

# Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86

[2009-86]



New South Wales

## Status Information

### Currency of version

Current version for 30 October 2023 to date (accessed 22 April 2024 at 3:50)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Health Practitioner Regulation Act 2009
- **Does not include amendments by**  
[Medicines, Poisons and Therapeutic Goods Act 2022 No 73](#) (not commenced)
- **See also**  
[Health Practitioner Legislation Amendment Bill 2024](#)

### Responsible Minister

- Minister for Regional Health
- Minister for Health
- Attorney General
- Minister for Mental Health

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 19 March 2024

# Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86



New South Wales

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# Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86



New South Wales

An Act to apply as a law of this State a national law relating to health practitioner regulation.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Health Practitioner Regulation (Adoption of National Law) Act 2009*.

### 2 Commencement

- (1) Subject to subsection (2), this Act commences on 1 July 2010.
- (2) A proclamation made before 1 July 2010 may appoint a day that is later than 1 July 2010 as the day on which this Act commences.

### 3 Definitions

- (1) In this Act—

***Health Practitioner Regulation National Law (NSW)*** means the provisions applying in this jurisdiction because of section 4.

- (2) Terms used in Part 2 and also in the *Health Practitioner Regulation National Law (NSW)* have the same meaning in Part 2 as they have in that Law.

## Part 2 Adoption of Health Practitioner Regulation National Law

### 4 Adoption of Health Practitioner Regulation National Law

- (1) The Health Practitioner Regulation National Law, as in force from time to time, set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland—
  - (a) applies as a law of this jurisdiction, with the modifications set out in Schedule 1, and
  - (b) as so applying may be referred to as the *Health Practitioner Regulation National*

*Law (NSW)*, and

(c) so applies as if it were a part of this Act.

- (2) If, after the commencement of this subsection, the Parliament of Queensland amends the Schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland, the amendment (the **Queensland amendment**) does not apply in New South Wales until a regulation is made applying the Queensland amendment as an amendment to the *Health Practitioner Regulation National Law (NSW)*, with or without modification.
- (3) A regulation made under subsection (2) that applies a Queensland amendment with modification may, for that purpose, amend the Schedule to this Act.
- (4) Despite the *Interpretation Act 1987*, section 39, a regulation made under subsection (2) may commence on the day the Queensland amendment commences, including a day that is earlier than the day the regulation is published on the NSW legislation website.
- (5) A regulation made under subsection (2) is repealed on the day after all of its provisions have commenced.
- (6) The repeal of a regulation under subsection (5) does not affect the application of the Queensland amendment, with or without modification, provided for by the regulation.

## **5 Meaning of generic terms in Health Practitioner Regulation National Law for purposes of this jurisdiction**

In the *Health Practitioner Regulation National Law (NSW)*—

**Magistrate** means a Magistrate appointed under the *Local Court Act 2007*.

**this jurisdiction** means New South Wales.

## **6 Health, performance and conduct process not to apply: co-regulatory jurisdiction**

It is declared that this jurisdiction is not participating in the health, performance and conduct process provided by Divisions 3–12 of Part 8 of the Health Practitioner Regulation National Law.

### **6A Adjudication body**

Each of the following entities is declared to be an **adjudication body** for the purposes of the Health Practitioner Regulation National Law—

- (a) a Professional Standards Committee,
- (b) a Council,

(c) a Performance Review Panel.

(d) (Repealed)

#### **6B Co-regulatory authority**

Each Council is declared to be a **co-regulatory authority** for the purposes of the Health Practitioner Regulation National Law.

#### **6C Responsible tribunal for Health Practitioner Regulation National Law**

The Civil and Administrative Tribunal is declared to be the **responsible tribunal** for the purposes of the Health Practitioner Regulation National Law.

#### **7 Application of legislation of this jurisdiction**

(1) Subject to subsection (2), the following Acts of this jurisdiction do not apply to the [Health Practitioner Regulation National Law \(NSW\)](#) or to the instruments made under that Law—

(a) (Repealed)

(b) the [Freedom of Information Act 1989](#),

(c) the [Government Information \(Information Commissioner\) Act 2009](#),

(d) the [Government Information \(Public Access\) Act 2009](#),

(d1) the [Government Sector Audit Act 1983](#),

(d2) the [Government Sector Finance Act 2018](#),

(e) the [Health Records and Information Privacy Act 2002](#),

(f) the [Interpretation Act 1987](#),

(g) the [Ombudsman Act 1974](#),

(h) the [Privacy and Personal Information Protection Act 1998](#),

(i) (Repealed)

(j) the [Government Sector Employment Act 2013](#),

(k) the [Subordinate Legislation Act 1989](#).

(2) The following Acts of this jurisdiction apply to the NSW provisions of the [Health Practitioner Regulation National Law \(NSW\)](#) and to the instruments made under the NSW provisions—

(a) (Repealed)

- (b) the *Freedom of Information Act 1989*,
- (c) the *Government Information (Information Commissioner) Act 2009*,
- (d) the *Government Information (Public Access) Act 2009*,
- (d1) the *Government Sector Audit Act 1983*,
- (d2) the *Government Sector Finance Act 2018*,
- (e) the *Health Records and Information Privacy Act 2002*,
- (e1) the *Interpretation Act 1987*,
- (f) the *Ombudsman Act 1974*,
- (g) the *Privacy and Personal Information Protection Act 1998*,
- (h) (Repealed)
- (i) the *Subordinate Legislation Act 1989*.

## **Part 3 Miscellaneous**

### **8 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **9 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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

### **[1A] Sections 3A and 3B**

Insert after section 3—

### **3A Guiding principles [NSW]**

- (1) The main guiding principle of the national registration and accreditation scheme is that the protection of the health and safety of the public must be the paramount consideration.
- (2) The other guiding principles of the national registration and accreditation scheme are as follows—
  - (a) the scheme is to operate in a transparent, accountable, efficient, effective and fair way;
  - (a1) the scheme is to ensure the development of a culturally safe and respectful health workforce that—
    - (i) is responsive to Aboriginal and Torres Strait Islander Peoples and their health; and
    - (ii) contributes to the elimination of racism in the provision of health services;

#### **Example—**

Codes and guidelines developed and approved by National Boards under section 39 may provide guidance to health practitioners about the provision of culturally safe and respectful health care.

- (b) fees required to be paid under the scheme are to be reasonable having regard to the efficient and effective operation of the scheme;
- (c) restrictions on the practice of a health profession are to be imposed under the scheme only if it is necessary to ensure health services are provided safely and are of an appropriate quality.

#### **Note—**

This section is a substituted New South Wales provision.

### **3B Objective and guiding principle [NSW]**

In the exercise of functions under a NSW provision, the protection of the health and safety of the public must be the paramount consideration.

#### **Note—**

This section is an additional New South Wales provision.

## **[1] Section 5 Definitions**

Omit the definitions of ***health panel, panel, performance and professional standards panel, performance assessment, professional misconduct, prohibition order, relevant action, unprofessional conduct, unsatisfactory professional***

***performance*** and ***voluntary notification***.

[2] **Section 5**

Insert the following in alphabetical order—

***health panel***

**Note—**

This definition is not applicable to New South Wales.

***panel***

**Note—**

This definition is not applicable to New South Wales.

***performance and professional standards panel***

**Note—**

This definition is not applicable to New South Wales.

***performance assessment***

**Note—**

This definition is not applicable to New South Wales.

***professional misconduct***

**Note—**

This definition is not applicable to New South Wales.

***prohibition order***

**Note—**

This definition is not applicable to New South Wales.

***relevant action***

**Note—**

This definition is not applicable to New South Wales.

***unprofessional conduct***

**Note—**

This definition is not applicable to New South Wales.

***unsatisfactory professional performance***

**Note—**

This definition is not applicable to New South Wales.

***voluntary notification*** means a complaint or other notification made under Part 8,



other than a mandatory notification.

**[3] Section 5, definition of “adjudication body”**

Insert after the definition—

**Note—**

See section 6A of the *Health Practitioner Regulation (Adoption of National Law) Act 2009* which declares that Professional Standards Committees, Councils and Performance Review Panels are all adjudication bodies for the purposes of the Health Practitioner Regulation National Law.

**[4] Section 5, definition of “co-regulatory authority”**

Insert after the definition—

**Note—**

See section 6B of the *Health Practitioner Regulation (Adoption of National Law) Act 2009* which declares that each Council is a co-regulatory authority for the purposes of the Health Practitioner Regulation National Law.

**[5] Section 5, definition of “co-regulatory jurisdiction”**

Insert after the definition—

**Note—**

See section 6 of the *Health Practitioner Regulation (Adoption of National Law) Act 2009* which declares that this jurisdiction is not participating in the health, performance and conduct process provided by Divisions 3 to 12 of Part 8 of the Health Practitioner Regulation National Law. As a consequence, New South Wales is a co-regulatory jurisdiction.

