5(1)(e)—
(e1) a finding or decision of a Council under Part 8, Division 3, Subdivision 5 about a complaint dealt with by inquiry at a meeting of the Council;
(e2) a finding or decision of a Performance Review Panel;
- [14] Schedule 1[25], Schedule 5D, clause 5(2)(a)**
Omit the paragraph. Insert instead—
(a) making a finding about a registered health practitioner in the proceedings; or

[Second reading speech made in—
Legislative Assembly on 19 March 2024
Legislative Council on 14 May 2024]