



New South Wales

# Health Legislation Amendment Bill (No 2) 2018

## Explanatory note

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

## Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Health Care Complaints Act 1993* to require certain information about a person whose registration as a registered health practitioner is cancelled or suspended as a result of disciplinary proceedings to be made publicly available,
- (b) to make miscellaneous amendments to the *Health Practitioner Regulation (Adoption of National Law) Act 2009* with respect to reviews and appeals, the powers of authorised persons, suspension of registration and the membership of an Assessment Committee of a Council for a health profession,
- (c) to amend the *Poisons and Therapeutic Goods Act 1966* to impose requirements in respect of certain substances and goods that may be used for cosmetic and other purposes,
- (d) to amend the *Private Health Facilities Act 2007* to create an offence of performing certain services or treatments at certain private health facilities, and to provide authorised officers with the power to require a person to answer questions or provide information and documents,
- (e) to amend the *Public Health Act 2010* to permit the Chief Health Officer to make public a statement identifying and giving warnings or information about a risk to health or safety, to exclude compensation for defamation for statements made under that Act and to clarify the meaning of de-registered health practitioner.

## 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 on the date of assent to the proposed Act.

### **Schedule 1      Amendment of Health Care Complaints Act 1993 No 105**

Section 94B of the *Health Care Complaints Act 1993* requires the Health Care Complaints Commission to make publicly available information required to be provided to it under the *Health Practitioner Regulation National Law (NSW)* about a person whose registration as a registered health practitioner is cancelled or suspended as a result of disciplinary proceedings. **Schedule 1** amends that section to make it clear that a person's registration as a registered health practitioner is cancelled if the person is disqualified from being registered as a registered health practitioner in a health profession.

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

The Health Practitioner Regulation National Law (the *National Law*) is set out in the *Health Practitioner Regulation National Law Act 2009* of Queensland (the *Queensland Act*). The National Law is then adopted and modified in New South Wales (to become the *National Law (NSW)*) by the *Health Practitioner Regulation (Adoption of National Law) Act 2009* (the *NSW adopting Act*). **Schedule 2** further modifies the National Law (NSW) by way of a number of amendments to the NSW adopting Act.

**Schedule 2 [1]** removes redundant provisions consequential on a previous amendment that removed a requirement that an Assessment Committee (being an Assessment Committee of a Council established for a health profession) must, if a complaint is referred to the Committee, encourage the complainant and the relevant health practitioner to settle the complaint by consent.

**Schedule 2 [3] and [6]** provide for a review of the imposition by a Council for a health profession of conditions on a practitioner's registration in circumstances where the conditions are imposed with the consent of the practitioner.

**Schedule 2 [4]** provides for a person to appeal to the Civil and Administrative Tribunal (the *Tribunal*) against a reprimand by a Council for a health profession.

**Schedule 2 [5]** clarifies that the Tribunal on an appeal against a decision of a Council for a health profession may confirm or set aside the decision or may set aside the decision and make a new decision.

**Schedule 2 [7]** clarifies that the powers of an authorised person under the National Law (NSW) may be exercised for the purposes of ascertaining whether conditions or suspensions are being complied with or have been contravened.

**Schedule 2 [8]** omits redundant references to the NSW regulations as the definition of *NSW provision* in the National Law (NSW) includes NSW regulations.

**Schedule 2 [9]** clarifies the effect of a suspension of registration and what happens when the suspension ends. **Schedule 2 [2]** makes a consequential amendment.

**Schedule 2 [10]** omits a redundant provision that purported to extend the application of a provision that does not form part of the National Law (NSW).

**Schedule 2 [11]** inserts savings and transitional provisions consequent on the other amendments in Schedule 2.

**Schedule 2 [12]** permits a Council for a health profession (rather than the Minister for Health) to grant a leave of absence to, accept the resignation of or remove from office a member of an Assessment Committee of the Council.