**[5A] Section 5, definitions of “NSW provision” and “NSW regulation”**

Insert in alphabetical order—

**NSW provision** means—

- (a) a provision that forms part of this Law because of a modification made by the *Health Practitioner Regulation (Adoption of National Law) Act 2009*; or
- (b) a NSW regulation.

**Note—**

This definition is an additional New South Wales provision.

**NSW regulation** means a regulation made under section 247A.

**Note—**

This definition is an additional New South Wales provision.

**[6] Section 5, definition of “responsible tribunal”**

Insert after the definition—

**Note—**

See section 6C of the *Health Practitioner Regulation (Adoption of National Law) Act 2009* which declares that the Civil and Administrative Tribunal is the responsible Tribunal for the purposes of the Health Practitioner Regulation National Law.

**[7] Section 26A**

Insert after section 26—

**26A Setting of fees in health profession agreements [NSW]**

- (1) For the purposes of section 26, if the Ministerial Council gives a fees policy direction that provides a registration fee is to separately identify a registration and accreditation element and a complaints element, the amount of the complaints element for registration fees payable by NSW health practitioners for a particular health profession is to be decided by the Council established for that profession, with the approval of the Minister.

**Note—**

The Ministerial Council gave a fees policy direction on 13 November 2009 that provided that the registration fees payable under this Law were to separately identify the registration and accreditation elements and the complaints element of the fees.

- (2) In this section—

**complaints element** means a component for the costs of operating the health, performance and conduct process under Part 8.

**fees policy direction** means a direction given to the National Agency and the National Boards about the policies to be applied in entering into a health profession agreement about registration fees.

**NSW health practitioner** means—

- (a) a registered health practitioner whose principal place of practice is in this jurisdiction; or
- (b) an applicant for registration whose application for registration includes a declaration under section 77(3) that—
- (i) the applicant will predominantly practise the profession in this jurisdiction; or
- (ii) the applicant’s principal place of residence is in this jurisdiction.

**registration fee** means a relevant fee payable by a health practitioner for registration or renewal of registration under this Law.

**Note—**

This section is an additional New South Wales provision.

**[8] Part 5A**

Insert after Part 5—

## **Part 5A New South Wales Councils [NSW]**

**Note—**

This Part is an additional New South Wales provision.

### **Division 1 Preliminary [NSW]**

#### **41A Definitions [NSW]**

In this Part—

**Council** means a Council established under section 41B.

**Executive Officer** means the Executive Officer of a Council.

**NSW regulation** means a regulation made under section 247A.

### **Division 2 Councils [NSW]**

#### **41B Establishment of Councils [NSW]**

- (1) Each of the following Councils is established for the health profession listed beside that Council in the following Table—

**Table—State Councils**

| <b>Name of Council</b>                           | <b>Health profession</b>  |
|--|---|
| Chiropractic Council of New South Wales          | chiropractic  |
| Dental Council of New South Wales                | dental (including the profession of a dentist, dental hygienist, dental prosthetist, dental therapist or oral health therapist) |
| Medical Council of New South Wales               | medical   |
| Nursing and Midwifery Council of New South Wales | nursing and midwifery   |
| Optometry Council of New South Wales             | optometry   |

|  |               |
|--|---------------|
| Osteopathy Council of New South Wales    | osteopathy    |
| Paramedicine Council of New South Wales  | paramedicine  |
| Pharmacy Council of New South Wales      | pharmacy      |
| Physiotherapy Council of New South Wales | physiotherapy |
| Podiatry Council of New South Wales      | podiatry      |
| Psychology Council of New South Wales    | psychology    |

**Editorial note—**

This provision has been amended by orders. For the full text see the [Health Practitioner Regulation National Law \(NSW\)](#).

- (2) The Governor may, by order published on the NSW legislation website, amend the Table to subsection (1) by inserting, altering or omitting the name of a Council or health profession.
- (3) A Council—
  - (a) is a body corporate with perpetual succession; and
  - (b) has a common seal; and
  - (c) may sue and be sued.

**41C General powers of Councils [NSW]**

- (1) A Council has all the powers of an individual and, in particular, may do anything necessary or convenient to be done in the exercise of its functions.
- (2) However, a Council cannot employ staff.

**41D Functions of Councils [NSW]**

A Council has and may exercise the functions conferred or imposed on it by or under this Law or another Act.

**41DA Ministerial control [NSW]**

A Council is subject to the control and direction of the Minister, except in relation to—

- (a) the assessment or management of a complaint about a registered health practitioner or a student, including a decision to refer a complaint to a committee or the Tribunal; and

- (b) the assessment or management of a registered health practitioner or student who was or is the subject of a complaint or whose registration is subject to a condition, including a decision to refer a matter concerning the practitioner or student to the Tribunal; and
- (c) the terms of a recommendation by the Council; and
- (d) the contents of a report of the Council.

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

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

#### **41F Committees [NSW]**

- (1) A Council may establish committees to assist it in connection with the exercise of any of its functions.
- (2) The members of a committee need not be members of the Council.
- (3) The procedure for the calling of meetings of a committee and for the conduct of business at the meetings is—
  - (a) as decided by the Council; or
  - (b) subject to a decision of the Council, as decided by the committee.

#### **41G Councils' complaint functions may be exercised by 2 or more members [NSW]**

- (1) A Council may appoint any 2 or more members of the Council to exercise the functions of the Council under Division 3 of Part 8.
- (2) The referral of a complaint by the members appointed is taken to be a referral by the Council.

#### **41H Annual reporting information [NSW]**

- (1) The annual reporting information prepared for a Council under the [Government Sector Finance Act 2018](#) must include particulars of the following for the annual reporting period to which it relates—
  - (a) all complaints received by the Council during the period or received by the Council before that period but which, in the Council's opinion had not, at the start of the period, been finally disposed of;
  - (b) the action taken during the period in relation to complaints received by the Council and the results of that action up to the end of that period;

- (c) all matters referred to a Performance Review Panel for performance review during the period, or referred to a Panel before the period but which, in the Council's opinion had not, at the start of the period, been finally disposed of;
  - (d) the results of all performance reviews conducted by Performance Review Panels that were finally disposed of during the period.
- (2) Two or more Councils may decide to prepare joint annual reporting information under the *Government Sector Finance Act 2018*.
  - (3) This section does not require the identity of a complainant, a person who notifies a professional performance matter to a Council, a person about whom a complaint is made or who is the subject of a performance review or any other person to be disclosed in annual reporting information.

#### **41I Information to be made available to public [NSW]**

- (1) A Council for a health profession must ensure the following information, in relation to a registered health practitioner registered in the profession, is made available to the public on request—
  - (a) any conditions imposed on the registration of the practitioner;
  - (b) any other order made in respect of the practitioner under this Law.
- (2) Without limiting subsection (1), the Council is taken to have complied with that subsection if the information is available on the Register kept by the National Board for the health profession.
- (3) This section does not require a Council to disclose anything the Council considers relates solely or principally to the physical or mental capacity of a person to practise the person's profession.

#### **41J Delegation by Council and Executive Officer [NSW]**

- (1) A Council may delegate to a person the exercise of any of its functions, other than this power of delegation.
- (2) An Executive Officer of a Council may delegate to a person the exercise of—
  - (a) any of the functions of the Executive Officer under this Law, other than this power of delegation; or
  - (b) any functions delegated to the Executive Officer by the Council, unless the Council otherwise provides in its instrument of delegation to the Executive Officer.
- (3) In this section, a reference to a person includes a reference to a group of

persons, including a committee.

#### **41K Service of documents on Councils [NSW]**

- (1) A document (other than a complaint made under Part 8) may be served on a Council by leaving it at or sending it by post to an office of the Council.
- (2) This does not affect the operation of any provision of a law or of the rules of a court authorising a document to be served on a Council in another way.

#### **41L Authentication of certain documents [NSW]**

A certificate, summons, process, demand, order, notice, statement, direction or other document requiring authentication by a Council may be sufficiently authenticated without the seal of the Council if signed by—

- (a) the President or the Executive Officer of the Council; or
- (b) an officer of the Council authorised to do so by the Executive Officer.

#### **41M Recovery of charges, fines, fees and other money by Councils [NSW]**

A charge, fine, fee or other money due to a Council may be recovered by the Council as a debt in a court of competent jurisdiction.

#### **41N Proof of certain matters not required [NSW]**

In any legal proceedings, proof is not required (until evidence is given to the contrary) of—

- (a) the establishment of a Council; or
- (b) any resolution of a Council; or
- (c) the appointment of, or the holding of office by, a member of a Council; or
- (d) the presence of a quorum at a meeting of a Council.

#### **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.

## **Division 3 Proceedings of Councils [NSW]**

### **410 Other matters to be taken into account [NSW]**

In the exercise of any of its functions under Part 8 with respect to a complaint about a registered health practitioner or a student, a Council must have regard to any of the following matters, to the extent the Council reasonably considers the matter to be relevant to the complaint—

- (a) another complaint or notification about the practitioner or student made to the Council or the National Agency, or made to a former Board under a repealed Act, including a complaint—
  - (i) in respect of which the Council, the Commission or a National Board has decided no further action should be taken; and
  - (ii) that is not required to be referred, or that the Council or the Commission decides not to refer, under Division 3 of Part 8;
- (b) a previous finding or decision of a Council inquiry in relation to the practitioner or student;
- (c) a previous finding or decision of a board inquiry, professional standards committee or a tribunal established under a repealed Act in respect of the practitioner or student;
- (d) a written report made by an assessor following an assessment of the practitioner's professional performance;
- (e) a recommendation made, or written statement of decision on a performance



review provided, by a Performance Review Panel in relation to the practitioner.

