



New South Wales

Health Legislation Amendment Bill 2009

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Drug and Alcohol Treatment Act 2007*:
 - (i) to remove the requirement that a medical practitioner who grants a person a leave of absence from a treatment centre must be satisfied that the person is medically fit, and
 - (ii) to include a transitional provision that allows persons who have been detained for treatment under the *Inebriates Act 1912*, within an area that is subsequently prescribed for the purposes of the *Drug and Alcohol Treatment Act 2007*, to continue to be detained under the *Inebriates Act 1912*, and
- (b) to amend the *Health Administration Act 1982* to provide that members of the Medical Services Committee may be appointed for 3 terms of office, with each term of office being 4 years, and
- (c) to amend the *Health Care Complaints Act 1993*:
 - (i) to provide that the Health Care Complaints Commission (the **Commission**) may compel a person to give information, produce

- documents or answer questions that would assist the Commission in assessing a complaint or carrying out an investigation, and
- (ii) to provide that following the assessment of a complaint the Commission is not required to give notice of its decision to a person in certain circumstances, and
 - (iii) to provide that following the investigation of a complaint the Commission may provide the outcomes of the investigation to certain persons and a report of the outcome of the investigation to the complainant, and
 - (iv) to provide that in circumstances in which the Director of Proceedings determines that a complaint should not be prosecuted before a disciplinary body, the Director may refer the complaint to the Commission for alternative action, and
 - (v) to provide that the Director of Proceedings may give notice of the Director's decision about whether or not to prosecute a complaint to certain persons, and
 - (vi) to provide that the Director of Proceedings may delegate his or her functions with respect to a particular complaint to an officer of the Commission, and
 - (vii) to provide that the Director of Proceedings may undertake functions imposed on the Commission by Acts other than the *Health Care Complaints Act 1993*, and
 - (viii) to provide that a person cannot be compelled to give evidence about, or produce documents containing, information obtained in exercising a function under the Act except in limited circumstances, and
 - (ix) to provide that the Commission, or a member of staff of the Commission, may disclose information obtained in exercising a function under the Act to certain persons, and
- (d) to amend the *Health Services Act 1997*:
- (i) to provide that if a board governed health corporation under that Act has fewer than 50 staff members there is no requirement to appoint a member of the NSW Health Service to the health corporation's board, and
 - (ii) to clarify that if the position of chief executive of a board governed health corporation is an executive position within the meaning of Part 3 of Chapter 9 of that Act, the chief executive is to be appointed under that Part, and
 - (iii) to provide that the protection from liability given to a person who provides expert advice or assistance in a review of the conduct of a visiting practitioner or a member of the NSW Health Service extends to a review of the conduct of an employee of a non-declared affiliated health organisation who is employed in relation to a recognised establishment or recognised service of the organisation, and

- (e) to amend the *Medical Practice Act 1992* to provide that at an inquiry conducted by a Professional Standards Committee, the medical practitioner concerned and any complainant are entitled to attend and to be represented by an Australian legal practitioner or another adviser, and
- (f) to amend the *Mental Health Act 2007*:
 - (i) to clarify that, in respect of an application for a further community treatment order under that Act, the requirement to give 14 days notice does not apply, and
 - (ii) to provide that the President of the Mental Health Review Tribunal may be appointed as a full-time or part-time member. A consequential amendment is made to the *Statutory and Other Offices Remuneration Act 1975*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act, other than Schedule 1.5, on the date of assent to the proposed Act. Schedule 1.5 will commence on a day to be appointed by proclamation.

Schedule 1 Amendment of Acts

Schedule 1.1 Drug and Alcohol Treatment Act 2007 No 7

Schedule 1.1 [2] amends the *Drug and Alcohol Treatment Act 2007* by removing the requirement that a person, subject to involuntary detention and treatment, must be medically fit before the person may be granted a leave of absence from a treatment centre.

