

Passed by both Houses



New South Wales

# Health Practitioner Regulation National Law (NSW) Amendment (Review) Bill 2016

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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,*

*, 2016*



New South Wales

## **Health Practitioner Regulation National Law (NSW) Amendment (Review) Bill 2016**

Act No , 2016

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An Act to make miscellaneous amendments to the *Health Practitioner Regulation (Adoption of National Law) Act 2009* in relation to health practitioners and associated matters.

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

*Assistant Speaker of the Legislative Assembly.*

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

**1 Name of Act**

This Act is the *Health Practitioner Regulation National Law (NSW) Amendment (Review) Act 2016*.

**2 Commencement**

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

## **Schedule 1      Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86**

### **[1]      Schedule 1 Modification of Health Practitioner Regulation National Law**

Omit section 41E from Schedule 1 [8]. Insert instead:

#### **41E      Membership of Councils [NSW]**

Each Council consists of the members prescribed by the NSW regulations.

### **[2]      Schedule 1 [8], section 41NA**

Insert after section 41N:

#### **41NA      Special provisions relating to non-financially viable Councils [NSW]**

- (1) The Minister may, if satisfied that a Council is not financially viable, make either or both of the following directions—
  - (a) a direction in writing to the Council that the Council delegate such of its functions as are specified in the direction to another Council, or to a person, designated by the Minister in the direction;
  - (b) a direction in writing to the Executive Officer of the Council that the Executive Officer delegate such of the Executive Officer's functions as are specified in the direction to a person designated by the Minister in the direction.

The Council or Executive Officer must comply with any such direction.

- (2) The NSW regulations may modify the functions of a Council (including modification of any of the Council's auditing or reporting requirements) as a consequence of—
  - (a) any direction under subsection (1), or
  - (b) the financial non-viability of the Council.
- (3) Any such regulation may not be made in relation to a Council unless the Minister has certified that, in the opinion of the Minister, the Council is not financially viable.
- (4) Any direction by the Minister under subsection (1) is to be made publicly available.

### **[3]      Schedule 1 [13] (sections 139B (1) (i) and (2) and 139D (1) (c) and (e), (2) (a) and (3)) and Schedule 1 [25] (Schedule 5C, clause 16 and Schedule 5F, except the definition of "pecuniary interest" in clause 1)**

Omit "pecuniary interest" and "pecuniary interests" wherever occurring.

Insert instead "financial interest" and "financial interests" respectively.

### **[4]      Schedule 1 [13], section 139I**

Insert after section 139H:

#### **139I      Notifications under section 130 [NSW]**

A notice under section 130 is taken to be a complaint both for the purposes of this Part and for the purposes of the *Health Care Complaints Act 1993* (including sections 96 and 98 of that Act).

**[5] Schedule 1 [15], section 145D, note**

Insert at the end of the section:

**Note.** A referral under this section is an application made to the Tribunal for a general decision for the purposes of the *Civil and Administrative Tribunal Act 2013*.

**[6] Schedule 1 [15], sections 145F, 146D (1), 148G (1) (a) and 152B**

Omit “sufficient physical and mental capacity” wherever occurring.

Insert instead “sufficient physical or mental capacity”.

**[7] Schedule 1 [15], section 146B (1) (b)**

Omit the paragraph. Insert instead:

(b) impose the conditions it considers appropriate on the practitioner’s registration;

**[8] Schedule 1 [15], section 147B (1)**

Omit the subsection. Insert instead:

(1) If a complaint is referred to a Committee, the Committee must investigate the complaint.

**[9] Schedule 1 [15], section 148E (1) (c)**

Omit the paragraph. Insert instead:

(c) impose the conditions it considers appropriate on the practitioner’s registration;

**[10] Schedule 1 [15], section 148E (2) (b)**

Omit the paragraph. Insert instead:

(b) impose the conditions it considers appropriate on the student’s registration;

**[11] Schedule 1 [15], section 151 (1)**

Omit “becomes a mentally incapacitated person or is involuntarily admitted to a mental health facility”.

Insert instead “is found to be a mentally ill person or a mentally disordered person in accordance with section 27 of the *Mental Health Act 2007*”.

**[12] Schedule 1 [15], section 152F (2)**

Insert at the end of section 152F:

(2) Subsection (1) does not apply if the Commission agrees to the continuation of the investigation or other action to be taken.

**[13] Schedule 1 [15], section 155C (1) (f)**

Omit “counselling.” from section 155C (1) (e). Insert instead:

counselling; or

(f) impose on the practitioner’s registration, with the consent of the practitioner, the conditions the Council considers appropriate.

**[14] Schedule 1 [15], section 159 (3)**

Omit the subsection. Insert instead:

- (3) The appeal is to be dealt with by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence that was before the Council, may be given.

**[15] Schedule 1 [15], section 159A (3A)**

Insert after section 159A (3):

- (3A) The appeal is to be dealt with by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence that was before the Council, may be given.

**[16] Schedule 1 [15], section 160 (1), note**

Insert after section 160 (1):

**Note.** An appeal under this section is an external appeal to the Tribunal for the purposes of the *Civil and Administrative Tribunal Act 2013*.

