

Passed by both Houses



New South Wales

Health Legislation Further Amendment Bill 2004

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2004*



New South Wales

Health Legislation Further Amendment Bill 2004

Act No , 2004

An Act to repeal the *Nursing Homes Act 1988* and a regulation made under that Act and to make miscellaneous amendments to various Acts and instruments that relate to health and associated matters; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Health Legislation Further Amendment Act 2004*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Repeal of Nursing Homes Act 1988 No 124 and regulation

The following are repealed:

- (a) the *Nursing Homes Act 1988*,
- (b) the *Nursing Homes Regulation 1996*.

4 Amendment of Acts and instruments

Each Act and instrument specified in Schedules 1–6 is amended as set out in those Schedules.

**Schedule 1 Amendment of Dental Technicians
Registration Act 1975 No 40**

(Section 4)

[1] Section 33 Penalty

Omit “5 penalty units”. Insert instead “50 penalty units”.

[2] Section 35 Regulations

Omit “2 penalty units” from section 35 (4). Insert instead “10 penalty units”.

Schedule 2 Amendment of Health Services Act 1997 No 154

(Section 4)

[1] Section 6 What is the public health system?

Insert at the end of section 6 (c):

, and

- (d) the Public Health System Support Division of the Health Administration Corporation.

[2] Section 16 Who constitutes the NSW Health Service?

Insert at the end of section 16 (c):

, and

- (d) all persons employed in the Public Health System Support Division of the Health Administration Corporation.

[3] Section 116 Transfers of employees in NSW Health Service

Omit “of a public health organisation from one position in the NSW Health Service” from section 116 (1).

Insert instead “in the NSW Health Service from one position in the Service”.

[4] Section 116 (1) (a) (i)

Insert “that employs the employee” after “by the organisation”.

[5] Section 116 (2)

Omit “public health” wherever occurring.

[6] Chapter 10 Administration of the public health system

Insert after the matter relating to Part 1 in the Introduction to the Chapter:

Part 1A enables the Health Administration Corporation (the **Corporation**) to provide health support services to public health organisations and, with the Minister’s approval, to provide health support services or corporate or other services, by contract or agreement, to other persons. A Public Health System Support Division of the Corporation is established and the persons employed in that Division are employed in connection with public health organisations and the public hospitals that they control and are to carry out the Corporation’s function of providing health support services to those organisations. The Corporation may delegate its functions under Part 1A to a person or an appointed body. The Director-General may transfer staff of a public health organisation to the Corporation for the purpose of exercising those functions and the Director-General may authorise the Corporation to make use of the services of any of the staff of a public health

organisation. The Minister may require a public health organisation to acquire health support services from the Corporation or some other specified person.

[7] **Chapter 10, Part 1A**

Insert after Part 1:

Part 1A Provision of health support services

126A Definitions

In this Part:

appointed body means a committee, board or other body of persons appointed under section 126C by the Corporation.

Corporation means the Health Administration Corporation.

Note. The term ***health support service*** is defined in the Dictionary.

126B Corporation to provide health support services

- (1) The Corporation may provide health support services to public health organisations and the public hospitals that they control.
- (2) There is established a Public Health System Support Division in the Corporation.
- (3) The persons employed by the Corporation in the Public Health System Support Division are employed in connection with public health organisations and the public hospitals that they control and are to carry out the Corporation's function under subsection (1).
- (4) The Corporation may also, with the approval of the Minister, make and enter into contracts or agreements with any person other than a public health organisation for the provision of health support services or corporate or other services to that person.
- (5) The Corporation may determine the fees and charges payable for any service provided by or on behalf of the Corporation under this section.
- (6) The Corporation may delegate its functions under this section to a person or appointed body.
- (7) A delegate may subdelegate to any person or appointed body some or all of any function delegated under this section if the delegate is authorised in writing to do so by the delegator.
- (8) Section 21 of the *Health Administration Act 1982* does not apply in relation to the functions under this section.

- (9) Nothing in this section limits the Corporation's functions under this or any other Act or law.