Schedule 1.1 [3] provides that a person detained for treatment under the *Inebriates Act 1912* is to continue to be subject to that Act, notwithstanding that the area in which the person is being treated has subsequently been prescribed for the purpose of the *Drug and Alcohol Treatment Act 2007*. It also provides that in such circumstances the *Drug and Alcohol Treatment Act 2007* is not to apply in relation to that person. **Schedule 1.1 [1]** is consequential on Schedule 1.1 [3].

Schedule 1.2 Health Administration Act 1982 No 135

Schedule 1.2 [2] amends the *Health Administration Act 1982* to provide that the Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of Schedule 1.2 to the proposed Act. **Schedule 1.2 [1] and [3]** make amendments consequent on Schedule 1.2 [2].

Schedule 1.2 [5] increases the term for which a person may be appointed as a member of the Medical Services Committee from 2 to 4 years.

Schedule 1.2 [6] decreases the number of consecutive terms a person may hold office as a member of the Medical Services Committee from 5 to 3.

Schedule 1.2 [4] provides for transitional arrangements consequent on Schedule 1.2 [5] and [6]. Specifically, it provides that a person who held office as a member of the Medical Services Committee immediately before the commencement of the proposed Act holds office for 4 years, in accordance with the amendment made by Schedule 1.2 [5], and that, despite the amendment made by Schedule 1.2 [6], the person may complete the person's term of office even if the person has already served 3 consecutive terms of office.

Schedule 1.3 Health Care Complaints Act 1993 No 105

Schedule 1.3 [1] amends the *Health Care Complaints Act 1993* with respect to the powers of the Health Care Complaints Commission in assessing a complaint. In particular, the limitation on the Commission's power to obtain information, records and evidence for the purposes of assessing a complaint so that only hospital and medical records, and documents relating to a health practitioner's practice, could be obtained is removed. **Schedule 1.3 [7]** is consequential on Schedule 1.3 [1] and clarifies that the protection from incrimination for persons giving information, answering questions or producing documents under the Act extends not only to persons who do so in the course of an investigation of a complaint but also to persons who do so in the course of an assessment of a complaint.

Schedule 1.3 [2] provides for circumstances in which the Health Care Complaints Commission is not required to give notice of the outcomes of an assessment of a complaint to third parties who may have an interest in the complaint, including a person not a party to the complaint but who is receiving treatment the subject of a complaint. The circumstances in which the Commission is not required to give the notice include circumstances in which the Commission reasonably believes that giving the notice will prejudice the investigation of the complaint, or place the health or safety of a client at risk. Further provision is made requiring the Commission to review a decision not to give the notice, as well as enabling an amended form of notice to be given. These amendments bring the notification of third parties in line with similar notification provisions with respect to actual parties to a complaint under section 28 of the *Health Care Complaints Act 1993*.

Schedule 1.3 [3]–[6] extend the Health Care Complaints Commission's powers to compel the provision of information, documents or evidence, from only persons who are a party to the complaint or a health service provider, to any person whatsoever. It also creates an offence for circumstances in which information, documents or evidence is provided with the knowledge that it is false or misleading.

Schedule 1.3 [8] extends the persons to whom the Health Care Complaints Commission may notify the results of an investigation, the action to be taken as a result of the investigation and the reasons for taking that action. Those persons may include any third party to the complaint to whom the Commission could have given notice under section 28A of the *Health Care Complaints Act 1993* and any other relevant person or body.

Schedule 1.3 [9] amends a requirement that must be satisfied before the Health Care Complaints Commission may issue a prohibition order or public statement, or both.

Specifically, the requirement that the Commission may issue a prohibition order or public statement only if in the Commission's opinion the health practitioner poses a substantial risk to the health of members of the public is replaced with a lesser and broader requirement that in the Commission's opinion the practitioner poses a risk to the health or safety of members of the public.

Schedule 1.3 [10] extends the persons to whom the Health Care Complaints Commission may provide the results of an investigation into a health organisation. They will include any third party to the complaint to whom the Commission could have given notice under section 28A of the *Health Care Complaints Act 1993* and any other relevant person or body. It also inserts proposed section 45 (2A) that enables the Commission to provide the complainant with a copy of the report produced with respect to their complaint.