### **Schedule 3      Amendment of Poisons and Therapeutic Goods Act 1966 No 31**

**Schedule 3** inserts proposed Division 1A into Part 3 of the *Poisons and Therapeutic Goods Act 1966* (the *principal Act*). The proposed Division provides for requirements in respect of certain substances and goods that may be used for cosmetic and other purposes. The proposed Division applies to botulinum toxins, hyaluronic acid and substances listed in certain Schedules to the Poisons List, and therapeutic goods, prescribed by the regulations made under the principal Act. The proposed Division permits regulations under the principal Act to prescribe requirements in respect of the possession, manufacture, supply, use, prescription, administration, storage and disposal of any substance or goods to which the proposed Division applies. If the regulations identify the requirement as a category 1 requirement, failure to comply with the requirement is an offence with a maximum penalty of \$110,000 in the case of a body corporate or \$22,000 or imprisonment for 6 months (or both) in the case of an individual. If the regulations identify the requirement as a category 2 requirement, failure to comply with the requirement is an offence with a maximum penalty of \$27,500 in the case of a body corporate or \$5,500 in the case of an individual.

### **Schedule 4      Amendment of Private Health Facilities Act 2007 No 9**

**Schedule 4 [1]** permits regulations under the *Private Health Facilities Act 2007* (the *principal Act*) to prescribe certain services or treatments that must not be performed at certain private health facilities. Failure to comply with such a regulation is an offence with a maximum penalty of \$55,000.

**Schedule 4 [2]** permits an authorised officer who enters and inspects premises under the principal Act to be accompanied by other persons.

**Schedule 4 [4]** removes redundant references to a record as record is included in the definition of *document* in section 21 of the *Interpretation Act 1987*. **Schedule 4 [3]** makes a consequential amendment.

**Schedule 4 [5]** gives specific powers for authorised officers to direct a person to answer questions and provide information and documents regardless of whether a power of entry is being exercised. **Schedule 4 [7]** protects individuals from self-incrimination in relation to the exercise of any such power. **Schedule 4 [6]** provides that failure to comply with a direction is an offence under section 53 of the principal Act (with a maximum penalty of \$22,000). **Schedule 4 [3]** makes a consequential amendment to ensure that the offence in section 53 of the principal Act continues to apply to section 51 (3) (a) of that Act.

### **Schedule 5      Amendment of Public Health Act 2010 No 127**

**Schedule 5 [1]** permits the Chief Health Officer to make public a statement identifying and giving warnings or information about a risk to the health or safety of the public or a sector of the public. **Schedule 5 [4]** contains a savings and transitional provision.

**Schedule 5 [2]** clarifies that for the purposes of Division 3 of Part 7 of the *Public Health Act 2010* (the *principal Act*), which deals with the provision of health services by health practitioners who are de-registered or subject to prohibition orders, a de-registered health practitioner includes a health practitioner who is disqualified from being registered as a registered health practitioner in a health profession.

**Schedule 5 [3]** provides that damages or other compensation is not payable in civil proceedings brought against the State or any authority of the State to the extent that the claim is based on alleged defamation arising in relation to the exercise of a function under the principal Act.



New South Wales

# Health Legislation Amendment Bill (No 2) 2018

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New South Wales

# Health Legislation Amendment Bill (No 2) 2018

No , 2018

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## **A Bill for**

An Act to make miscellaneous amendments to various Acts that relate to health and associated matters.

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**The Legislature of New South Wales enacts:**

1

**1 Name of Act**

2

This Act is the *Health Legislation Amendment Act (No 2) 2018*.

3

**2 Commencement**

4

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

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**Schedule 1      Amendment of Health Care Complaints Act 1993  
                         No 105**

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2

**Section 94B Publication of information about decisions and de-registered  
practitioners**

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Insert after section 94B (4) (d):

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- (e) the person is disqualified from being registered as a registered health practitioner in a health profession.