#### **41P Exercise of functions with consent [NSW]**

- (1) A Council may exercise any of its functions under this Law with respect to a registered health practitioner or student with the written consent of the practitioner or student.
- (2) A function exercised by the Council with the consent of the registered health practitioner or student may be exercised even though a condition otherwise required to be met or procedures otherwise required to be followed before its exercise have not been met or followed.
- (3) If the registered health practitioner or student withdraws the practitioner's or student's consent, the Council must take the action necessary to give effect to the withdrawal.

### **Division 4 Administration [NSW]**

#### **41Q Executive Officer [NSW]**

- (1) There is an Executive Officer of each Council.
- (2) The Executive Officer—
  - (a) is responsible, as the chief executive officer of the Council, for the management of the affairs of the Council subject to any directions of the Council; and
  - (b) has and may exercise other functions conferred or imposed on the Executive Officer by or under this Law or any other Act.
- (3) The Executive Officer of a Council must keep a record of—
  - (a) all proceedings and decisions of Committees to which the Council refers matters; and
  - (b) (Repealed)
  - (c) all inquiries held by the Council.

### **Division 5 Finance [NSW]**

#### **41R Financial provisions [NSW]**

The Executive Officer of a Council must give to the Health Administration Corporation constituted under the *Health Administration Act 1982*, for payment into an account established under section 13A of that Act, all money received by the Council.

#### **41S Education and Research Account [NSW]**

- (1) A Council may establish an account named the '[name of Council] Education and Research Account'.
- (2) The Council must pay into its Education and Research Account the amounts decided by the Minister from time to time.
- (3) The Minister may not decide an amount under this section without first consulting with the Council.
- (4) Money in the Education and Research Account may be expended by the Council for or towards the following purposes—
  - (a) any purpose relating to education and research about the health, performance and conduct of registered health practitioners or students registered in the health profession for which the Council is established;
  - (b) meeting administrative expenditure incurred with respect to the Education and Research Account and the purposes for which it is used.
- (5) An expenditure of money under this section must not be made unless it is authorised by a resolution of the Council supported by two-thirds of the members of the Council.

#### **41T Medical Council to pay expenses of Medical Services Committee [NSW]**

The reasonable expenses of the Medical Services Committee established under the [Health Administration Act 1982](#) are to be paid out of the account established under section 13A of that Act for the Medical Council of New South Wales.

#### **[9] Part 7, Division 10, Subdivision 2**

Insert after the heading to the Subdivision—

##### **Note—**

See also Schedule 5F which contains New South Wales provisions providing for specific restrictions in relation to the control of pharmacies.

#### **[10] Section 121A**

Insert after section 121—

#### **121A General anaesthesia and simple sedation in dentistry [NSW]**

- (1) A dentist must not carry out any procedure forming part of the practice of dentistry on a patient to whom a general anaesthetic has been administered unless the general anaesthetic has been administered by a registered medical

practitioner who—

- (a) holds specialist registration in anaesthesia; or
- (b) is accredited for the purposes of administering any general anaesthetic at a public or private hospital at which surgery may lawfully be carried out.

Maximum penalty—200 penalty units.

(2) A dentist must not administer simple sedation by the intravenous route unless the dentist—

- (a) has been endorsed by the Dental Board of Australia to administer sedation; and
- (b) is assisted by another person who is either—
  - (i) a registered nurse who has received training in intensive care or anaesthesia; or
  - (ii) a dentist, appropriately trained in the observation and monitoring of sedated patients and in resuscitation, whose sole responsibility in assisting is to monitor the level of consciousness and cardio-respiratory function of the patient and to administer resuscitation if necessary.

Maximum penalty—200 penalty units.

(3) In this section—

**general anaesthetic** means a drug or other substance that, when administered to a patient, will render the patient—

- (a) unaware of the patient's surroundings; and
- (b) unable to retain reflex control of the airway; and
- (c) incapable of understanding and obeying a spoken command.

**simple sedation** means a technique in which the use of a drug produces a state of depression of the central nervous system enabling treatment to be carried out, and in which—

- (a) the patient does not lose consciousness; and
- (b) the drug and techniques used have a margin of safety wide enough to render unintended loss of consciousness unlikely.

**Note—**

This section is an additional New South Wales provision.

**[10A] Section 127AA**

Insert after section 127A—

**127AA Council to be review body for purposes of section 127A [NSW]**

- (1) The Council for the health profession in which the relevant practitioner or student is registered is declared to be the review body for the purposes of section 127A.
- (2) A Council, in deciding a matter referred to it under section 127A, must do so in accordance with this section.
- (3) A Council may inquire into and decide the matter on its own motion or on the application of the relevant practitioner or student.
- (4) An application may not be made—
  - (a) while the terms of the condition or undertaking provide that an application for review may not be made; or
  - (b) while an appeal to the Tribunal or the Supreme Court in respect of the same matter is pending.
- (5) A Council, following its inquiry into a matter, may do any of the following—
  - (a) in the case of an inquiry initiated by an application, dismiss the application;
  - (b) in the case of an inquiry initiated by the Council, decide to do nothing;
  - (c) in the case of an inquiry in relation to an undertaking, decide to revoke the undertaking or revoke the undertaking and impose a condition on similar or different terms as the undertaking;
  - (d) in the case of an inquiry in relation to a condition, decide to remove the condition, change the condition or remove the condition and impose a new condition.

**Note—**

This section is an additional New South Wales provision.

**[11] Section 129 Professional indemnity insurance arrangements**

Insert after section 129 (1)—

**Note—**

See also the [Health Care Liability Act 2001](#) which provides that medical practitioners practising in New South Wales must be covered by approved professional indemnity insurance within the meaning of that Act.

**[11A] Section 136A**

Insert after section 136—

**136A Directing or inciting unsatisfactory professional conduct [NSW]**

- (1) A person must not direct or incite a registered health practitioner to do anything, in the course of the practitioner's practice of the health profession, that amounts to unsatisfactory professional conduct.

Maximum penalty—

- (a) for an individual—\$60,000, or  
(b) for a body corporate—\$120,000.

- (2) Subsection (1) does not apply to a person who is the owner or operator of a public health facility.

- (3) In this section—

***unsatisfactory professional conduct*** has the same meaning as it has in Part 8.

**Note—**

This section is an additional New South Wales provision.

**[12] Part 8 Health, performance and conduct**

Insert after the heading to the Part—

**Note—**

This Part, other than Division 2, is a substituted New South Wales provision.

**[13] Part 8, Division 1**

Omit the Division. Insert instead—

**Division 1 Preliminary [NSW]**

**138 Definitions [NSW]**

- (1) In this Part—

***Assessment Committee*** means an Assessment Committee established under section 172A.

***assessor*** means a person appointed as an assessor under section 174D.

**authorised person** means a person appointed as an authorised person under section 164.

**Australian lawyer** has the same meaning as it has in the [Legal Profession Uniform Law \(NSW\)](#).

**Commission** means the Health Care Complaints Commission constituted under the [Health Care Complaints Act 1993](#).

**Committee** means—

- (a) an Assessment Committee; or
- (b) a Professional Standards Committee.

**competent** has the meaning given by section 139.

**complainant** includes a person acting as a nominal complainant in accordance with this Law.

**conduct** means any act or omission.

**confidential information** has the meaning given by section 139A.

**confidential information notice** means a notice that—

- (a) indicates that—
  - (i) confidential information is not included in a statement required to be given to a person under this Law; or
  - (ii) a statement required to be given to a person under this Law will not be provided; and
- (b) gives the reason the confidential information is not included or the statement will not be provided.

**Council** means a Council established under section 41B.

**court** includes a tribunal, authority or person having power to require the production of documents or the answering of questions but does not include—

- (a) the Tribunal; or
- (b) a Council; or
- (c) a Performance Review Panel; or
- (d) a Professional Standards Committee.

**criminal finding** means—

- (a) a finding that an offence has been proved without proceeding to a conviction; or
- (b) a finding that an offence has been proved and the discharging of, or the making of an order releasing, the offender conditionally on entering into a good behaviour bond for a specified period or on other conditions decided by the court.

**critical compliance order or condition** means an order or condition of a registered health practitioner's or student's registration that is a critical compliance order or condition under section 146B, 149A or 163B.

**drug related offence** means an offence under—

- (a) the [Drug Misuse and Trafficking Act 1985](#) or regulations under that Act; or
- (b) the [Poisons and Therapeutic Goods Act 1966](#) or regulations under that Act.