Schedule 1.3 [11] provides that the Commission's discretion to provide the results of an investigation of a complaint to certain persons does not authorise the release of a report prepared under section 42 (2) of the *Health Care Complaints Act 1993*, other than as provided by section 44 or 45 (2A).

Schedule 1.3 [12] and [14] expand the functions the Director of Proceedings may exercise to include those conferred or imposed on the Health Care Complaints Commission by an Act other than the *Health Care Complaints Act 1993*. The amendments provide that the Director is not empowered to exercise a function conferred or imposed on the Commission, as opposed to the Director, other than those referred to in subsection (1) or proposed subsection (2A) of section 90B of the *Health Care Complaints Act 1993*.

Schedule 1.3 [13] enables the Director of Proceedings to refer a complaint to the Health Care Complaints Commission for action under section 39 (1) (c), (d), (e), (f) or (g) if the Director determines the complaint should not be prosecuted before a disciplinary body.

Schedule 1.3 [15] gives the Director of Proceedings power to notify specified persons of the Director's determination as to whether or not a complaint should be prosecuted before a disciplinary body.

Schedule 1.3 [16] enables the Director of Proceedings to delegate his or her functions with respect to a complaint, other than the power of delegation, to an officer of the Health Care Complaints Commission.

Schedule 1.3 [17] provides that a person is not compellable in legal proceedings to give evidence or produce documents relating to the exercise of a function under the *Health Care Complaints Act 1993*. Exceptions are provided with respect to an inquiry under the *Ombudsman Act 1974*, proceedings before the Independent Commission Against Corruption and under the *Royal Commissions Act 1923* and Part 3 of the *Special Commissions of Inquiry Act 1983*.

Schedule 1.3 [18] gives the Health Care Complaints Commission a discretion to disclose information obtained in the exercise of a function under the *Health Care Complaints Act 1993* to specified persons. However, the discretion may be exercised only if the Commission considers that it is in the public interest to do so and having regard to the principle set out in section 3 (2) of that Act.

Schedule 1.3 [19] provides that the Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of Schedule 1.3 to the proposed Act.

Schedule 1.4 Health Services Act 1997 No 154

Schedule 1.4 [1] amends the *Health Services Act 1997* to exempt board governed health corporations of the NSW Health Service that have fewer than 50 employees from the requirement that one member of that board, appointed by the Minister for Health, is to be an employee of the NSW Health Service.

Schedule 1.4 [2] clarifies that the manner in which an appointment to the office of chief executive of a board governed health corporation is to be made is based on whether or not that office is an executive position within the meaning of Part 3 of Chapter 9 of the *Health Services Act 1997*. An appointment in circumstances in which the position is an executive position is subject to Part 3 of Chapter 9. An appointment in circumstances in which the position is not classified as an executive position is made by the Minister for Health.

Schedule 1.4 [3] and [4] extend the protection from personal liability provided by the *Health Services Act 1997* to cover specified reviews of a person who is an employee of a non-declared affiliated health organisation who is employed in relation to a recognised establishment or recognised service of the organisation.

Schedule 1.4 [5] provides that the Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of Schedule 1.4 to the proposed Act.

Schedule 1.5 Medical Practice Act 1992 No 94

Schedule 1.5 [1] amends the *Medical Practice Act 1992* to provide that at an inquiry conducted by a Professional Standards Committee, the medical practitioner the subject of the inquiry and any complainant are entitled to attend and to be represented by an Australian legal practitioner or another adviser. The fact that a medical practitioner is represented at an inquiry conducted by a Professional Standards Committee does not prevent the Committee from addressing questions directly to the practitioner.

Schedule 1.5 [2] is consequent on the amendment made by Schedule 1.5 [1] and provides that a Professional Standards Committee may grant leave to any person to appear at an inquiry conducted by the Committee if the Committee considers it appropriate.

Schedule 1.5 [3] provides for transitional arrangements consequent on Schedule 1.5 [1]. An inquiry conducted by a Professional Standards Committee that had started, and not been finalised, before the commencement of the proposed Act is to continue in accordance with the *Medical Practice Act 1992* as it applied at the time the inquiry started.