126C Appointed bodies

- (1) The Corporation may appoint a committee, board or other body for the purposes of this Part.
- (2) An appointed body is to consist of such members appointed by the Corporation as the Corporation thinks fit.
- (3) The procedure of an appointed body is to be determined by the Corporation or (subject to any determination of the Corporation) by the appointed body.
- (4) A member of an appointed body holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (5) The Corporation may terminate the appointment of a member of an appointed body at any time for any or no reason by notice in writing to the member.
- (6) A member of an appointed body is entitled to such fees and allowances as the Corporation may determine from time to time.
- (7) A member of an appointed body is not personally liable for any act or omission done or omitted to be done in good faith for the purposes of this Part.
- (8) If subsection (7) prevents liability attaching to a member of an appointed body, the liability attaches instead to the Corporation.

126D Transfer of staff to Corporation

- (1) The Director-General may, by order in writing, transfer such of the staff of a public health organisation as are specified in the order (either individually or by reference to a class of persons) to the Corporation for the purpose of exercising the Corporation's function under section 126B (1).
- (2) The members of staff of a public health organisation who are transferred to the Corporation by such an order are to be regarded for all purposes as having become employees of the Corporation, in accordance with the terms of the order, on a day specified in the order as being the day on which the transfer takes effect.

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- (3) A person who is a member of staff of a public health organisation and who is transferred under this section:
- (a) is (until other provision is duly made by this or any other Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person if the person had not been transferred but had instead remained as a member of the staff of the public health organisation from which the person was transferred, and
 - (b) retains any rights to annual leave, extended service leave, sick leave, and other forms of leave, accrued or accruing in the person's employment with the public health organisation, and
 - (c) retains any other right or entitlement that may be prescribed for the purposes of this section, and
 - (d) is not entitled to receive any payment or other benefit merely because the person ceases to be a member of staff of the public health organisation, and
 - (e) is not entitled to claim, both under this Act and under any other Act or law, dual benefits of the same kind for the same period of service, and
 - (f) is employed in the Public Health System Support Division of the Corporation.

126E Corporation may use staff of public health organisation

- (1) The Director-General may, by order in writing, authorise the Corporation to make use of the services of such of the staff of a public health organisation as are specified in the order (either individually or by reference to a class of persons) for the purpose of exercising the Corporation's functions under section 126B.
- (2) Staff that are subject to an order under subsection (1) are subject to the control and direction of the Corporation to the extent specified or referred to in that order.
- (3) An order under subsection (1) may specify that staff are to be subject to the control and direction of the Corporation on a full-time and ongoing basis.
- (4) Except in so far as an order under subsection (1) otherwise provides, the Corporation may, by instrument in writing, authorise another person or appointed body to exercise the control and direction of any staff that are subject to the order, and may, in like manner, revoke, wholly or in part, any such authority.

- (5) Staff that are subject to an order under subsection (1) remain members of staff of the public health organisation and do not become employees of the Corporation despite any other provision of this Act or of any other law or of any provision of the order.
- (6) This section is not limited by section 7 of the *Health Administration Act 1982*.

126F Obligations and rights under Occupational Health and Safety Act 2000 and other legislation

- (1) For the purposes of the *Occupational Health and Safety Act 2000* and the employer liability legislation, the Corporation has the functions and liabilities of an employer in respect of a person who is the subject of an order under section 126E (1).
- (2) A public health organisation, and any person concerned in the management of the organisation, is not liable for an offence under the *Occupational Health and Safety Act 2000* or the employer liability legislation arising out of an act or omission done or omitted to be done by a member of staff of that organisation while the member of staff is under the control and direction of the Corporation, but only if that liability attaches solely because the member of staff is an employee of the public health organisation or of a person concerned in the management of the organisation.
- (3) In this section:
employer liability legislation means:
 - (a) instruments under the *Occupational Health and Safety Act 2000*, and
 - (b) associated occupational health and safety legislation within the meaning of that Act, and
 - (c) any other Act or instrument under an Act that makes an employer liable for an act or omission of an employee, or for an act or omission of the employer in relation to an employee, being a law prescribed by the regulations for the purposes of this section.

126G Minister may direct public health organisation to enter contracts with Corporation and others

- (1) The Minister may, by order in writing, from time to time:
 - (a) require a public health organisation to acquire specified health support services from the Corporation or some other specified person if and when such services are required, and

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- (b) give a public health organisation any necessary directions for the purposes of paragraph (a).
 - (2) The following conduct is specifically authorised by this Act for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*:
 - (a) a requirement or direction of the Minister given under subsection (1),
 - (b) the entering or making of a contract, agreement, arrangement or understanding as the result of such a requirement or direction,
 - (c) conduct authorised or required by or under the terms or conditions of any such contract, agreement, arrangement or understanding,
 - (d) any conduct of the Corporation in carrying out its functions or exercising its powers under this Part,
 - (e) any conduct of a public health organisation, its agents, a person concerned in the management of the organisation or a person who is engaged or employed by the organisation:
 - (i) in relation to obtaining health support services in accordance with this Part, or
 - (ii) in complying with a requirement or direction of the Minister given under subsection (1).
 - (3) Conduct authorised by subsection (2) is authorised only to the extent (if any) that it would otherwise contravene Part IV of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*.