**Executive Officer** means the Executive Officer of a Council.

**former Board** means a Board established under a repealed Act.

**health product** means a pharmaceutical product or other product used for health purposes.

**health service** has the meaning given by the [Health Care Complaints Act 1993](#).

**health service provider** has the meaning given by the [Health Care Complaints Act 1993](#).

**Impaired Registrants Panel** means an Impaired Registrants Panel established under section 173.

**Minister** means—

- (a) the Minister administering this Law; or
- (b) if different Ministers are administering the Law in different respects or different portions of the Law, the Minister administering the Law in the relevant respect or administering the relevant portion of the Law.

**overservicing**, by a registered health practitioner, means the practitioner, in the course of practising the practitioner's profession—

- (a) provides a service in circumstances in which provision of the service is unnecessary, not reasonably required or excessive; or
- (b) engages in conduct prescribed by the NSW regulations as constituting overservicing.

**performance assessment** means an assessment of a registered health practitioner's professional performance conducted by an assessor under Subdivision 3 of Division 5 of Part 8.

**performance review** means a review of a registered health practitioner's professional performance conducted by a Performance Review Panel under Subdivision 4 of Division 5 of Part 8.

**Performance Review Panel** means a Performance Review Panel established under section 174.

**pharmacist** means a person registered under this Law in the pharmacy profession.

**President** means the President of a Council.

**professional misconduct** has the meaning given by section 139E.

**Professional Standards Committee** means a Professional Standards Committee established under section 169.

**prohibition order** has the meaning given by section 149C(5).

**protected report** means any of the following reports—

- (a) a report prepared by an Impaired Registrants Panel for a Council;
- (b) a report prepared by an assessor for a Council or Performance Review Panel;
- (c) a report prepared by a registered health practitioner about an examination conducted under section 145E, 152B or 152C;
- (d) a report prepared by a registered health practitioner for a Council in connection with an examination of a person by the health practitioner as required by a condition of registration or an order imposed by an adjudication body on the person;
- (e) a report prepared by a registered health practitioner for a Council under a request made by a person to the health practitioner in connection with a matter being dealt with by an Impaired Registrants Panel;
- (f) a report prepared, under clause 12 of Schedule 5B, by a person giving expert advice to a Performance Review Panel.

**repealed Act** means any of the following Acts—

- (a) [Chiropractors Act 2001](#);
- (b) [Dental Practice Act 2001](#);



- (c) *Medical Practice Act 1992*;
- (d) *Nurses and Midwives Act 1991*;
- (e) *Optometrists Act 2002*;
- (f) *Osteopaths Act 2001*;
- (g) *Pharmacy Practice Act 2006*;
- (h) *Physiotherapists Act 2001*;
- (i) *Podiatrists Act 2003*;
- (j) *Psychologists Act 2001*.

**Secretary** means the Secretary of the Ministry of Health.

**sex or violence offence** means an offence involving any of the following, other than an offence prescribed by the NSW regulations—

- (a) sexual activity;
- (b) sexual touching or sexual acts within the meaning of Division 10 of Part 3 of the *Crimes Act 1900*;
- (c) child pornography or child abuse material (within the meaning of the *Crimes Act 1900*);
- (d) physical violence or the threat of physical violence.

**Tribunal** means the Civil and Administrative Tribunal.

**Tribunal List Manager** means the List Manager of the Health Practitioner List of the Occupational Division of the Tribunal.

**unsatisfactory professional conduct** has the meaning given by sections 139B–139D.

- (2) A term defined in subsection (1) for this Part and also used in another NSW provision has the same meaning in the other NSW provision as it has in this Part.

### **139 Competence to practise health profession [NSW]**

A person is **competent** to practise a health profession only if the person—

- (a) has sufficient physical capacity, mental capacity, knowledge and skill to practise the profession; and
- (b) has sufficient communication skills for the practice of the profession, including

an adequate command of the English language.

### **139A Confidential information [NSW]**

Information is **confidential information** for the purposes of a statement of a decision under this Law if it falls into any of the following categories—

- (a) it has not previously been published or made available to the public when the statement of the decision to which it is or may be relevant is being prepared;
- (b) it relates to the personal or business affairs of a person other than a person to whom the statement is required to be provided or would be required to be provided but for the fact that it contains confidential information;
- (c) it was supplied in confidence;
- (d) its publication would reveal a trade secret;
- (e) it was provided in compliance with a duty imposed by or under an Act;
- (f) its inclusion in the statement would be a contravention of an Act;
- (g) it is a protected report or would reveal the contents of a protected report.

### **139B Meaning of “unsatisfactory professional conduct” of registered health practitioner generally [NSW]**

(1) **Unsatisfactory professional conduct** of a registered health practitioner includes each of the following—

(a) **Conduct significantly below reasonable standard**

Conduct that demonstrates the knowledge, skill or judgment possessed, or care exercised, by the practitioner in the practice of the practitioner’s profession is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

(b) **Contravention of this Law or regulations**

A contravention by the practitioner (whether by act or omission) of a provision of this Law, or the regulations under this Law or under the NSW regulations, whether or not the practitioner has been prosecuted for or convicted of an offence in respect of the contravention.

(c) **Contravention of conditions of registration or undertaking**

A contravention by the practitioner (whether by act or omission) of—

- (i) a condition to which the practitioner’s registration is subject; or

(ii) an undertaking given to a National Board.

**(d) Failure to comply with decision or order of Committee or the Tribunal**

A contravention by the practitioner (whether by act or omission) of a decision or order made by a Committee or the Tribunal in relation to the practitioner.

**(e) Contravention of requirement under [Health Care Complaints Act 1993](#)**

A contravention by the practitioner of section 21A(3), 34A(4) or 63G(4) of the [Health Care Complaints Act 1993](#).

**(f) Accepting benefit for referral or recommendation to health service provider**

Accepting from a health service provider (or from another person on behalf of the health service provider) a benefit as inducement, consideration or reward for—

- (i) referring another person to the health service provider; or
- (ii) recommending another person use any health service provided by the health service provider or consult with the health service provider in relation to a health matter.

**(g) Accepting benefit for recommendation of health product**

Accepting from a person who supplies a health product (or from another person on behalf of the supplier) a benefit as inducement, consideration or reward for recommending that another person use the health product, but does not include accepting a benefit that consists of ordinary retail conduct.

**(h) Offering a benefit for a referral or recommendation**

Offering or giving a person a benefit as inducement, consideration or reward for the person—

- (i) referring another person to the registered health practitioner; or
- (ii) recommending to another person that the person use a health service provided by the practitioner or consult the practitioner in relation to a health matter.

**(i) Failure to disclose financial interest in giving referral or recommendation**

Referring a person to, or recommending that a person use or consult—

(i) another health service provider; or

(ii) a health service; or

(iii) a health product;

if the practitioner has a financial interest in giving that referral or recommendation, unless the practitioner discloses the nature of the interest to the person before or at the time of giving the referral or recommendation.

(j) **Engaging in overservicing**

Engaging in overservicing.

(k) **Supervision of assistants**

Permitting an assistant employed by the practitioner (in connection with the practitioner's professional practice) who is not a registered health practitioner to attend, treat or perform operations on patients in respect of matters requiring professional discretion or skill.

(l) **Other improper or unethical conduct**

Any other improper or unethical conduct relating to the practice or purported practice of the practitioner's profession.

(2) For the purposes of subsection (1)(i), a registered health practitioner has a **financial interest** in giving a referral or recommendation—

(a) if the health service provider, or the supplier of the health product, to which the referral or recommendation relates is a public company and the practitioner holds 5% or more of the issued share capital of the company; or

(b) if the health service provider, or the supplier of the health product, to which the referral or recommendation relates is a private company and the practitioner has any interest in the company; or

(c) if the health service provider, or the supplier of the health product, to whom the referral or recommendation relates is a natural person who is a partner of the practitioner; or

(d) in any circumstances prescribed by the NSW regulations.

(3) For avoidance of doubt, a reference in this section to a referral or recommendation that is given to a person includes a referral or recommendation that is given to more than one person or to persons of a particular class.

(4) In this section—

**benefit** means money, property or anything else of value.

**recommend** a health product includes supply or prescribe the health product.

**supply** includes sell.

**139C Additional matters that constitute unsatisfactory professional conduct of medical practitioners [NSW]**

In addition to the matters referred to in section 139B, **unsatisfactory professional conduct** of a medical practitioner also includes each of the following—

**(a) Criminal convictions and criminal findings**

Conduct that results in the medical practitioner being convicted of or being made the subject of a criminal finding for any of the following offences—

- (i) an offence under section 102 of the *Mental Health Act 2007*;
- (ii) an offence under section 175 of the *Children and Young Persons (Care and Protection) Act 1998*;
- (iii) an offence under section 35 of the *Guardianship Act 1987*;
- (iv) an offence under section 128A, 128B, 129 or 129AA of the *Health Insurance Act 1973* of the Commonwealth;
- (v) an offence under section 58 of the *Private Health Facilities Act 2007*.