Schedule 1.6 Mental Health Act 2007 No 8

Schedule 1.6 [1] amends the *Mental Health Act 2007* to make clear, in respect of an application for a further community treatment order regarding a person the subject of a current community treatment order, that it is only the requirement to give a specified period of notice which is dispensed with. The requirement to give notice in writing to the affected person, as well as information as to the proposed treatment plan, will still apply.

Schedule 1.6 [2] enables the President of the Mental Health Review Tribunal to be appointed as either a full-time or part-time member.

Schedule 1.6 [3] provides that the Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of Schedule 1.6 to the proposed Act.

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

Schedule 1.7 amends the *Statutory and Other Offices Remuneration Act 1975* as a consequence of Schedule 1.6 [2] to enable the Statutory and Other Offices Remuneration Tribunal to make a determination about the remuneration of the President of the Mental Health Review Tribunal, regardless of whether the President is appointed on a full-time or part-time basis.

First print



New South Wales

Health Legislation Amendment Bill 2009

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New South Wales

Health Legislation Amendment Bill 2009

No. , 2009

A Bill for

An Act to make miscellaneous amendments to various Acts administered by the Minister for Health; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Health Legislation Amendment Act 2009</i> .	3
2 Commencement	4
(1) This Act commences on the date of assent to this Act, except as provided by subsection (2).	5 6
(2) Schedule 1.5 commences on a day to be appointed by proclamation.	7

Schedule 1	Amendment of Acts	1
1.1	Drug and Alcohol Treatment Act 2007 No 7	2
[1]	Section 4 Application of Act	3
	Insert at the end of section 4 (1):	4
	Note. See section 55A which provides that the <i>Inebriates Act 1912</i> 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).	5 6 7 8
[2]	Section 21 Leave of absence on compassionate, medical or other grounds	9 10
	Omit “the person is medically fit and,” from section 21 (3).	11
[3]	Section 55A	12
	Insert after section 55:	13
55A	Transitional provision for declaration of areas	14
	(1) This section applies if:	15
	(a) an area is prescribed under section 4 (1), and	16
	(b) immediately before the area is prescribed, a person is detained in an institution in that area under an order made under the <i>Inebriates Act 1912</i> .	17 18 19
	(2) Despite section 4, while the order remains in force:	20
	(a) the <i>Inebriates Act 1912</i> continues to apply to the person, and	21 22
	(b) this Act does not apply in relation to the person.	23
1.2	Health Administration Act 1982 No 135	24
[1]	Schedule 2 Savings, transitional and other provisions	25
	Insert before clause 1:	26
Part 1	Provisions consequent on enactment of this Act	27 28

[2] Schedule 2, Clause 13 Regulations	1
Omit “enactment of the cognate Acts (other than Schedule 3 to this Act).” from clause 13 (1).	2 3
Insert instead:	4
enactment of:	5
the cognate Acts (other than Schedule 3 to this Act)	6
<i>Health Legislation Amendment Act 2009</i> (but only to the extent that it amends this Act)	7 8
[3] Schedule 2, Clause 13 (4)	9
Omit “foregoing”.	10
[4] Schedule 2, Part 2	11
Insert after clause 13:	12
Part 2 Provisions consequent on enactment of Health Legislation Amendment Act 2009	13 14
14 Terms of office	15
(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.	16 17 18
(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.	19 20 21 22
(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).	23 24 25 26
(4) Subclauses (2) and (3) do not prevent the member otherwise vacating office under clause 8 of Schedule 4.	27 28
[5] Schedule 4 Medical Services Committee	29
Omit “2 years” from clause 4 (1). Insert instead “4 years”.	30
[6] Schedule 4, Clause 4 (2)	31
Omit “5”. Insert instead “3”.	32

