

[Act 1999 No 76]



New South Wales

# Health Legislation Amendment Bill 1999

## 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 repeal the *Pathology Laboratories Accreditation Act 1981*,
  - (b) to amend the *Public Health Act 1991* to prohibit the sale of herbal cigarettes and other non-tobacco smoking products to minors and to give environmental health officers the power to enter and inspect premises that are being used for skin penetration procedures,
  - (c) to amend the *Poisons and Therapeutic Goods Act 1966* to remove the requirement for the Director-General of the Department of Health to obtain a recommendation from the Medical Committee before authorising a medical practitioner to prescribe or supply a drug of addiction to a drug dependent person and to make consequential cross-vesting amendments,
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- (d) to amend the *Dental Technicians Registration Act 1975*, the *Nurses Act 1991*, the *Optometrists Act 1930*, the *Physiotherapists Registration Act 1945* and the *Pharmacy Act 1964* to enable the governing bodies of the professions regulated by those Acts to grant exemptions from, waive or wholly or partially refund, fees payable under those Acts and certain regulations under those Acts,
- (e) to amend the *Pharmacy Act 1964* to allow pharmacists to carry on the business of a pharmacist in a pharmacy, or have a direct or indirect interest in the business of a pharmacist carried on in a pharmacy, as a member of up to three partnerships,
- (f) to amend the *Human Tissue Act 1983* to remove the requirement for a medical practitioner's advice to be obtained prior to blood donations by persons aged 16 or 17 years of age and to clarify that the consent of a parent or guardian to such a blood donation is ongoing unless withdrawn,
- (g) to amend the *Health Services Act 1997* to provide that any arbitrator required to make a determination regarding the terms and conditions of visiting officers' service contracts is to be appointed by the Minister for Health on the nomination of the President of the Industrial Relations Commission and to amend the financial provisions of that Act to improve flexibility and ensure consistency with current financial management practices.

## 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 a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the Acts set out in Schedules 1 to 10.

**Clause 4** repeals the *Pathology Laboratories Accreditation Act 1981*.

## **Schedule 1    Amendment of Public Health Act 1991 No 10**

**Schedule 1 [2]** inserts proposed section 51 into the Act to enable an environmental health officer to enter and inspect premises where the officer believes on reasonable grounds that the premises are being used for the carrying on of skin penetration

procedures (such as acupuncture, tattooing and ear piercing). **Schedule 1 [5]** inserts proposed section 59 (1A) into the Act to make it an offence to sell non-tobacco smoking products (such as herbal cigarettes) to persons under the age of 18 years. This offence will carry a penalty of 50 penalty units (currently \$ 5,500). **Schedule 1 [4]** amends section 53 of the Act to define *non-tobacco smoking product* to mean any product (other than a tobacco product) that is intended to be smoked including herbal cigarettes. **Schedule 1 [1], [3], [6]–[9]** make consequential amendments.

## **Schedule 2 Amendment of Poisons and Therapeutic Goods Act 1966 No 31**

**Schedule 2 [2], [3]** and **[4]** amend the Act to replace the term “addict” with the term “drug dependent person”. **Schedule 2 [5]** replaces section 29 (2) of the Act to remove the requirement for the Director-General of the Department of Health to obtain a recommendation from the Medical Committee before authorising a medical practitioner to prescribe or supply a drug of addiction to a drug dependent person. The Director-General still may refer such an application for authorisation to the Medical Committee for its recommendation, but will no longer be mandatorily required to do so. **Schedule 2 [1], [6]** and **[7]** make amendments consequent on the High Court decision regarding the vesting of State jurisdiction in federal courts.

## **Schedules 3–6 and Schedule 7 [2]**

**Schedules 3–6** and **Schedule 7 [2]** give effect to the object outlined in paragraph (d) above.

## **Schedule 7 Amendment of Pharmacy Act 1964 No 48**

**Schedule 7 [1]** amends section 26 (2) of the *Pharmacy Act 1964* to allow a pharmacist to carry on the business of a pharmacist in a pharmacy, or to have a direct or indirect interest in the business of a pharmacist carried on in a pharmacy, as a member of up to three partnerships. Currently pharmacists are restricted to one partnership.

## **Schedule 8 Amendment of Human Tissue Act 1983 No 164**

**Schedule 8 [1]** amends section 20 of the Act to make it clear that the advice of a medical practitioner that a blood donation is not likely to be prejudicial to the health of the child concerned only applies to children under the age of 16 years. **Schedule 8 [2]** inserts proposed section 20 (2) into the Act to provide that where a parent or guardian has given consent to blood donation in relation to a child aged 16 or 17 years of age that consent is ongoing (unless given for a blood donation on a particular occasion only) but the consent can be withdrawn either by the parent or guardian who gave it or by the child ceasing to be in agreement with the blood donation.

## **Schedule 9 Amendment of Health Services Act 1997 No 154**

**Schedule 9 [1]** and **[2]** amend section 90 of the Act to make it clear that an arbitrator appointed to determine the terms and conditions of visiting officers' service contracts is to be a judicial member of the Industrial Relations Commission appointed by the Minister for Industrial Relations on the nomination of the President of that Commission. **Schedule 9 [3]** inserts proposed section 127 (3A) into the Act to give the Minister for Health the power to vary a determination of a subsidy to an area health service in such circumstances as the Minister considers appropriate. **Schedule 9 [4]** inserts proposed sections 127A and 127B into the Act. Proposed section 127A enables the Minister to determine that payment of the whole or any part of an amount of an area health services subsidy payable under section 127 of that Act in a financial year is to be deferred to a subsequent financial year. Proposed section 127B enables the Minister to loan, on such terms and conditions as the Minister determines, amounts of money to area health services, statutory health corporations and affiliated health organisations, out of money appropriated from the Consolidated Fund to the Minister. These loans must not result in expenditure in excess of forward estimates. **Schedule 9 [5]** amends Schedule 7 (Savings and transitional provisions) to the Act to allow the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act. **Schedule 9 [6]** inserts clause 55 into Schedule 7. Clause 55 validates any loan made by the Minister for Health, out of money appropriated from the Consolidated Fund to the Minister, to an area health service, statutory health corporation or affiliated health organisation before the commencement of the clause.

## **Schedule 10 Amendment of Public Finance and Audit Act 1983 No 152**

**Schedule 10** amends the *Public Finance and Audit Act 1983* to remove a reference to the Pathology Laboratories Accreditation Board. This amendment is consequential on the repeal of the *Pathology Laboratories Accreditation Act 1981* by clause 4 of this Bill.