**[17] Schedule 1 [15], section 160 (2)**

Omit the subsection. Insert instead:

- (2) The appeal is to be dealt with by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence that was before the Performance Review Panel, may be given.

**[18] Schedule 1 [15], section 163C (4)**

Insert after section 163C (3):

- (4) A Council and the Commission are entitled to appear at any inquiry conducted by the Tribunal under this Division.

**[19] Schedule 1 [15], section 165B (2)**

Omit “and (5)”. Insert instead “, (5) and (5A)”.

**[20] Schedule 1 [15], section 165B (5A)**

Insert after section 165B (5):

- (5A) The Tribunal, when constituted to make an ancillary decision or an interlocutory decision within the meaning of the *Civil and Administrative Tribunal Act 2013*, is to be constituted by the Tribunal List Manager or the member referred to in subsection (2) (a).

**[21] Schedule 1 [15], section 165L (3)**

Insert after section 165L (2):

- (3) The Tribunal may, during any proceedings under this Law, suspend a registered health practitioner’s or student’s registration if—
- (a) it has found the subject-matter of the complaint against the practitioner or student to have been proved; and
  - (b) the complaint has not yet been finally disposed of; and
  - (c) it is satisfied that it is appropriate to do so for the protection of the health or safety of any person or persons (whether or not a particular person or persons) or the action is otherwise in the public interest.

**[22] Schedule 1 [15], section 165M (5)**

Insert after section 165M (4):

- (5) This section applies to a decision on an inquiry that is conducted into a complaint referred to the Tribunal under this Law where the subject-matter of the complaint is admitted in writing to the Tribunal.

**[23] Schedule 1 [15], section 170A (2)**

Insert at the end of section 170A:

- (2) The Chairperson of a Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**[24] Schedule 1 [15], section 170D (1) (c)**

Omit “inquiry.” from section 170D (1) (b). Insert instead:

- inquiry;
- (c) the power to make a decision concerning any interlocutory issue before the Committee.

**[25] Schedule 1 [15], section 170E**

Insert after section 170D:

**170E Effect of vacancy on Committee [NSW]**

- (1) If one of the members (other than the Chairperson of the Committee) constituting a Committee for the purpose of conducting an inquiry under this Law vacates office for any reason before the inquiry is completed or a determination in respect of the inquiry is made, the inquiry may be continued and a determination made by the remaining members of the Committee.
- (2) If more than one of the members vacate office, or the Chairperson of the Committee vacates office, for any reason before the Committee has completed an inquiry or made a determination in respect of an inquiry, the inquiry is terminated.
- (3) When an inquiry is terminated, the Committee may be reconstituted in accordance with this Division for the purposes of conducting a new inquiry in respect of the matter concerned.

**[26] Schedule 1 [15], section 171G**

Insert after section 171F:

**171G Record of inquiry [NSW]**

- (1) Proceedings on any inquiry of the Committee under this Subdivision are to be recorded.
- (2) The NSW regulations may prescribe the manner in which the evidence may be recorded.

**[27] Schedule 1 [15], section 172B (1)**

Omit “appointed by the Minister”. Insert instead “appointed by the Council”.

**[28] Schedule 1 [15], section 175 (3)**

Insert after section 175 (2):

- (3) The appeal is to be dealt with by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence that was before the National Board, may be given.

**[29] Schedule 1 [25], Schedule 5A**

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provision consequent on enactment of Health Practitioner Regulation National Law (NSW) Amendment (Review) Act 2016 [NSW]**

**Application of amendment concerning membership of Committee [NSW]**

Any person appointed by the Minister under section 172B (1) (as in force immediately before its amendment by the *Health Practitioner Regulation National Law (NSW) Amendment (Review) Act 2016*) is taken to have been appointed by the relevant Council.

**[30] Schedule 1 [25], Schedule 5C, Part 1**

Omit the Part.

**[31] Schedule 1 [25], Schedule 5C, clause 19 (2)**

Insert at the end of clause 19:

- (2) If a Council has more than 4 members, the quorum for a meeting of the Council for the purpose of dealing with a complaint about a registered health practitioner or student by inquiry is 3.

**[32] Schedule 1 [25], Schedule 5D, clause 13 (3A)**

Insert after clause 13 (3):

- (3A) The Tribunal may fix the amount of costs itself or order that the amount of costs be assessed by a costs assessor under the legal costs legislation (as defined in section 3A of the *Legal Profession Uniform Law Application Act 2014*) or on any other basis.

**[33] Schedule 1 [25], Schedule 5F, clause 1**

Insert in alphabetical order:

*financial interest* has the meaning given by clause 2.

**[34] Schedule 1 [25], Schedule 5F, clause 1**

Omit the definition of *pecuniary interest*.

**[35] Schedule 1 [25], Schedule 5F, clause 12 (5)**

Omit “decided by the Council”. Insert instead “prescribed by the NSW regulations”.

**[36] Schedule 1 [25], Schedule 5F, Part 4, heading**

Omit “Returns”. Insert instead “Declarations”.



**[37] Schedule 1 [25], Schedule 5F, clause 15**

Omit “return” wherever occurring. Insert instead “declaration”.