



New South Wales

# Health Practitioner Legislation Amendment Bill 2024

## Explanatory note

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

## Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Health Care Complaints Act 1993* and *Health Practitioner Regulation (Adoption of National Law) Act 2009*.

## 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**

**Schedule 1[2]** updates section 14 to align the *Health Care Complaints Act 1993* (*the Act*) with terminology used in the *Health Practitioner Regulation National Law (NSW)* (*the National Law*). The terminology clarifies that Councils for health professions (**Councils**) under the National Law, section 41B must take action in certain circumstances to protect the public. **Schedule 1[1], [3] and [7]** update references to Councils to ensure uniform terminology throughout the Act.

**Schedule 1[4]** provides for the Health Care Complaints Commission (*the Commission*) to accept either written or oral notice from a complainant to withdraw their complaint.

**Schedule 1[6]** provides that the Commission is only required to consult with the appropriate Council, when deciding what action to take under section 39, if there is an appropriate Council.

**Schedule 1[8]** amends section 90B to explicitly state the functions of the Director of Proceedings include prosecuting a complaint, to varying the decision to prosecute or to discontinuing or withdrawing the prosecution whether or not a decision had already been made by the Director to prosecute.

**Schedule 1[9]** provides for the Commission to obtain a report from a person sufficiently qualified or experienced to provide expert advice on the matter of a complaint and makes certain provisions for obtaining a report from an expert. Schedule 1[9] also provides that the report may be used in disciplinary or related proceedings under the Act or National Law but may not be used in any other proceedings before a court, tribunal or body without the consent of the expert, the complainant and the person against whom the complaint is made. Schedule 1[9] also sets out that an expert, the Commission or the Commissioner may not be compelled to produce the report or give evidence in relation to the report before a court, tribunal or body, other than for disciplinary or related proceedings under the National Law. **Schedule 1[5]** makes a consequential amendment.

**Schedule 1[10]** amends section 99B to allow the Commission to disclose information to any person or body regulating health service providers in Australia or in another jurisdiction.

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

**Schedule 2[1]** sets out that if the Tribunal would have suspended a person's registration under the National Law, section 149C(4)(a) the person may not reapply for registration in the health profession during the period the person would have been suspended if they were still a registered health practitioner.

**Schedule 2[2] and [3]** require Councils to give a registered health practitioner or student written notice of a decision made in relation to the practitioner or student and the reasons for the decision. Schedule 2[2] and [3] also provide that the written notice provided by Councils is not admissible in evidence in civil or criminal proceedings in a court of law, except proceedings under the National Law, or in an inquest or inquiry under the *Coroners Act 2009*.

**Schedule 2[4]** extends the existing privilege that prevents certain audio recordings of Council proceedings being admissible in evidence in certain proceedings to the transcripts of audio recordings.

**Schedule 2[5]** inserts proposed section 152IA to make certain provisions for consideration of reports by an Impaired Registrants Panel (a *Panel*), including provision for a Council, after considering a Panel's written report, to refer the recommendations in the report back to the Panel for further consideration and, if appropriate, to vary the recommendations.

**Schedule 2[6]** enables assessors to require a person to answer questions in writing or produce relevant records to an assessor conducting a performance assessment of a practitioner. Schedule 2[6] also makes it an offence for a person to fail to comply with an assessor's requirement to answer questions or produce records. **Schedule 2[7]–[10]** make consequential amendments.

**Schedule 2[11] and [12]** provide that the Minister may remove a member of a Council from office but only if the member's nomination for appointment to the Council was on the basis of their principal place of practice being in the State and their principal place of practice ceases to be in the state.

**Schedule 2[13]** provides that a Professional Standards Committee or the Civil and Administrative Tribunal may receive and admit the following as evidence in any proceedings—

- (a) a finding or decision of a Council about a complaint dealt with by inquiry at a meeting of the Council,
- (b) a finding or decision of a Performance Review Panel.

**Schedule 2[14]** makes a consequential amendment.



New South Wales

# Health Practitioner Legislation Amendment Bill 2024

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*This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Legislative Assembly*

*Clerk of the Legislative Assembly*



New South Wales

## **Health Practitioner Legislation Amendment Bill 2024**

No. , 2024

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### **A Bill for**

An Act to make miscellaneous amendments to the *Health Care Complaints Act 1993* and the *Health Practitioner Regulation (Adoption of National Law) Act 2009*.