1.3 Health Care Complaints Act 1993 No 105	1
[1] Section 21A	2
Omit the section. Insert instead:	3
21A Power of Commission to obtain information, records and evidence	4
(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:	5 6 7 8 9 10
(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,	11 12 13 14 15
(b) to produce to the Commission, in accordance with the notice, any such documents,	16 17
(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.	18 19 20 21 22
(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 <i>Health Administration Act 1982</i>).	23 24 25 26 27
(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.	28 29 30 31
[2] Section 28A Notification of other persons following assessment	32
Insert after section 28A (5):	33
(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:	34 35 36 37
(a) prejudice the investigation of the complaint, or	38

(b)	place the health or safety of a client at risk, or	1
(c)	place the complainant or another person at risk of intimidation or harassment, or	2 3
(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.	4 5 6
(7)	Despite subsection (6), the Commission must give the notice if the Commission considers on reasonable grounds that:	7 8
(a)	it is essential, having regard to the principles of natural justice, that the notice be given, or	9 10
(b)	the giving of the notice is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.	11 12 13
(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.	14 15 16 17 18
(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.	19 20 21 22 23 24 25
[3]	Section 34A Power of Commission to obtain information, records and evidence	26 27
	Omit “request” from section 34A (1). Insert instead “require”.	28
[4]	Section 34A (2)	29
	Omit the subsection.	30
[5]	Section 34A (4)	31
	Omit the subsection. Insert instead:	32
(4)	A person who is subject to a requirement under subsection (1) must not, without reasonable excuse, fail to comply with the requirement.	33 34 35
	Maximum penalty: 20 penalty units.	36

[6] Section 34A (4), note	1
Omit “request”. Insert instead “requirement”.	2
[7] Section 37A Protection from incrimination	3
Omit “section 34A” wherever occurring. Insert instead “section 21A or 34A”.	4
[8] Section 41 (2) (c) and (d)	5
Insert at the end of section 41 (2) (b):	6
, or	7
(c) any person to whom it could have given notice under section 28A of its assessment of the complaint, or	8
(d) any other person or body that is, in the Commission’s opinion, a relevant person or body.	9
[9] Section 41A Prohibition orders and public statements	12
Omit “substantial risk to the health” from section 41A (1) (c).	13
Insert instead “risk to the health or safety”.	14
[10] Section 45 Notification of results of investigation	15
Omit section 45 (2). Insert instead:	16
(2) The Commission may, at its discretion, also provide the results of its investigation to:	17
(a) any person or body it could have referred the matter to under section 26, or	18
(b) any person to whom it could have given notice under section 28A of its assessment of the complaint, or	19
(c) any other person or body that is, in the Commission’s opinion, a relevant person or body.	20
(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.	21
	22
	23
	24
	25
	26
	27
[11] Section 45 (3)	28
Insert “subsection (2A) or” after “provided by”.	29

[12] Section 90B Functions of Director of Proceedings	1
Insert after section 90B (2):	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.	3 4 5 6
[13] Section 90B (3A)	7
Insert after section 90B (3):	8
(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).	9 10 11 12
[14] Section 90B (5)	13
Insert “or (2A)” after “subsection (1)”.	14
[15] Section 90CA	15
Insert after section 90C:	16
90CA Notice of determination	17
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:	18 19 20
(a) the parties to the complaint,	21
(b) the appropriate registration authority (if any),	22
(c) any other person or body whom the Commission could notify under section 45 of the results of an investigation of the complaint.	23 24 25
[16] Section 90E	26
Insert after section 90D:	27
90E Delegation of functions	28
(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.	29 30 31
(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.	32 33 34

[17] Section 99A Offence: improper disclosure of information	1
Insert at the end of section 99A:	2
(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 4 5
(3) Subsection (2) does not apply to the following proceedings:	6
(a) proceedings under the <i>Royal Commissions Act 1923</i> ,	7
(b) proceedings before the Independent Commission Against Corruption,	8 9
(c) proceedings under Part 3 of the <i>Special Commissions of Inquiry Act 1983</i> ,	10 11
(d) an inquiry under the <i>Ombudsman Act 1974</i> .	12
[18] Section 99B	13
Insert after section 99A:	14
99B Disclosure of information to certain persons or bodies	15
(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:	16 17 18
(a) the Minister,	19
(b) any court, tribunal or other person acting judicially,	20
(c) any person or body regulating health service providers in Australia,	21 22
(d) any officer of, or Australian legal practitioner instructed by, any of the following:	23 24
(i) any authority regulating health service providers in Australia,	25 26
(ii) the Commonwealth or a State or Territory,	27
(iii) an authority of the Commonwealth or of a State or Territory,	28 29
(e) any investigative or prosecuting authority established by or under legislation,	30 31
(f) a police officer if the Commission suspects on reasonable grounds that the information relates to an offence that may have been committed,	32 33 34
(g) an investigator carrying out an investigation, examination or audit in relation to a health service provider,	35 36

