



New South Wales

Health Legislation Amendment Bill 2003

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 Services Act 1997*:
 - (i) to provide for “medical indemnity insurance” under section 85 of that Act to have the same meaning as “approved professional indemnity insurance” under the *Health Care Liability Act 2001*, and
 - (ii) to enable the Minister to appoint a person as a member of the Board of a statutory health corporation that has fewer than 50 employees, rather than holding an election for the position of Board member,
- (b) to amend the *Mental Health Act 1990* to provide for the appointment of part-time Deputy Presidents of the Mental Health Review Tribunal,
- (c) to amend the *New South Wales Institute of Psychiatry Act 1964* to clarify that the Institute has power to charge fees for the programmes of training it conducts, and may recover any fee due or payable to the Institute as a debt,

- (d) to amend the *Poisons and Therapeutic Goods Act 1966* with respect to:
 - (i) the maximum penalty for unlawful possession of steroids, and
 - (ii) approvals relating to drugs of addiction, and
 - (iii) powers of investigators in regard to entry and seizure,
- (e) to amend the *Royal Society for the Welfare of Mothers and Babies' Incorporation Act 1919*:
 - (i) to replace the requirement for any by-laws or rules to be made by the Governor with a power for the Royal Society for the Welfare of Mothers and Babies (incorporated under section 3 of the Act) to make its own by-laws and rules, and
 - (ii) to omit the requirement for by-laws and rules to be laid before Parliament and be subject to disallowance by Parliament,
- (f) to amend the *Smoke-free Environment Act 2000* to exempt certain licensed premises within the environs of a casino from the operation of the Act,
- (g) to amend the *Statutory and Other Offices Remuneration Act 1975* to make a change to the remuneration arrangements for the Deputy Presidents of the Mental Health Review Tribunal consequent on the amendments to the *Mental Health Act 1990* described in paragraph (b) above.

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 1–7.

Schedule 1 Amendment of Health Services Act 1997 No 154

Schedule 1 amends the *Health Services Act 1997* as described in paragraph (a) of the Overview above.

Schedule 2 Amendment of Mental Health Act 1990 No 9

Schedule 2 amends the *Mental Health Act 1990* as described in paragraph (b) of the Overview above.

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

Schedule 3 amends the *New South Wales Institute of Psychiatry Act 1964* as described in paragraph (c) of the Overview above.

Schedule 4 Amendment of Poisons and Therapeutic Goods Act 1966 No 31

Schedule 4 [1] amends section 16 of the *Poisons and Therapeutic Goods Act 1966* to increase the maximum penalty for offences relating to possession of anabolic or androgenic steroidal agents. The maximum penalty is increased from 20 penalty units or 6 months imprisonment, or both to 20 penalty units or 2 years imprisonment, or both.

Schedule 4 [3] amends section 28A (7) of the Act to provide that the Director-General of the Department of Health may, if the circumstances are sufficiently urgent, take immediate action to suspend, or impose or amend a condition of, an approval of a medical practitioner as a prescriber of drugs of addiction.

Schedule 4 [4] inserts proposed section 28A (10). The proposed subsection provides that circumstances are sufficiently urgent to require immediate action if the Director-General is of the opinion that the action is necessary for the purpose of protecting the life, or the physical or mental health, of the medical practitioner or any other person.

Schedule 4 [6] amends section 29 (5) (a) of the Act to provide that an authority issued by the Director-General under that section must specify the maximum quantity of the drug of addiction that may be prescribed under the authority by a medical practitioner.

Schedule 4 [5], [7] and [8] amend section 29 of the Act to make it explicit that forms, including applications and authorities, are to be generated and provided in a form approved by the Director-General of the Department of Health, including in an electronic form.

Schedule 4 [9] inserts proposed section 30AA into the Act. Proposed section 30AA applies if the Director-General of the Department of Health refers an approval to the Medical Committee (established under section 30 of the Act) for review and the review is with respect to a possible contravention of the Act or regulations by the approval holder or a failure to comply with conditions imposed on the approval. The Medical Committee may require the Health Care Complaints Commission or New South Wales Medical Board to provide the Committee with information in the Commission's or Board's possession that is relevant to the review.

Schedule 4 [10]–[13] amend section 43 of the Act to clarify inspectors' powers of entry and seizure in relation to records:

- (a) relevant to investigating or auditing compliance with the conditions of an approval, authority or licence given or issued for the purposes of Part 4 of the Act, or
- (b) with respect to a substance listed in Appendix D to the *Poisons and Therapeutic Goods Regulation 2002*.

Schedule 4 [2] omits a redundant cross-reference.

Schedule 5 Amendment of Royal Society for the Welfare of Mothers and Babies' Incorporation Act 1919 No 52

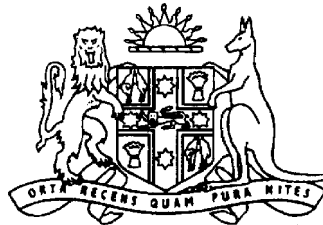
Schedule 5 amends the *Royal Society for the Welfare of Mothers and Babies' Incorporation Act 1919* as described in paragraph (e) of the Overview above.