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*The LEGISLATIVE COUNCIL has this day agreed to this Bill with/without amendment.*

*Legislative Council*

*Clerk of the Parliaments*

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

1

**1 Name of Act**

2

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

3

**2 Commencement**

4

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

5

<b>Schedule 1</b>	<b>Amendment of Health Care Complaints Act 1993</b>	1
	<b>No 105</b>	2
<b>[1]</b>	<b>Section 3A Outline of role and principles of Commission and related government agencies in health care system</b>	3
	Omit “relevant professional councils” from section 3A(2).	4
	Insert instead “appropriate professional councils”.	5
<b>[2]</b>	<b>Section 14 Suspension of action by professional council</b>	6
	Omit section 14(2). Insert instead—	7
	(2) However, subsection (1) does not limit the powers of a professional council to take action under the <i>Health Practitioner Regulation National Law (NSW)</i> , Part 8, Division 3, Subdivision 7.	8
	<b>Note—</b> Under the <i>Health Practitioner Regulation National Law (NSW)</i> , Part 8, Division 3, Subdivision 7, a professional council must, in certain circumstances, take action for the protection of the public.	9
<b>[3]</b>	<b>Section 15 Provision of information to professional councils</b>	10
	Omit “relevant professional council” from the note.	11
	Insert instead “appropriate professional council”.	12
<b>[4]</b>	<b>Section 18 Can a complaint be withdrawn?</b>	13
	Omit section 18(1). Insert instead—	14
	(1) A complainant may withdraw the complainant’s complaint at any time—	15
	(a) by written notice to the Commission, or	16
	(b) if the Commission considers it appropriate to accept the withdrawal of the complaint orally—by oral notice to the Commission.	17
	(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.	18
<b>[5]</b>	<b>Section 30 Expert assistance</b>	19
	Omit the section.	20
<b>[6]</b>	<b>Section 39 What action is taken after an investigation?</b>	21
	Insert “, if any,” after “appropriate professional council” in section 39(2).	22
<b>[7]</b>	<b>Section 41A Prohibition orders and public statements</b>	23
	Omit “relevant professional council” in section 41A(3).	24
	Insert instead “appropriate professional council”.	25
<b>[8]</b>	<b>Section 90B Functions of Director of Proceedings</b>	26
	Omit section 90B(1)(a1). Insert instead—	27
	(a1) if the Director determines the complaint should be prosecuted before a disciplinary body by the Commission—	28
	(i) to prosecute the complaint before the disciplinary body, or	29
	(ii) to vary the decision to prosecute the complaint, including after the prosecution has commenced, or	30

(iii)	to withdraw or discontinue the prosecution of the complaint, including after the prosecution has commenced,	1 2
<b>[9] Section 91A</b>		3
	Insert after section 91—	4
<b>91A Expert assistance</b>		5
(1)	The Commission may obtain a report from a person (an <i>expert</i> ), 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.	6 7 8 9
(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.	10 11
(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.	12 13 14 15
(4)	The expert must include in the expert’s report, or annex to the report, a statement in the following form, completed as appropriate—	16 17
	<i>I have/do not have</i> a personal, financial or professional connection with the person against whom the complaint is made. Particulars of the connection are as follows—	18 19 20
	.....	
	.....	
	.....	
	Dated—	21
	Signature .....	22
(5)	The expert’s report—	23
(a)	may be used in—	24
(i)	proceedings under this Act, or	25
(ii)	disciplinary or related proceedings under the <i>Health Practitioner Regulation National Law (NSW)</i> , but	26 27
(b)	may not be admitted or used in any other proceedings before a court, tribunal or body, except with the consent of—	28 29
(i)	the expert, and	30
(ii)	the complainant, and	31
(iii)	the person against whom the complaint is made.	32
(6)	The expert, the Commission or the Commissioner may not be compelled to—	33
(a)	produce the report in proceedings before a court, tribunal or body, other than—	34 35
(i)	proceedings under this Act, or	36
(ii)	disciplinary or related proceedings under the <i>Health Practitioner Regulation National Law (NSW)</i> or this Act.	37 38
(b)	give evidence in relation to the report or the report contents in proceedings before a court, tribunal or body, other than—	39 40
(i)	proceedings under this Act, or	41
(ii)	disciplinary or related proceedings under the <i>Health Practitioner Regulation National Law (NSW)</i> .	42 43

- (7) In this section— 1
  - report* includes— 2
    - (a) a copy, a reproduction and a duplicate, and 3
    - (b) a part of the report, copy, reproduction or duplicate. 4
- [10] Section 99B Disclosure of information to certain persons or bodies 5**
  - Insert “or another jurisdiction” after “Australia” in section 99B(1)(c). 6