126H Consent of affiliated health organisations required for certain orders

- (1) The Director-General may not make an order under section 126D (1) or 126E (1) in relation to the staff of an affiliated health organisation unless the Director-General has obtained the written consent of the organisation to the making of the order.
- (2) The Minister may not make an order under section 126G (1) that requires or directs an affiliated health organisation to do, or omit to do, anything unless the Minister has obtained the written consent of the organisation to the requirement or direction.

[8] Schedule 7 Savings and transitional provisions

Insert at the end of clause 1 (1):

Health Legislation Further Amendment Act 2004 (but only to the extent that it amends this Act)

[9] Dictionary

Omit “supply” from paragraph (b) of the definition of *health support service*.

Insert instead “procurement or supply (or both)”.

[10] Dictionary, definition of “health support service”

Insert at the end of paragraph (c):

, or

(d) the provision of corporate services to providers of health services,

and includes a service prescribed by the regulations.

[11] Dictionary, definition of “nursing home”

Omit “the *Nursing Homes Act 1988*”.

Insert instead “the *Public Health Act 1991*”.

Schedule 3 Amendment of New South Wales Institute of Psychiatry Act 1964 No 44

(Section 4)

[1] Section 2 Definitions

Omit “Part 2 of the *Public Sector Management Act 1988*” from the definition of **Director**.

Insert instead “Chapter 2 of the *Public Sector Employment and Management Act 2002*”.

[2] Section 2

Insert in alphabetical order:

exercise a function includes perform a duty.

function includes a power, authority or duty.

[3] Section 4 Objects of the Institute

Omit “, subject to the approval of the Minister,” from section 4 (3).

[4] Section 7 Public Sector Employment and Management Act 2002 not to apply to members other than Director

Omit “*Public Sector Management Act 1988*”.

Insert instead “*Public Sector Employment and Management Act 2002*”.

[5] Sections 20 and 20A

Omit section 20. Insert instead:

20 Staff of Institute

- (1) The Director and the staff of the Institute are (subject to this section) to be employed under Chapter 2 of the *Public Sector Employment and Management Act 2002*.
- (2) The Institute may, with the approval of the Minister, employ such other persons possessing medical, scientific or technical or other para-medical qualifications as may be necessary for carrying out the provisions of this Act. Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to the employment of any such staff.
- (3) Salaries and fees payable pursuant to subsection (2) are to be part of the costs of administration of this Act.

- (4) The Institute may arrange for the use of the services of any staff or facilities of a government agency, with the approval of the agency concerned and the Minister. Any person whose services the Institute makes use of under this subsection is, for the purposes of this Act, taken to be a member of staff of the Institute.

20A Delegation

The Institute may delegate the exercise of any function of the Institute under this Act (other than this power of delegation) to:

- (a) any member of staff of the Institute, or
- (b) a person of a class prescribed by the regulations.

[6] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Health Legislation Further Amendment Act 2004 (but only to the extent that it amends this Act)

[7] Schedule 1, Part 3

Insert after Part 2:

Part 3 Provisions consequent on enactment of Health Legislation Further Amendment Act 2004

6 Re-enactment of section 20

The substitution of section 20 by the *Health Legislation Further Amendment Act 2004* does not affect the employment (including the terms of employment) of any person employed by the Institute immediately before the substitution of that section.

Schedule 4 Amendment of Optical Dispensers Act 1963 No 35

(Section 4)

[1] Section 2 Definitions

Omit the definition of *Optical appliance* from section 2 (1). Insert instead:

Optical appliance means:

- (a) contact lenses, spectacle lenses or any other appliance designed to correct, remedy or relieve any refractive abnormality or defect of sight, or
- (b) contact lenses other than those referred to in paragraph (a).