Schedule 6 Amendment of Smoke-free Environment Act 2000 No 69

Schedule 6 amends the *Smoke-free Environment Act 2000* as described in paragraph (f) of the Overview above.

Schedule 7 Amendment of Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

Schedule 7 amends the *Statutory and Other Offices Remuneration Act 1975* as described in paragraph (g) of the Overview above.



New South Wales

Health Legislation Amendment Bill 2003

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Health Legislation Amendment Bill 2003

No. , 2003

A Bill for

An Act to make miscellaneous amendments to various Acts relating to health and associated matters; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Health Legislation Amendment Act 2003*.

2 Commencement

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

3 Amendment of various Acts

Each Act specified in Schedules 1–7 is amended as set out in those Schedules.

**Schedule 1 Amendment of Health Services Act 1997
No 154**

(Section 3)

[1] Section 49 Membership of health corporation board

Omit section 49 (2). Insert instead:

- (2) Of the persons appointed by the Minister, 1 is to be a person elected or, in the case of a statutory health corporation that has fewer than 50 employees, elected or appointed, in the manner prescribed by clause 2 of Schedule 5 or regulations made under that clause.

[2] Section 85 When can medical practitioners elect to provide their services through their practice companies?

Omit section 85 (2). Insert instead:

- (2) However, no such election may be made unless the medical practitioner's practice company:
- (a) carries public liability insurance to a level approved by the Director-General from time to time, and
- (b) carries medical indemnity insurance.
- (3) Subsection (2) (b) does not apply to the extent that the medical practitioner's practice company is exempt under section 19 (4) of the *Health Care Liability Act 2001* from the requirement to be covered by approved professional indemnity insurance in respect of medical services to be provided under the relevant service contract.
- (4) In this section:
- medical indemnity insurance* means approved professional indemnity insurance within the meaning of the *Health Care Liability Act 2001*.

[3] Schedule 5 Provisions relating to members and procedure of area health boards and health corporation boards

Insert "(other than an elected staff member appointed under subclause (11))" after "office of an elected staff member" in clause 2 (9).

[4] Schedule 5, clause 2

Insert after clause 2 (10):

- (11) If a statutory health corporation has fewer than 50 employees:
 - (a) the Minister may direct that an election for an appointed staff member of the Board for the corporation not be held and the Minister may appoint any person to be an appointed member, and
 - (b) that person is, on being appointed, taken to be a person elected in the manner prescribed by the regulations made under this clause.
- (12) If a vacancy occurs in the office of a member appointed under subclause (11) otherwise than by reason of the expiration of the period for which the member was appointed:
 - (a) the Minister may appoint any person to hold, subject to this Schedule, the office for a term commencing on the date of appointment or a later date specified in the relevant instrument of appointment and ending on the commencement of the term of office of the next member elected or appointed under this clause, and
 - (b) the person is, on being so appointed, taken to be a person elected in the manner prescribed by the regulations made under this clause.

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Schedule 2 Amendment of Mental Health Act 1990 No 9
(Section 3)

[1] Section 252 Constitution of the Tribunal

Insert “or part-time” after “full-time” in section 252 (2) (b).

[2] Section 252A

Insert after section 252:

252A Part-time arrangements

A Deputy President, although not appointed on a part-time basis, may, by agreement in writing entered into with the President, exercise the functions of Deputy President on a part-time basis.

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Schedule 3	Amendment of New South Wales Institute of Psychiatry Act 1964 No 44	1
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		3
	(Section 3)	
[1]	Section 4 Objects of the Institute	4
	Insert after section 4 (2):	5
	(2A) Without limiting subsection (2), the Institute may charge such fees as are reasonable in respect of the programmes of training conducted by the Institute.	6 7 8
[2]	Section 22	9
	Insert after section 21:	10
	22 Recovery of fees	11
	Any fee due or payable to the Institute may be recovered by the Institute as a debt in a court of competent jurisdiction.	12 13

Schedule 4 Amendment of Poisons and Therapeutic Goods Act 1966 No 31

(Section 3)

[1] Section 16 Offences relating to prescribed restricted substances

Omit the matter relating to the maximum penalty from section 16 (1).

Insert instead:

Maximum penalty:

- (a) for an offence relating to a prescribed restricted substance that is an anabolic or androgenic steroidal agent, 20 penalty units or imprisonment for 2 years, or both, and
- (b) for an offence relating to a prescribed restricted substance other than an anabolic or androgenic steroidal agent, 20 penalty units or imprisonment for 6 months, or both.

[2] Section 28A Approval of prescribers of drugs of addiction

Omit “for the purposes of section 29 (2) (b)” from section 28A (1).

[3] Section 28A (7)

Insert “or before referring the matter to the Medical Committee for a recommendation if the circumstances are sufficiently urgent to require immediate action” after “subsection (6)”.