**(b) Assisting unregistered practitioners**

By the medical practitioner's presence, countenance, advice, assistance or co-operation, knowingly enable a person who is not a medical practitioner (whether or not that person is described as an assistant) or is not otherwise authorised by a National Board to—

- (i) perform operative surgery (as distinct from manipulative surgery) on a patient in respect of any matter requiring professional discretion or skill; or
- (ii) issue or procure the issue of a certificate, notification, report or other like document, or to engage in professional practice, as if the person were a medical practitioner.

**(c) Failing to render urgent attention**

Refusing or failing, without reasonable cause, to attend (within a reasonable time after being requested to do so) on a person for the purpose of rendering professional services in the capacity of a medical practitioner if the practitioner has reasonable cause to believe the person is in need of urgent attention by a medical practitioner, unless the practitioner has taken all reasonable steps to ensure that another medical practitioner attends instead within a reasonable

time.

**139D Additional matters that constitute unsatisfactory professional conduct of pharmacists [NSW]**

- (1) In addition to the matters referred to in section 139B, **unsatisfactory professional conduct** of a pharmacist also includes each of the following—
- (a) practising pharmacy for remuneration at a pharmacy in the course of employment by, or in association with, a non-pharmacist;
  - (b) the supply of precursor drugs, or preparations, admixtures, extracts or other substances containing a proportion of precursor drugs, by the pharmacist in circumstances in which the supply of the drugs, preparations, admixtures, extracts or other substances is unnecessary, not reasonably required, or excessive;
  - (c) if the pharmacist is the owner of, or otherwise has a financial interest in, a pharmacy business, failing to display at or near the main entrance of each premises in which the business is carried on the owner's name;
  - (d) if the pharmacist is the pharmacist in charge of a pharmacy, failing to display adjacent to the area where dispensing is carried on in the pharmacy the name of the pharmacist in charge followed by the words "PHARMACIST IN CHARGE";
  - (e) if the pharmacist is the owner of, or otherwise has a financial interest in, a pharmacy business, failing to ensure drug price information displayed in premises in which the business is carried on does not contravene the Price Information Code of Practice (within the meaning of Schedule 5F).
- (2) For the purposes of subsection (1)(c) and (e), the owner of a pharmacy business includes—
- (a) a pharmacist who has a financial interest in the pharmacy business; and
  - (b) a pharmacist who is nominated by the owner of the pharmacy business as being responsible for the matters referred to in clause 6(2)(c) or 7(2) of Schedule 5F.
- (3) In this section—
- non-pharmacist** means an entity that is not a pharmacist, but does not include any of the following—
- (a) the Crown;
  - (b) a public health organisation or a charitable or philanthropic institution;

- (c) a pharmacists' partnership or pharmacists' body corporate;
- (d) a friendly or other society that owns a pharmacy business as permitted by clause 6 of Schedule 5F;
- (e) a body corporate that owns or carries on a pharmacy business under clause 7 of Schedule 5F;
- (f) a person who has a financial interest in a pharmacy business as referred to in clause 5(4) or (5) of Schedule 5F and who carries on that business;
- (g) a person who, in assuming the administration of the property of another person under a security interest granted in respect of that other person's pharmacy business, carries on that pharmacy business.

**precursor drug** has the same meaning as **precursor** has in section 24A of the [Drug Misuse and Trafficking Act 1985](#).

### **139E Meaning of "professional misconduct" [NSW]**

For the purposes of this Law, **professional misconduct** of a registered health practitioner means—

- (a) unsatisfactory professional conduct of a sufficiently serious nature to justify suspension or cancellation of the practitioner's registration; or
- (b) more than one instance of unsatisfactory professional conduct that, when the instances are considered together, amount to conduct of a sufficiently serious nature to justify suspension or cancellation of the practitioner's registration.

### **139F References to "complaint" [NSW]**

In Subdivisions 1-6 of Division 3 and in Subdivisions 1 and 2 of Division 6, a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this Law or another Act.

### **139G Part applicable to persons formerly registered under this Law**

- (1) This section applies if a person was, but is no longer, registered in a health profession under this Law.
- (2) A notification may be made, and proceedings may be taken, under this Part in relation to the person's behaviour while registered as if the person were still registered under this Law by the National Board established for the health profession.
- (3) For the purposes of subsection (2), this Part (other than Division 2) applies, with any necessary changes, to the person as if a reference to a registered health

practitioner included that person.

**Note—**

This section is a Health Practitioner Regulation National Law provision.

**139H Part applicable to persons formerly registered under corresponding prior Act in certain circumstances**

- (1) This section applies if a person—
  - (a) was registered in a health profession under a corresponding prior Act; and
  - (b) is not, and has not been, registered in the health profession under this Law.
- (2) A notification may be made, and proceedings may be taken, under this Part in relation to the person's behaviour while registered under the corresponding prior Act as if the person were registered under this Law by the National Board established for the health profession.
- (3) However, subsection (2) applies only to the extent—
  - (a) a notification about the person's behaviour could have been made under the corresponding prior Act; and
  - (b) proceedings of that type could have been taken under the corresponding prior Act.
- (4) For the purposes of subsection (2), this Part (other than Division 2) applies, with any necessary changes, to the person as if a reference to a registered health practitioner included that person.

**Note—**

This section is a Health Practitioner Regulation National Law provision.

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

- (1) 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).
- (2) A National Board must, within 3 business days of receiving a notice under section 130 from a registered health practitioner or student to whom the following applies, provide the Council for the health profession in which the practitioner or student is registered with a copy of the notice—
  - (a) for a registered health practitioner—
    - (i) the relevant event the subject of the notice, or the matters to which the



relevant event relates, occurred in or relates to New South Wales; or

(ii) the principal place of practice of the registered health practitioner is in New South Wales;

(b) for a student—the relevant event the subject of the notice, or the matters to which the relevant event relates, occurred in or relates to New South Wales.

(3) In this section—

**relevant event** has the same meaning as it has in section 130.

#### **[14] Part 8, Division 2**

Insert after the heading to the Division—

**Note—**

This Division is a Health Practitioner Regulation National Law provision.

#### **[14AC] Section 142A**

Insert after section 142—

##### **142A Employers having dual notification requirements [NSW]**

- (1) If an employer is required to report the same conduct under section 142 and under section 117A of the *Health Services Act 1997*, compliance with either section, or with alternative reporting requirements approved by the Secretary, satisfies the requirements of both those sections.
- (2) If an employer is required to report the same conduct under section 142 and under section 99A of the *Health Services Act 1997*, compliance with either section, or with alternative reporting requirements approved by the Secretary, satisfies the requirements of both those sections.

**Note—**

This section is an additional New South Wales provision.

#### **[14A] Section 143A**

Insert after section 143—

##### **143A Mandatory notifications [NSW]**

A mandatory notification 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).

**Note—**

This section is an additional New South Wales provision.

**[15] Part 8, Divisions 3-14B**

Omit Divisions 3-14. Insert instead—

## **Division 3 Complaints [NSW]**

### **Subdivision 1 Making complaints [NSW]**

#### **144 Grounds for complaint about registered health practitioner [NSW]**

The following complaints may be made about a registered health practitioner—

(a) **Criminal conviction or criminal finding**

A complaint the practitioner has, either in this jurisdiction or elsewhere, been convicted of or made the subject of a criminal finding for an offence.

(b) **Unsatisfactory professional conduct or professional misconduct**

A complaint the practitioner has been guilty of unsatisfactory professional conduct or professional misconduct.

(c) **Lack of competence**

A complaint the practitioner is not competent to practise the practitioner's profession.

(d) **Impairment**

A complaint the practitioner has an impairment.

(e) **Suitable person**

A complaint the practitioner is otherwise not a suitable person to hold registration in the practitioner's profession.

#### **144A Grounds for complaint about student [NSW]**

The following complaints may be made about a student—

(a) **Offences**

A complaint the student has, either in this jurisdiction or elsewhere, been charged with an offence, or has been convicted of or made the subject of a criminal finding for an offence, that is punishable by 12 months imprisonment or more.

(b) **Impairment**

A complaint the student has an impairment.

(c) **Contravention of conditions**

A complaint that the student has contravened a condition of the student's registration or an undertaking given by the student to a National Board.

**144B Who can make complaint [NSW]**

- (1) Any person can make a complaint.
- (2) A complaint may also be made by a Council or the Secretary.

**144C Complaints may be made to Council or Health Care Complaints Commission [NSW]**

A complaint may be made to a Council or the Commission.

**144D Complaints to be in writing [NSW]**

- (1) A complaint, other than a complaint made by a Council or the Secretary, must—
  - (a) be in writing; and
  - (b) contain particulars of the allegations on which it is founded.
- (2) A complaint need not be made in terms that are strictly consistent with the terminology of section 144 or 144A.
- (3) A Council or the Commission may consider and investigate a complaint that does not comply with the requirements of subsection (1) but must not refer the complaint under Subdivision 2 until the requirements are complied with.