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<b>Schedule 2</b>	<b>Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86</b>	1
		2
<b>[1] Schedule 1 Modification of Health Practitioner Regulation National Law</b>		3
Omit section 147B (4) and (5) from Schedule 1 [15].		4
<b>[2] Schedule 1 [15], section 150G Ending suspension [NSW]</b>		5
Omit the section.		6
<b>[3] Schedule 1 [15], section 155C (1) (f)</b>		7
Insert “by order” after “impose”.		8
<b>[4] Schedule 1 [15], section 159 (1) (a1)</b>		9
Insert before section 159 (1) (a):		10
(a1) against a reprimand by the Council for the health profession under Division 3;		11
		12
<b>[5] Schedule 1 [15], section 159C (1)</b>		13
Omit the subsection. Insert instead:		14
(1) On an appeal against a decision of a Council, the Tribunal may by order—		15
(a) confirm the decision; or		16
(b) set aside the decision; or		17
(c) set aside the decision and make a new decision (being a decision that the Council could have made).		18
		19
<b>[6] Schedule 1 [15], section 163A (4), definition of “decision-making entity”</b>		20
Omit “or under Subdivision 5 of Division 3” from paragraph (b1).		21
Insert instead “, Subdivision 5 of Division 3 or section 155C (1) (f)”.		22
<b>[7] Schedule 1 [15], section 164A (1) (a)</b>		23
Omit “or the NSW regulations”.		24
Insert instead “(including any conditions or suspension imposed under the NSW provisions)”.		25
		26
<b>[8] Schedule 1 [15], sections 164A (3) (e) and 164B (1) (a)</b>		27
Omit “or the NSW regulations” wherever occurring.		28
<b>[9] Schedule 1 [15], section 176D</b>		29
Omit the section. Insert instead:		30
<b>176D Effect of suspension [NSW]</b>		31
(1) If a person’s registration as a health practitioner or student is suspended under this Law, the person is taken during the period of suspension not to be registered under this Law, other than for the purposes of this Part.		32
		33
<b>Note.</b> This subsection is a Health Practitioner Regulation National Law provision (see section 207 of the National Law).		34
		35
		36

(2)	Accordingly, a reference in any other Act or instrument to a registered health practitioner does not include a reference to a health practitioner whose registration is suspended.	1 2 3
(3)	When a suspension imposed under this Law ends, the person's rights and privileges as a registered health practitioner or student in the health profession are revived, subject to—	4 5 6
(a)	any other action taken by the Council for the profession under Subdivision 7 of Division 3 of Part 8 or Division 4 of Part 8; or	7 8
(b)	any order of the Tribunal on a complaint referred to the Tribunal.	9
<b>[10]</b>	<b>Schedule 1 [24AA]</b>	10
	Insert after Schedule 1 [24]:	11
<b>[24AA]</b>	<b>Section 321 Offences relating to prohibition orders made before commencement</b>	12 13
	Omit the section. Insert instead:	14
	<b>321</b>	
	<b>Note.</b> This section is not applicable to New South Wales.	15
<b>[11]</b>	<b>Schedule 1 [25], Schedule 5A</b>	16
	Insert after clause 38:	17
	<b>Part 9 Provisions consequent on enactment of Health Legislation Amendment Act (No 2) 2018 [NSW]</b>	18 19
<b>39</b>	<b>Appeal against reprimand by Council [NSW]</b>	20
	Section 159 (1) (a1) of this Law extends to a reprimand given before the commencement of that paragraph even if the reprimand was not given by way of an order.	21 22 23
<b>40</b>	<b>Tribunal's powers on appeal [NSW]</b>	24
	Section 159C (1) of this Law, as substituted by the <i>Health Legislation Amendment Act (No 2) 2018</i> , extends to an appeal that has been made but not finally disposed of before that substitution.	25 26 27
<b>41</b>	<b>Effect of suspension [NSW]</b>	28
	Section 176D of this Law, as substituted by the <i>Health Legislation Amendment Act (No 2) 2018</i> , extends to a suspension that was imposed before that substitution.	29 30 31
<b>[12]</b>	<b>Schedule 1 [25], Schedule 5E, clause 6 (1) (b), (f) and (g) and (3)</b>	32
	Omit "Minister" wherever occurring. Insert instead "Council".	33