[2] Section 29A

Omit the section. Insert instead:

29A Supply of optical appliance pursuant to prescription

An optical dispenser must not supply an optical appliance to any person unless:

- (a) the optical dispenser does so pursuant to a prescription written by a person whom the optical dispenser reasonably believes to be qualified, pursuant to any Act or law, to write a prescription for an optical appliance, for the person who is to use the optical appliance, or
- (b) the optical dispenser does so by way of the copying or duplication of an optical appliance, or part of an optical appliance, furnished to the optical dispenser by or on behalf of the person, not being an optical appliance, or part, that the optical dispenser ought reasonably to have suspected had been supplied to the person otherwise than pursuant to a prescription referred to in paragraph (a), or
- (c) the optical appliance is a contact lens that is not designed to correct, remedy or relieve any refractive abnormality or defect of sight.

Maximum penalty: 10 penalty units.

[3] Section 36 and Schedule 1

Insert after section 35:

36 Savings and transitional provisions

Schedule 1 has effect.

Schedule 1 Savings and transitional provisions

(Section 36)

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
Health Legislation Further Amendment Act 2004 (but only to the extent that it amends this Act)
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Schedule 5 Amendment of Public Health Act 1991 No 10

(Section 4)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

nursing home means a facility at which residential care (within the meaning of the *Aged Care Act 1997* of the Commonwealth) is provided and in relation to which any one or more of the following is satisfied:

- (a) a licence was in force, or an approval of an application for a licence in principle was effective, under the *Nursing Homes Act 1988* in relation to the facility immediately before the repeal of that Act,
- (b) residential care is provided at the facility in relation to an allocated place under the *Aged Care Act 1997* of the Commonwealth and that place requires a high level of residential care within the meaning of that Act,
- (c) the facility belongs to a class of facilities prescribed by the regulations.

[2] Section 52

Omit the section. Insert instead:

52 Nursing requirements for nursing homes

- (1) A person who operates a nursing home must:
 - (a) ensure that a registered nurse is on duty in the nursing home at all times, and
 - (b) ensure that a registered nurse is appointed as a director of nursing of the nursing home, and
 - (c) ensure that any vacancy in the position of director of nursing of the nursing home is filled within 7 days.

Maximum penalty: 20 penalty units.

- (2) The regulations may prescribe the minimum necessary qualifications for a registered nurse to be appointed as a director of nursing at a nursing home.

(3) In this section:

director of nursing of a nursing home means the registered nurse responsible for care of the residents of the nursing home.

registered nurse has the same meaning as in the *Nurses and Midwives Act 1991*.

[3] Section 68 Definitions

Omit “within the meaning of the *Nursing Homes Act 1988*” from paragraph (e) of the definition of ***hospital***.

[4] Schedule 4 Savings and transitional provisions

Insert at the end of clause 1 (2A):

Health Legislation Further Amendment Act 2004 (but only to the extent that it amends this Act or repeals the *Nursing Homes Act 1988*)

[5] Schedule 4, Part 6

Insert after Part 5:

Part 6 Provision consequent on the repeal of the Nursing Homes Act 1988

19 Reference to nursing homes in other Acts, instruments or documents

A reference in any other Act, statutory instrument or other document to a nursing home within the meaning of the *Nursing Homes Act 1988* is taken to include a reference to a nursing home within the meaning of this Act.

Schedule 6 Consequential amendment of other Acts and instruments

(Section 4)

6.1 Children and Young Persons (Care and Protection) Act 1998 No 157

Section 200 Meaning of “children’s service”

Omit “or a nursing home licensed under the *Nursing Homes Act 1988*” from section 200 (3) (a) (i).

6.2 Children and Young Persons (Care and Protection) Regulation 2000

Clause 17 Out-of-home care: sec 135

Omit clause 17 (d).

6.3 Children (Care and Protection) Act 1987 No 54

Section 3 Definitions

Omit “or a nursing home licensed under the *Nursing Homes Act 1988*” from paragraph (a) (ii) of the definition of *exempt premises* in section 3 (1).

6.4 Chiropractors Act 2001 No 15

Section 38 Notification of orders to employer and others

Omit “the *Nursing Homes Act 1988*” from section 38 (1) (d).

Insert instead “the *Public Health Act 1991*”.

6.5 Dental Practice Act 2001 No 64

Sections 56 (1) (d) and 137A (5) (c)

Omit “the *Nursing Homes Act 1988*” wherever occurring.

Insert instead “the *Public Health Act 1991*”.

6.6 Guardianship Act 1987 No 257

Section 3 Definitions

Omit “licensed under the *Nursing Homes Act 1988*” from paragraph (a) (ii) of the definition of *exempt premises* in section 3 (1).