**144E Where to lodge complaints [NSW]**

- (1) A complaint made to a Council must be lodged with the Executive Officer of the Council.
- (2) A complaint made to the Commission is, in accordance with section 9 of the [Health Care Complaints Act 1993](#), to be lodged with the Commission.

**144F Further particulars may be required from complainant [NSW]**

A Council or the Commission may require the complainant to provide further particulars of a complaint.

**144G Council to notify Commission and National Boards of complaints [NSW]**

A Council must, as soon as practicable after a complaint is made to or by the Council

about a registered health practitioner or student, notify the following persons about the complaint or matter—

- (a) the Commission;
- (b) the National Board for the health profession in which the registered health practitioner or student is registered.

## **Subdivision 2 How complaints are to be dealt with [NSW]**

### **145 Complaints to be dealt with expeditiously [NSW]**

All complaints are to be dealt with expeditiously.

#### **145A Council and Commission to consult on complaint [NSW]**

- (1) Before any action is taken on a complaint, a Council and the Commission must consult to see if agreement can be reached between them as to the course of action to be taken concerning the complaint.
- (2) Division 2 of Part 2 of the *Health Care Complaints Act 1993* applies to the consultation, despite the other provisions of this Subdivision.

#### **145B Courses of action available to Council on complaint [NSW]**

- (1) The following courses of action are available to a Council in respect of a complaint—
  - (a) the Council may make any inquiries about the complaint the Council thinks appropriate;
  - (b) the Council may refer the complaint to the Commission for investigation;
  - (c) the Council may refer the complaint to the Tribunal;
  - (d) the Council may refer the complaint to a Committee;
  - (e) for a complaint about a health practitioner or student who is registered in a health profession other than the medical or nursing and midwifery profession, the Council may deal with the complaint by inquiry at a meeting of the Council;
  - (f) the Council may—
    - (i) refer the practitioner or student for a health assessment; or
    - (ii) refer the matter to an Impaired Registrants Panel; or
    - (iii) refer the professional performance of the practitioner concerned for a performance assessment;

- (g) the Council may direct the practitioner or student concerned to attend counselling;
  - (h) the Council may refer the complaint to the Commission for conciliation or to be dealt with under Division 9 of Part 2 of the *Health Care Complaints Act 1993*;
  - (i) the Council may refer the complaint to another entity, including, for example, a National Board;
  - (j) the Council may determine that no further action should be taken in respect of the complaint.
- (2) The Commission must, on receipt of a complaint referred by a Council for investigation, investigate the complaint or cause it to be investigated.
  - (3) If a Council makes a referral under subsection (1)(f), the matter ceases to be a complaint for the purposes of this Law and the *Health Care Complaints Act 1993*.
  - (4) Subsection (3) ceases to apply in respect of any matter that a Council subsequently deals with as a complaint.

#### **145BA Notification of outcomes of complaints to complainants [NSW]**

- (1) This section applies to a Council for a health profession with respect to any of the following outcomes (a **notifiable outcome**) concerning complaints against health practitioners or students—
  - (a) if the Council deals with a complaint by inquiry at a meeting of the Council under section 145B (1) (e)—the result of the inquiry;
  - (b) if the Council refers a health practitioner (or a matter concerning the practitioner’s health or professional performance) for assessment under section 145B (1) (f)—any action resulting from the assessment (including the imposition of conditions on the health practitioner’s registration);
  - (c) a decision of the Council to take action under section 145B (1) (g), (h), (i) or (j) in respect of a complaint.
- (2) The Council must give the complainant notice in writing of a notifiable outcome within 30 days after the outcome.
- (3) The Council may include such other information in the notice in addition to indicating the outcome as it considers appropriate.
- (4) However, the Council must not disclose confidential information in a notice unless it considers that the public interest in disclosing the information outweighs the public interest in protecting the confidentiality of the information

and the privacy of any person to whom it relates.

- (5) For avoidance of doubt, section 145B (3) does not affect the obligation of a Council under this section to give notice of a notifiable outcome of the kind referred to in subsection (1) (b).

#### **145C Courses of action available to the Commission on complaint [NSW]**

- (1) The following courses of action are available to the Commission in respect of a complaint made to the Commission, or that the Commission has decided to make, about a registered health practitioner or student—
  - (a) the Commission may refer the complaint to the Council for the health profession in which the practitioner or student is registered or, after consultation with a Council, to a Committee or the Tribunal;
  - (b) the Commission may refer the complaint for conciliation or deal with the complaint under Division 9 of Part 2 of the *Health Care Complaints Act 1993*;
  - (c) the Commission may refer the complaint to another entity, including, for example, a National Board;
  - (d) the Commission may determine that no further action should be taken in respect of the complaint;
  - (e) the Commission may take any other action that it can take under the *Health Care Complaints Act 1993*.
- (2) If the Commission refers a complaint to a Committee or the Tribunal, the Commission must inform the Council accordingly.

#### **145D Serious complaints must be referred to Tribunal [NSW]**

- (1) Both a Council for a health profession and the Commission are under a duty to refer a complaint to the Tribunal if, at any time, either forms the opinion that it may, if substantiated, provide grounds for the suspension or cancellation of a registered health practitioner's or student's registration.
- (2) However, either the Council or the Commission may decide not to refer the complaint to the Tribunal if of the opinion the allegations on which the complaint is founded (and on which any other pending complaint against the registered health practitioner or student is founded) relate solely or principally to—
  - (a) for a practitioner, the physical or mental capacity of the practitioner to practise the practitioner's profession; or
  - (b) for a student, the physical or mental capacity of the student to undertake clinical training in the health profession in which the student is registered.

- (3) If the Council decides not to refer the complaint to the Tribunal, the Council must instead refer the complaint to a Committee or Impaired Registrants Panel.
- (4) If the Commission decides not to refer the complaint to the Tribunal, the Commission must instead refer the complaint to the Council.
- (5) This section does not require the Council or the Commission to refer a complaint the Council or Commission thinks is frivolous or vexatious.

**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*.

**145E Council may require health practitioner or student to undergo examination [NSW]**

- (1) A Council may, by written notice given to a registered health practitioner or student against whom a complaint has been made, direct the practitioner or student to undergo an examination by a specified registered health practitioner at a specified reasonable time and place.
- (2) A registered health practitioner or student must not be directed to undergo an examination under subsection (1) unless it is reasonable to require the examination, given the nature of the complaint against the practitioner or student.
- (3) The fee charged by the specified registered health practitioner for the examination is at the expense of the Council.

**145F Result of failure to attend counselling or examination [NSW]**

A failure by a registered health practitioner or student, without reasonable excuse, to comply with a direction under section 145B to attend counselling or under section 145E to undergo an examination is, for the purposes of this Law and any inquiry or appeal under this Law, evidence that the practitioner or student—

- (a) for a registered health practitioner, does not have sufficient physical or mental capacity to practise the health profession in which the practitioner is registered; or
- (b) for a student, does not have sufficient physical or mental capacity to undertake clinical training in the health profession in which the student is registered.

**145G Inquiries etc not prevented by other proceedings [NSW]**

A complaint can be referred to a Committee or the Tribunal, and dealt with by the Committee or Tribunal, even though the practitioner or student concerned is the subject of proposed or current criminal or civil proceedings relating to the subject-

matter of the complaint.

**145H Complaint not to be referred if health practitioner or student dead [NSW]**

A complaint is not to be referred under this Subdivision if the registered health practitioner or student concerned is dead.

**145I Complaint need not be referred if health practitioner or student no longer registered [NSW]**

A Council or the Commission may decide not to refer a complaint under this Subdivision if the registered health practitioner or student concerned has ceased to be registered.

**145J Complaint need not be referred if complainant fails to provide further particulars [NSW]**

A Council or the Commission may decide not to refer a complaint under this Subdivision if the complainant has failed to provide further particulars in response to a request by the Council or the Commission.

**Subdivision 3 Disciplinary powers of Professional Standards Committees [NSW]**

**146 Definitions [NSW]**

In this Subdivision—

**Committee** means a Professional Standards Committee.

**relevant health practitioner** means a health practitioner registered under this Law in the—

- (a) medical profession; or
- (b) nursing and midwifery profession.

**146A Powers may be exercised if complaint proved or admitted [NSW]**

A Committee may exercise any power conferred on it by this Subdivision if it finds the subject-matter of a complaint against a relevant health practitioner to have been proved or the relevant health practitioner who is the subject of the complaint admits to it in writing to the Committee.

**146B General powers to caution, reprimand, counsel etc [NSW]**

- (1) A Committee may do one or more of the following in relation to a relevant health practitioner the subject of a complaint referred to it—



- (a) caution or reprimand the practitioner;
  - (b) impose the conditions it considers appropriate on the practitioner's registration;
  - (c) order that the practitioner seek and undergo medical or psychiatric treatment or counselling (including, but not limited to, psychological counselling);
  - (d) order that the practitioner complete an educational course specified by the Committee;
  - (e) order that the practitioner report on the practitioner's practice at the times, in the way and to the persons specified by the Committee;
  - (f) order that the practitioner seek and take advice, in relation to the management of the practitioner's practice, from the persons specified by the Committee.
- (2) If the relevant health practitioner is not registered, a direction may still be given under this section but has effect only so as to require the conditions concerned to be imposed when the health practitioner is registered.
- (3) If a Committee acting under this section makes an order or directs that any condition be imposed on a health practitioner's registration, the Committee may order that a contravention of the order or condition will result in the health practitioner's registration in the health profession being cancelled.
- (4) The order or condition concerned is then a ***critical compliance order or condition***.