<b>Schedule 3</b>	<b>Amendment of Poisons and Therapeutic Goods Act 1966 No 31</b>	1
		2
<b>Part 3, Division 1A</b>		3
Insert after section 18A:		4
<b>Division 1A</b>	<b>Substances and goods used for cosmetic and other purposes</b>	5
		6
<b>18B</b>	<b>Object of Division</b>	7
	The object of this Division is to prescribe requirements in respect of certain substances and goods that may be used for cosmetic and other purposes.	8 9
<b>18C</b>	<b>Substances and goods to which Division applies</b>	10
	This Division applies to the following:	11
	(a) botulinum toxins for human use,	12
	(b) hyaluronic acid and its polymers in preparations for injection or implantation,	13 14
	(c) any other substance specified in Schedule 2, Schedule 3, Schedule 4 or Schedule 8 of the Poisons List that is prescribed by the regulations,	15 16
	(d) any therapeutic goods prescribed by the regulations.	17
<b>18D</b>	<b>Regulation of substances and goods to which Division applies</b>	18
	(1) The regulations may prescribe requirements in respect of the possession, manufacture, supply, use, prescription, administration, storage and disposal of any substance or goods to which this Division applies.	19 20 21
	(2) A person who contravenes a requirement prescribed for the purposes of this section and identified in the regulations as a category 1 requirement or a category 2 requirement is guilty of an offence.	22 23 24
	Maximum penalty:	25
	(a) in the case of a requirement identified in the regulations as a category 1 requirement—1,000 penalty units in the case of a body corporate or 200 penalty units or imprisonment for 6 months (or both) in the case of an individual, or	26 27 28 29
	(b) in the case of a requirement identified in the regulations as a category 2 requirement—250 penalty units in the case of a body corporate or 50 penalty units in any other case.	30 31 32

<b>Schedule 4</b>	<b>Amendment of Private Health Facilities Act 2007</b>	1
	<b>No 9</b>	2
<b>[1] Section 33A</b>		3
	Insert after section 33:	4
<b>33A</b>	<b>Certain services or treatments must not be performed at unlicensed facility</b>	5
(1)	The regulations may prescribe specified services or treatments or classes of services or treatments that must not be performed at a private health facility unless the private health facility has a licence or has a licence of a particular class.	6 7 8 9
(2)	A person must not perform a service or treatment at a private health facility in contravention of a regulation made for the purposes of this section. Maximum penalty: 500 penalty units.	10 11 12
(3)	It is a defence to a prosecution under this section if the accused person establishes that the person had reasonable grounds for believing the private health facility had a licence that permitted the provision of the service or treatment.	13 14 15 16
<b>[2] Section 51 Power to enter and inspect</b>		17
	Insert after section 51 (1):	18
(1A)	The authorised officer may enter and inspect the premises either alone or together with such other persons as the authorised officer considers necessary.	19 20
<b>[3] Section 51 (3) (a)</b>		21
	Omit the paragraph. Insert instead:	22
(a)	direct a person to furnish any document or other thing that is in the possession, or under the control, of the person,	23 24
<b>[4] Section 51 (3) (b) and (c), (4) and (5)</b>		25
	Omit “document, record” wherever occurring. Insert instead “document”.	26
<b>[5] Sections 51A and 51B</b>		27
	Insert after section 51:	28
<b>51A</b>	<b>Power of authorised officers to require answers</b>	29
(1)	An authorised officer may, by notice in writing, direct a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters about which the authorised officer requires information in connection with the exercise of the authorised officer’s functions:	30 31 32 33
(a)	to answer questions in relation to those matters, and	34
(b)	if a meeting with the authorised officer is reasonably necessary to enable questions in relation to those matters to be properly asked and answered, to meet with the authorised officer to answer such questions.	35 36 37
(2)	The Secretary may, by notice in writing, direct a corporation to nominate, in writing and within a specified time, a director or officer of the corporation to represent the corporation for the purpose of answering any such questions.	38 39 40
(3)	Answers given by the nominated person bind the corporation.	41