Insert instead “within the meaning of the *Public Health Act 1991*”.

6.7 Health Administration Regulation 2000

Clause 12 Prescribed establishments

Omit “the *Nursing Homes Act 1988*” from clause 12 (b).

Insert instead “the *Public Health Act 1991*”.

6.8 Inclosed Lands Protection Act 1901 No 33

Section 3 Definitions

Omit “the *Nursing Homes Act 1988*” from paragraph (d) of the definition of *prescribed premises* in section 3 (1).

Insert instead “the *Public Health Act 1991*”.

6.9 Land Tax Management Act 1956 No 26

[1] Section 10 Land exempted from tax

Omit section 10 (1) (g) (x).

[2] Section 10R Retirement villages—exemption/reduction

Omit the definition of *nursing home* from section 10R (1).

[3] Section 10R (2) (c)

Omit the paragraph.

[4] Section 10R (4)

Omit “, a retirement village or a nursing home,”.

Insert instead “or a retirement village”.

6.10 Liquor Act 1982 No 147

Section 6 Application of Act

Omit “who is a resident of a nursing home within the meaning of the *Nursing Homes Act 1988*” from section 6 (2) (a).

Insert instead “who is accommodated in a nursing home within the meaning of the *Public Health Act 1991* and who receives nursing care”.

6.11 Medical Practice Act 1992 No 94

[1] Section 116A Prohibition against directing or inciting overservicing or misconduct

Omit “the *Nursing Homes Act 1988*” from section 116A (5) (c).

Insert instead “the *Public Health Act 1991*”.

[2] Section 191B Notification of orders to practitioner’s employer and others

Omit “the *Nursing Homes Act 1988*” from section 191B (1) (d).

Insert instead “the *Public Health Act 1991*”.

6.12 Medical Practice Regulation 2003

Clause 5 Records relating to patients

Omit “the *Nursing Homes Act 1988*” from clause 5 (4) (d).

Insert instead “the *Public Health Act 1991*”.

6.13 Optometrists Act 2002 No 30

Sections 42 (1) (d) and 120A (5) (c)

Omit “the *Nursing Homes Act 1988*” wherever occurring.

Insert instead “the *Public Health Act 1991*”.

6.14 Osteopaths Act 2001 No 16

Section 38 Notification of orders to employer and others

Omit “the *Nursing Homes Act 1988*” from section 38 (1) (d).

Insert instead “the *Public Health Act 1991*”.

6.15 Physiotherapists Act 2001 No 67

Section 39 Notification of orders to employer and others

Omit “the *Nursing Homes Act 1988*” from section 39 (1) (d).

Insert instead “the *Public Health Act 1991*”.

6.16 Podiatrists Act 2003 No 69

Section 38 Notification of orders to employer and others

Omit “the *Nursing Homes Act 1988*” from section 38 (1) (d).

Insert instead “the *Public Health Act 1991*”.

6.17 Poisons and Therapeutic Goods Regulation 2002

Clause 3 Definitions

Omit the definition of *nursing home* from clause 3 (1). Insert instead:

nursing home has the same meaning as in the *Public Health Act 1991*.

6.18 Private Hospitals and Day Procedure Centres Act 1988 No 123

[1] Section 3 Definitions

Omit “the *Nursing Homes Act 1988*” from paragraph (e) of the definition of *day procedure centre* in section 3 (1).

Insert instead “the *Public Health Act 1991*”.

[2] Section 3 (1), definition of “private hospital”

Omit “the *Nursing Homes Act 1988*” from paragraph (d) of the definition.

Insert instead “the *Public Health Act 1991*”.

6.19 Psychologists Act 2001 No 69

Section 38 Notification of orders to employer and others

Omit “the *Nursing Homes Act 1988*” from section 38 (1) (d).

Insert instead “the *Public Health Act 1991*”.

6.20 Retirement Villages Act 1999 No 81

[1] Section 5 Meaning of “retirement village”

Omit section 5 (3) (b). Insert instead:

- (b) a nursing home within the meaning of the *Public Health Act 1991*,

[2] Section 15 Approvals for certain facilities

Omit the note to the section.

6.21 Summary Offences Act 1988 No 25

Section 3 Definitions

Omit “the *Nursing Homes Act 1988*” from paragraph (c) of the definition of *hospital* in section 3 (1).

Insert instead “the *Public Health Act 1991*”.