<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
Insert after Schedule 1[15], section 149C(4)—		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.		5 6 7 8
<b>[2] Schedule 1[15], section 150(6)</b>		9
Omit the subsection. Insert instead—		10
(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—		11 12 13
(a) the action taken under this section;		14
(b) the reasons for the action.		15
(6A) A written notice under subsection (6)(b) about the reasons for action taken under this section is not admissible in evidence in—		16 17
(a) civil or criminal proceedings in a court of law, other than proceedings under this Law; or		18 19
(b) an inquest or inquiry under the <i>Coroners Act 2009</i> .		20
<b>[3] Schedule 1[15], section 150A(5)</b>		21
Insert after section 150A(4)—		22
(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 —		23 24 25
(a) the decision;		26
(b) the reasons for the decision.		27
(6) A written notice under subsection (5)(b) about the reasons for a decision under this section is not admissible in evidence in—		28 29
(a) civil or criminal proceedings in a court of law, other than proceedings under this Law; or		30 31
(b) an inquest or inquiry under the <i>Coroners Act 2009</i> .		32
<b>[4] Schedule 1[15], section 150B(2)</b>		33
Insert “, or a transcript of a recording,” after “recording”.		34
<b>[5] Schedule 1[15], section 152IA</b>		35
Insert after section 152I—		36
<b>152IA Referral to Panel for reconsideration [NSW]</b>		37
(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.		38 39 40

(2)	The Council may decide to refer the matter to the Impaired Registrants Panel to—	1 2
(a)	further consider the Panel’s recommendations, having regard to any matters specified in the referral; and	3 4
(b)	if appropriate, vary the recommendations.	5
(3)	The Impaired Registrants Panel must give the Council a further written report about the matter.	6 7
(4)	The report must include—	8
(a)	the results of the Impaired Registrants Panel’s further consideration of the recommendations; and	9 10
(b)	details of any variations in the recommendations to the Council the Panel considers appropriate.	11 12
(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.	13 14 15 16 17
<b>[6]</b>	<b>Schedule 1[25], Schedule 5B, clause 2A</b>	18
	Insert after clause 2—	19
<b>2A</b>	<b>Powers to obtain information and records [NSW]</b>	20
(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—	21 22 23 24
(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	25 26 27
(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.	28 29
(2)	Relevant information and relevant records may be given to the assessor in compliance with this section despite any other Act or law.	30 31
(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.	32 33 34
(4)	In this section— <i>relevant information</i> , in relation to a registered health practitioner, means information relating to the carrying out of the practitioner’s professional practice. <i>relevant record</i> , in relation to a registered health practitioner, means a record relating to the carrying out of the practitioner’s professional practice.	35 36 37 38 39 40
<b>[7]</b>	<b>Schedule 1[25], Schedule 5B, clause 4</b>	41
	Omit the heading. Insert instead—	42
<b>4</b>	<b>Production of information and records [NSW]</b>	43

<b>[8] Schedule 1[25], Schedule 5B, clause 4(1)</b>	1
Omit “information furnished by a person in answering a question asked by an assessor”.	2
Insert instead “information or a record given by a person to an assessor”.	3
<b>[9] Schedule 1[25], Schedule 5B, clause 4(2)</b>	4
Omit “information furnished”. Insert instead “information or a record given”.	5
<b>[10] Schedule 1[25], Schedule 5B, clause 5(c)</b>	6
Omit “information knowing it”.	7
Insert instead “information or a record knowing the information or record”.	8
<b>[11] Schedule 1[25], Schedule 5C, clause 15(1)(f1)</b>	9
Insert after clause 15(1)(f)—	10
(f1) for a member whose nomination was made on a basis that included the	11
member’s principal place of practice was in the State—is removed from	12
office by the Minister under subclause (1A); or	13
<b>[12] Schedule 1[25], Schedule 5C, clause 15(1)(f1)</b>	14
Insert after clause 15(1)—	15
(1A) The Minister may, by written notice given to a member, remove the member	16
from office but only if—	17
(a) the member’s nomination for appointment to the Council was made on	18
a basis that included the member’s principal place of practice was in the	19
State; and	20
(b) the member’s principal place of practice ceases to be in the State.	21
<b>[13] Schedule 1[25], Schedule 5D, clause 5(1)(e1) and (e2)</b>	22
Insert after clause 5(1)(e)—	23
(e1) a finding or decision of a Council under Part 8, Division 3, Subdivision	24
5 about a complaint dealt with by inquiry at a meeting of the Council;	25
(e2) a finding or decision of a Performance Review Panel;	26
<b>[14] Schedule 1[25], Schedule 5D, clause 5(2)(a)</b>	27
Omit the paragraph. Insert instead—	28
(a) making a finding about a registered health practitioner in the	29
proceedings; or	30