(4)	The place and time at which a person may be directed to attend under subsection (1) (b) is to be:	1
		2
(a)	a place or time nominated by the person, or	3
(b)	if the place and time so nominated is unreasonable in the circumstances or if the person fails to nominate a place and time, a place and time nominated by the authorised officer.	4
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		6
(5)	An authorised officer may record any questions and answers under this section if the person to be questioned has been informed that the record is to be made.	7
		8
(6)	A record may be made by any method, including sound or video recording.	9
(7)	A copy of any such record must be provided to the person who is questioned as soon as practicable after the record is made.	10
		11
<b>51B</b>	<b>Requirement to provide information and documents</b>	12
(1)	An authorised officer may, by notice in writing, direct a person to furnish to the authorised officer such information or documents as the authorised officer requires in connection with the exercise of the authorised officer's functions.	13
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(2)	A notice under this section must specify the manner in which, and the time by which, the information or documents to which the notice relates must be furnished.	16
		17
		18
(3)	A notice under this section may only require a person to furnish existing documents that are in the person's possession or that are within the person's power to obtain lawfully.	19
		20
		21
(4)	The authorised officer to whom a document is furnished under this section may take copies of it.	22
		23
(5)	If any document required to be furnished under this section is in electronic, mechanical or other form, the notice requires the document to be furnished in written form, unless the notice otherwise provides.	24
		25
		26
<b>[6]</b>	<b>Section 53 Obstruction of officers and failure to comply with direction</b>	27
	Omit section 53 (b). Insert instead:	28
	(b) fail to comply with a direction under this Part.	29
<b>[7]</b>	<b>Section 53A</b>	30
	Insert after section 53:	31
<b>53A</b>	<b>Provisions relating to requirements to furnish documents, information or answer questions</b>	32
		33
(1)	A person is not guilty of an offence of failing to comply with a direction under this Part to furnish documents, information or other things, or to answer a question, unless the person was warned on that occasion that a failure to comply is an offence.	34
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(2)	A person is not excused from a direction under this Part to furnish documents, information or other things, or to answer a question, on the ground that the document, information, thing or answer might incriminate the person or make the person liable to a penalty.	38
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		41
(3)	However, any information furnished or answer given by a natural person in compliance with a direction under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under Part 5A of the <i>Crimes Act 1900</i> ) if:	42
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- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or 1  
2
  - (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person. 3  
4  
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- (4) Any document furnished by a person in compliance with a direction under this Part is not inadmissible in evidence against the person in criminal proceedings by reason only that the document incriminates the person. 6  
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- (5) Further information obtained as a result of a document or information furnished, or of an answer given, in compliance with a direction under this Part is not inadmissible by reason only: 9  
10  
11
  - (a) that the document or information had to be furnished or the answer had to be given, or 12  
13
  - (b) that the document or information furnished or answer given incriminates the person. 14  
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<b>Schedule 5</b>	<b>Amendment of Public Health Act 2010 No 127</b>	1
[1]	<b>Part 2A</b>	2
	Insert after Part 2:	3
	<b>Part 2A Public warnings about health matters</b>	4
	<b>12A Public warning statements</b>	5
	(1) If the Chief Health Officer is of the view that there is a risk to the health or safety of the public or a sector of the public, the Chief Health Officer may make public a statement identifying and giving warnings or information about the risk.	6 7 8 9
	(2) The Chief Health Officer is to take into account any matters prescribed by the regulations in determining whether to make public a statement under this section.	10 11 12
	(3) The <i>Privacy and Personal Information Protection Act 1998</i> and the <i>Health Records and Information Privacy Act 2002</i> do not apply with respect to a statement made public under this section.	13 14 15
	<b>12B No liability for issuing or publishing warning statements</b>	16
	(1) No liability is incurred by the Chief Health Officer or any other person for making public in good faith:	17 18
	(a) a statement referred to in section 12A, or	19
	(b) a fair report or summary of such a statement.	20
	(2) In this section:	21
	<i>liability</i> includes liability for defamation.	22
[2]	<b>Section 101 Definitions</b>	23
	Insert “or who is disqualified from being registered as a registered health practitioner in a health profession” after “health registration legislation” in the definition of <i>de-registered health practitioner</i> in section 101 (1).	24 25 26
[3]	<b>Section 132 Exclusion of liability of the State and others</b>	27
	Insert “, defamation” after “negligence” in section 132 (2).	28

<b>[4] Schedule 5 Savings, transitional and other provisions</b>	1
Insert after Part 2:	2
<b>Part 3 Provision consequent on enactment of Health Legislation Amendment Act (No 2) 2018</b>	3 4
<b>8 Public warnings</b>	5
Section 12A extends to permit a statement to be made public about a risk that arose before the commencement of that section.	6 7