[4] Section 28A (10)

Insert after section 28A (9):

- (10) For the purposes of subsection (7), the circumstances are sufficiently urgent to require immediate action with respect to a medical practitioner’s approval if the Director-General is of the opinion that the action is necessary for the purpose of protecting the life, or the physical or mental health, of the medical practitioner or any other person (whether or not any other such person is identifiable).

[5] Section 29 Director-General may authorise prescription or supply of drugs of addiction	1 2
Omit section 29 (1). Insert instead:	3
(1) An application for the authority of the Director-General referred to in section 28 is to be in a form approved by the Director-General.	4 5 6
[6] Section 29 (5) (a)	7
Omit “quantity”. Insert instead “maximum quantity”.	8
[7] Section 29 (5) (d)	9
Omit the paragraph. Insert instead:	10
(d) is to be in a form approved by the Director-General.	11
[8] Section 29 (6)	12
Insert “or by electronic communication” after “in writing”.	13
[9] Section 30AA	14
Insert after section 30:	15
30AA Power of Medical Committee to obtain information	16
(1) This section applies if:	17
(a) under section 28A (8) the Director-General refers an approval to the Medical Committee for review, and	18 19
(b) the review of the approval is with respect to a possible contravention of this Act or the regulations, or a failure to comply with any conditions to which the approval is subject.	20 21 22 23
(2) For the purposes of conducting the review and preparing its report and the recommendation, the Medical Committee may require the Health Care Complaints Commission or New South Wales Medical Board to provide the Medical Committee with any information in the Commission’s or Board’s possession that is relevant to the Medical Committee’s review.	24 25 26 27 28 29 30
(3) A requirement made by the Medical Committee under this section must be made in writing.	31 32

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- (4) The Health Care Complaints Commission or New South Wales Medical Board must comply with any reasonable requirement given to the Commission or Board under this section. 1
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- (5) This section applies despite any provision of: 5
- (a) the *Health Care Complaints Act 1993*, or 6
- (b) the *Medical Practice Act 1992*, including section 190B of that Act. 7
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- [10] Section 43 Powers of entry and seizure** 9
- Insert “, or any condition of an approval, authority or licence given or issued for the purposes of this Act or the regulations,” after “regulations” where firstly occurring in section 43 (2). 10
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- [11] Section 43 (2) (h)** 13
- Insert “, or a condition of an approval, authority or licence given or issued for the purposes of this Act or the regulations,” after “regulations”. 14
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- [12] Section 43 (2) (i) and (j)** 16
- Insert after section 43 (2) (h): 17
- (i) examine any records (including prescriptions), that may be relevant to investigating or auditing compliance with an approval given, or authority or licence issued, for the purposes of Part 4 or with respect to a prescribed restricted substance, 18
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22
- (j) remove any records referred to in paragraph (i). 23
- [13] Section 43 (8), definition of “prescribed restricted substance”** 24
- Insert in alphabetical order: 25
- prescribed restricted substance* means a substance listed in Appendix D to the *Poisons and Therapeutic Goods Regulation 2002*. 26
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Schedule 5	Amendment of Royal Society for the Welfare of Mothers and Babies' Incorporation Act 1919 No 52	1
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		3
	(Section 3)	4
[1]	Section 11 By-laws and rules	5
	Omit all the words from "It" to "particular:" from section 11 (1).	6
	Insert instead "The body corporate may make by-laws and rules, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed and, in particular, for or with respect to the following:".	7
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[2]	Section 11 (1) (a) and (b)	11
	Omit "as to" wherever occurring.	12
[3]	Section 11 (2) (iii)	13
	Omit the paragraph.	14
[4]	Section 11 (4)	15
	Insert after section 11 (3):	16
	(4) A by-law or rule made by the Governor and in force immediately before the commencement of Schedule 5 [1] to the <i>Health Legislation Amendment Act 2003</i> continues in force after that commencement as if the by-law or rule had been made by the body corporate.	17
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Schedule 6 Amendment of Smoke-free Environment Act 2000 No 69

(Section 3)

[1] Section 11 Exempt premises

Omit section 11 (1) (d). Insert instead:

- (d) any part of the premises of a casino or casino environs that is used solely for the purposes of gaming machines or solely for the purposes of a bar (whether or not such gaming machines are situated in the bar area),

[2] Section 11 (3)

Insert after section 11 (2):

- (3) In this section:

casino has the same meaning as in the *Casino Control Act 1992*.

casino environs means the whole or a specified part of premises the subject of an order under section 89 (3) of the *Casino Control Act 1992*.

gaming machine has the same meaning as in the *Casino Control Act 1992*.

Schedule 7 Amendment of Statutory and Other Offices Remuneration Act 1975 (1976
No 4)

Schedule 7	Amendment of Statutory and Other Offices Remuneration Act 1975 (1976 No 4)	1
	(Section 3)	2
		3
Schedule 2	Public offices	4
	Omit “Deputy President of the Mental Health Review Tribunal” from Part 1.	5
		6
	Insert instead:	7
	Full-time Deputy President of the Mental Health Review Tribunal	8
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	Part-time Deputy President of the Mental Health Review Tribunal	10
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