#### **146C Power to fine in certain cases [NSW]**

- (1) A Committee may by order impose a fine of an amount of not more than 50 penalty units on a relevant health practitioner the subject of a complaint referred to the committee.
- (2) A fine is not to be imposed unless—
- (a) the Committee finds the relevant health practitioner to have been guilty of unsatisfactory professional conduct; and
  - (b) the Committee is satisfied there is no other order, or combination of orders, that is appropriate in the public interest.
- (3) A fine is not to be imposed if a fine or other penalty has already been imposed by a court in respect of the conduct.

- (4) A fine must be paid within the time specified in the order imposing the fine and must be paid to the Council.

#### **146D Committee can recommend suspension or cancellation on grounds of lack of physical or mental capacity [NSW]**

- (1) A Committee may recommend that a relevant health practitioner's registration be suspended for a specified period or that the practitioner's registration be cancelled if the Committee is satisfied the practitioner does not have sufficient physical or mental capacity to practise the practitioner's profession.
- (2) If the relevant health practitioner is no longer registered, a recommendation may be made under this section that the person be disqualified from being registered.
- (3) The Committee makes its recommendation by referring the matter, with its recommendation and the material on which it relied in making its recommendation, to the Tribunal.
- (4) The Tribunal may—
  - (a) make an order in the terms recommended; or
  - (b) may make another order about the suspension or cancellation of the registration of the relevant health practitioner as the Tribunal thinks proper based on the findings of the Committee.
- (5) An order under this section may also provide that an application for review of the order under Division 8 may not be made until after a specified time.
- (6) Instead of making an order under this section, the Tribunal may exercise any power of a Committee under this Subdivision.

#### **146E Council may refer contravention of conditions to Tribunal [NSW]**

- (1) If a Council for a health profession reasonably believes a relevant health practitioner has contravened any conditions imposed under a direction made by a Committee under this Subdivision, it may refer the matter to the Tribunal.
- (2) If the Tribunal finds the failure proved, it may exercise any power conferred on it by Subdivision 6.

### **Subdivision 4 Dealing with complaints by Assessment Committee [NSW]**

#### **147 Definitions [NSW]**

In this Subdivision—

**Committee** means an Assessment Committee.

**relevant health practitioner** means a health practitioner registered under this Law other than a health practitioner registered in the—

- (a) medical profession; or
- (b) nursing and midwifery profession.

**147A Complaints that may be referred to Committee [NSW]**

- (1) A Council may refer a complaint to a Committee only if—
  - (a) the complaint is about a relevant health practitioner; and
  - (b) the Commission has decided not to investigate the complaint or following an investigation has decided not to refer the complaint to the Tribunal.
- (2) A complaint may not be referred to a Committee if it is a complaint that—
  - (a) the relevant health practitioner is not of good character; or
  - (b) the relevant health practitioner has been convicted of or made the subject of a criminal finding for an offence.
- (3) This section does not limit the Committee in the exercise of its functions under this Subdivision in relation to any matter that arises in the course of the Committee's investigation of a complaint.

**147B How complaints are dealt with [NSW]**

- (1) If a complaint is referred to a Committee, the Committee must investigate the complaint.
- (2) A Committee may obtain the medical, legal, financial or other advice it thinks necessary or desirable to enable it to exercise its functions.
- (3) Advice obtained by a Committee under subsection (2) may not, unless otherwise ordered by the Council, be admitted or used in civil proceedings before a court and a person may not be compelled to produce the advice or to give evidence in relation to the advice in civil proceedings.
- (4), (5) (Repealed)

**147C Skills testing of relevant health practitioner [NSW]**

- (1) A Council may direct a Committee to require the relevant health practitioner the subject of the complaint referred to the Committee to undergo skills testing.
- (2) The Committee must, by written notice given to the relevant health practitioner,

require the health practitioner to undergo skills testing by an appropriately qualified person specified in the notice, at the reasonable time and place specified in the notice.

- (3) A failure by the relevant health practitioner, without reasonable excuse, to comply with the notice is, for the purposes of this Part or any inquiry or appeal under this Law, evidence the health practitioner does not have sufficient skill to practise the health profession in which the health practitioner is registered.
- (4) A person who conducts skills testing for the purposes of this section must report to the Committee on the results of the testing.
- (5) The Committee must give a copy of the report to the relevant health practitioner.
- (6) A person must not, directly or indirectly, make a record of or divulge to any person any information contained in a report to a Committee under this section that has come to the person's notice in the exercise of the person's functions under this Law, other than for the purpose of exercising the person's functions under this Law.

Maximum penalty—50 penalty units.

- (7) A person cannot be required in civil proceedings in any court to produce or permit access to a report made to a Committee under this section or to divulge the contents of the report.
- (8) In this section—

**report** includes a copy, reproduction and duplicate of the report or any part of the report, copy, reproduction or duplicate.

#### **147D Recommendations of Committee [NSW]**

- (1) A Committee's report to a Council may include the recommendations about the complaint the Committee considers appropriate, including any of the following—
  - (a) a recommendation that the Council deal with the complaint by inquiry at a meeting of the Council as a complaint of unsatisfactory professional conduct;
  - (b) a recommendation that the Council direct the relevant health practitioner to attend counselling;
  - (c) a recommendation that the Council dismiss the complaint.
- (2) The Council must give the relevant health practitioner and the Commission a copy of the Committee's report as soon as practicable after the report is made.
- (3) The Council must—

- (a) if the Committee recommends that the Council deal with the complaint by inquiry at a meeting of the Council as a complaint of unsatisfactory professional conduct, comply with the recommendation; or
  - (b) otherwise, allow the Commission and the relevant health practitioner, not less than 21 days after they have been given a copy of the Committee's report and recommendations, to make submissions about the report and recommendations.
- (4) After considering the Committee's report and recommendations and any submissions made by the Commission or relevant health practitioner, the Council must proceed to deal with the complaint as provided by section 145B.

**Note—**

See section 145D which provides that both Council and the Commission have a duty to refer a complaint to the Tribunal if, at any time, either of them is of the opinion that the complaint, if substantiated, would provide grounds for the suspension or cancellation of the relevant health practitioner's registration.

**147E No representation for parties appearing before Committee [NSW]**

A complainant and the relevant health practitioner the subject of the complaint are not entitled to be legally represented at an appearance before a Committee.

**Subdivision 5 Dealing with complaint by inquiry at meeting of Council [NSW]**

**148 Application of Subdivision [NSW]**

This Subdivision does not apply to a complaint about a health practitioner or student registered in—

- (a) the medical profession; or
- (b) the nursing and midwifery profession.

**148A Procedures for dealing with complaint at meeting [NSW]**

- (1) If a Council decides to deal with a complaint about a registered health practitioner or student by inquiry at a meeting of the Council, the meeting must be held in accordance with Part 3 of Schedule 5C and this Subdivision.
- (2) The Council may be assisted by a legal practitioner when dealing with the complaint at a meeting of the Council.
- (3) The Council must give the Commission a copy of any submission made to the Council by the registered health practitioner or student in respect of the complaint or in respect of any recommendation of the Committee concerning the

complaint.

#### **148B General procedure [NSW]**

The procedure for the calling of a meeting to deal with a complaint and for the conduct of the meeting is, subject to this Law and the NSW regulations, to be decided by the Council.

#### **148C Conduct of meeting [NSW]**

At the meeting to deal with the complaint, the Council—

- (a) may inform itself on any matter in the way it thinks fit; and
- (b) may receive written or oral submissions; and
- (c) must proceed with as little formality and technicality, and as much expedition, as the requirements of this Law and the proper consideration of the complaint permit; and
- (d) is not bound by rules of evidence; and
- (e) may proceed to deal with the complaint in the absence of the registered health practitioner or student.

#### **148D Making submissions to inquiry [NSW]**

- (1) The registered health practitioner or student is entitled to attend the meeting at which the complaint is dealt with and to make submissions to the Council.
- (2) The Committee may, if the Council so requires, make a submission to the Council with respect to the complaint and may for that purpose attend the meeting at which the complaint is dealt with.
- (3) The Council must give the Commission the opportunity to make a submission to the Council with respect to the complaint and the Commission may for that purpose attend the meeting at which the complaint is dealt with.
- (4) The Committee or the Commission may not be present at the meeting except while actually making a submission, unless the Council otherwise decides.
- (5) Despite subsection (4), the Commission may be present throughout the Council's inquiry if the complaint is the subject of a recommendation of the Commission that it be dealt with by inquiry at a meeting of the Council under this Subdivision.
- (6) The registered health practitioner or student is not entitled to be legally represented at the inquiry but may be accompanied by a support person. The support person can be an Australian lawyer.