(h)	a health service provider that is the subject of an investigation under this Act,	1 2
(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.	3 4 5
(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:	6 7 8
(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	9 10 11 12
(b)	the Commission has had due regard to the principle set out in section 3 (2).	13 14
[19]	Schedule 4 Savings, transitional and other provisions	15
	Insert at the end of clause 1 (1):	16
	<i>Health Legislation Amendment Act 2009</i> (but only to the extent that it amends this Act)	17 18
1.4	Health Services Act 1997 No 154	19
[1]	Section 49 Membership of health corporation board	20
	Insert after section 49 (2):	21
(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.	22 23 24 25
[2]	Section 51 Appointment of chief executive	26
	Omit section 51 (1)–(3). Insert instead:	27
(1)	There is to be a chief executive for each board governed health corporation.	28 29
(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.	30 31 32
(3)	If the position of chief executive is not an executive position within the meaning of Part 3 of Chapter 9:	33 34
(a)	the chief executive is to be appointed by the Minister, and	35

	(b) the chief executive is, while holding that office, to be employed under Part 1 of Chapter 9 in the NSW Health Service.	1 2 3
[3]	Section 139 Liability of persons conducting performance reviews etc	4
	Omit “member of the NSW Health Service” from section 139 (1).	5
	Insert instead “relevant employee”.	6
[4]	Section 139 (5)	7
	Insert after section 139 (4):	8
	(5) In this section:	9
	<i>relevant employee</i> means:	10
	(a) a member of the NSW Health Service, or	11
	(b) a person who:	12
	(i) is an employee of an affiliated health organisation that is not a declared affiliated health organisation, and	13 14 15
	(ii) is employed in relation to a recognised establishment or recognised service of the organisation.	16 17 18
[5]	Schedule 7 Savings and transitional provisions	19
	Insert at the end of clause 1 (1):	20
	<i>Health Legislation Amendment Act 2009</i> (but only to the extent that it amends this Act)	21 22
1.5	Medical Practice Act 1992 No 94	23
[1]	Section 177 Representation at inquiry	24
	Omit section 177 (1)–(2A). Insert instead:	25
	(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.	26 27 28
	(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.	29 30 31 32

[2] Section 177 (3)	1
Omit “(except an Australian legal practitioner or another adviser representing any person)”.	2 3
[3] Schedule 5 Savings and transitional provisions	4
Insert after clause 49:	5
Part 9 Provisions consequent on enactment of Health Legislation Amendment Act 2009	6 7
50 Professional Standards Committees	8
(1) This clause applies if, immediately before the commencement of this clause, a Professional Standards Committee had started but not finalised an inquiry.	9 10 11
(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 <i>Health Legislation Amendment Act 2009</i> had not commenced.	12 13 14 15
1.6 Mental Health Act 2007 No 8	16
[1] Section 52 Notice of applications	17
Omit “This section” from section 52 (4). Insert instead “Subsection (3)”.	18
[2] Section 141 Membership of Tribunal	19
Insert “or part-time” after “full-time” in section 141 (1) (a).	20
[3] Schedule 6 Savings, transitional and other provisions	21
Insert at the end of clause 1 (1):	22
<i>Health Legislation Amendment Act 2009</i> (but only to the extent that it amends this Act)	23 24

1.7 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)	1
	2
Schedule 2 Public offices	3
Omit “President of the Mental Health Review Tribunal” from Part 1.	4
Insert instead “Full-time or part-time President of the Mental Health Review Tribunal”.	5
	6