(7) The Commission is not entitled to be legally represented at the inquiry.

**148E General powers of Council [NSW]**

- (1) The Council may do any one or more of the following in relation to the health practitioner the subject of the inquiry—
- (a) caution or reprimand the practitioner;
  - (b) make an order for the withholding or refunding of part or all of the payment with respect to the fees to be charged or paid for the services that are the subject of the complaint;
  - (c) impose the conditions it considers appropriate on the practitioner's registration;
  - (d) order that the practitioner seek and undergo medical or psychiatric treatment or counselling (including, but not limited to, psychological counselling);
  - (e) order that the practitioner complete an educational course specified by the Council;
  - (f) order that the practitioner report on his or her practice at the times, in the way and to the persons specified by the Council;
  - (g) order that the practitioner seek and take advice, in relation to the management of his or her practice, from persons specified by the Council.
- (2) The Council may do any one or more of the following in relation to the student the subject of the inquiry—
- (a) caution or reprimand the student;
  - (b) impose the conditions it considers appropriate on the student's registration;
  - (c) order that the student seek and undergo medical or psychiatric treatment or counselling (including, but not limited to, psychological counselling);
  - (d) order that the student complete an educational course specified by the Council.
- (3) If the person is not registered, an order or direction can still be given under this section but has effect only so as to prevent the person being registered unless the order is complied with or to require the conditions concerned to be imposed when the person is registered, as appropriate.

**148F Power to fine in certain cases [NSW]**

- (1) The Council may by order impose a fine, of an amount of not more than 50 penalty units, on the health practitioner the subject of the inquiry.
- (2) A fine is not to be imposed unless—
  - (a) the Council finds the health practitioner to have been guilty of unsatisfactory professional conduct; and
  - (b) the Council is satisfied there is no other order, or combination of orders, that is appropriate in the public interest.
- (3) A fine is not to be imposed if a fine or other penalty has already been imposed by a court in respect of the conduct.
- (4) A fine must be paid within the time specified in the order imposing the fine and must be paid to the Council.

**148G Power of Council to recommend suspension or cancellation of registration [NSW]**

- (1) The Council may recommend that the registration of the registered health practitioner or student be suspended for a specified period or cancelled if the Council is satisfied the health practitioner or student—
  - (a) for a health practitioner, does not have sufficient physical or mental capacity to practise the practitioner's profession; or
  - (b) for a student, has an impairment.
- (2) If the health practitioner is not registered, a recommendation can be made under this section that the health practitioner not be registered.
- (3) The Council makes its recommendation by referring the matter with its recommendation to the Tribunal.
- (4) The Tribunal may—
  - (a) make an order in the terms recommended; or
  - (b) make another order about the suspension or cancellation of the health practitioner's or student's registration as the Tribunal thinks proper based on the Council's findings.
- (5) An order may also provide that an application for review of the order under Division 8 may not be made until after a specified time.
- (6) Instead of making an order under this section, the Tribunal may exercise any



power or combination of powers of the Council under this Subdivision.

#### **148H Decision of the Council [NSW]**

- (1) The Council must, within 30 days of making its decision on the complaint, make available to the complainant, the registered health practitioner or student concerned, the National Board and any other persons it thinks fit, a written statement of the decision.
- (2) If the Commission made a submission to the Council with respect to the complaint, the Council must provide the Commission with a copy of the written statement of the decision.
- (3) The written statement of a decision must give the reasons for the decision.
- (4) The Council is not required to include confidential information in the statement.
- (5) If the statement would be false or misleading if it did not include the confidential information, the Council is not required to provide the statement.
- (6) If confidential information is not included in the statement given to a person or the statement is not given to a person because of subsection (5), the Council must give a confidential information notice to the person.
- (7) A confidential information notice must be given within one month after the decision is made.
- (8) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.

#### **148I Admissibility of Council's findings [NSW]**

A finding of a Council under this Subdivision is admissible as evidence in any legal proceedings.

### **Subdivision 6 Disciplinary powers of Tribunals [NSW]**

#### **149 Powers may be exercised if complaint proved or admitted [NSW]**

The Tribunal may exercise any power conferred on it by this Subdivision in relation to a registered health practitioner or student if—

- (a) it finds the subject-matter of a complaint against the practitioner or student to have been proved; or
- (b) the practitioner or student admits to it in writing to the Tribunal.

**149A General powers to caution, reprimand, counsel etc [NSW]**

- (1) The Tribunal may do any one or more of the following in relation to the registered health practitioner—
  - (a) caution or reprimand the practitioner;
  - (b) impose the conditions it considers appropriate on the practitioner's registration;
  - (c) order the practitioner to seek and undergo medical or psychiatric treatment or counselling (including, but not limited to, psychological counselling);
  - (d) order the practitioner to complete an educational course specified by the Tribunal;
  - (e) order the practitioner to report on the practitioner's practice at the times, in the way and to the persons specified by the Tribunal;
  - (f) order the practitioner to seek and take advice, in relation to the management of the practitioner's practice, from persons specified by the Tribunal.
- (2) The Tribunal may do any one or more of the following in relation to the student—
  - (a) caution or reprimand the student;
  - (b) impose the conditions it considers appropriate on the student's registration;
  - (c) order the student to seek and undergo medical or psychiatric treatment or counselling (including, but not limited to, psychological counselling);
  - (d) order the student to complete an educational course specified by the Tribunal.
- (3) If the health practitioner is no longer registered, an order or direction may still be given under this section but has effect only—
  - (a) to prevent the practitioner being registered unless the order is complied with; or
  - (b) to require the conditions concerned to be imposed when the practitioner is registered.
- (4) If the Tribunal makes an order or imposes a condition on the registered health practitioner's or student's registration, the Tribunal may order that a contravention of the order or condition will result in the practitioner's or student's registration being cancelled.
- (5) The order or condition concerned is then a **critical compliance order or**

***condition.***

**149B Power to fine registered health practitioner in certain cases [NSW]**

- (1) The Tribunal may by order impose a fine on the registered health practitioner of an amount of not more than 250 penalty units.
- (2) A fine is not to be imposed unless—
  - (a) the Tribunal finds the registered health practitioner to have been guilty of unsatisfactory professional conduct or professional misconduct; and
  - (b) the Tribunal is satisfied there is no other order, or combination of orders, that is appropriate in the public interest.
- (3) A fine is not to be imposed if a fine or other penalty has already been imposed by a court in respect of the conduct.
- (4) A fine must be paid within the time specified in the order imposing the fine and must be paid to the Council for the health profession.

**149C Tribunal may suspend or cancel registration in certain cases [NSW]**

- (1) The Tribunal may suspend a registered health practitioner's registration for a specified period or cancel the registered health practitioner's registration if the Tribunal is satisfied—
  - (a) the practitioner is not competent to practise the practitioner's profession; or
  - (b) the practitioner is guilty of professional misconduct; or
  - (c) the practitioner has been convicted of or made the subject of a criminal finding for an offence, either in or outside this jurisdiction, and the circumstances of the offence render the practitioner unfit in the public interest to practise the practitioner's profession; or
  - (d) the practitioner is not a suitable person for registration in the practitioner's profession.
- (2) The Tribunal may suspend a student's registration for a specified period or cancel the student's registration if the Tribunal is satisfied—
  - (a) the student has been convicted of or made the subject of a criminal finding for an offence, either in or outside this jurisdiction, and the circumstances of the offence render the student unfit in the public interest to undertake clinical training in the health profession; or
  - (b) the student is otherwise not a suitable person to undertake clinical training in the health profession.

- (3) The Tribunal must cancel a registered health practitioner's or student's registration if the Tribunal is satisfied the practitioner or student has contravened a critical compliance order or condition.
- (4) If the person is no longer registered, the Tribunal may—
  - (a) decide that if the person were still registered the Tribunal would have suspended or cancelled the person's registration; and
  - (b) if the Tribunal would have cancelled the person's registration, decide that the person is disqualified from being registered in the health profession for a specified period or until specified conditions have been complied with; and
  - (c) require the National Board with which the person was registered to record the fact that the Tribunal would have suspended or cancelled the person's registration in the National Register kept by the Board.
- (5) If the Tribunal suspends or cancels a registered health practitioner's or student's registration and it is satisfied the person poses a substantial risk to the health of members of the public, it may by order (a **prohibition order**) do any one or more of the following—
  - (a) prohibit the person from providing health services or specified health services for the period specified in the order or permanently;
  - (b) place specified conditions on the provision of health services or specified health services by the person for the period specified in the order or permanently.

**Note—**

Section 102 (3) of the [Public Health Act 2010](#) provides that it is an offence for a person to provide a health service in contravention of a prohibition order.

- (5A) The power of the Tribunal to make a prohibition order under subsection (5) extends to a person who is no longer registered if the Tribunal decides under subsection (4) that it would have suspended or cancelled the person's registration if the person were still registered.
- (6) If the Tribunal is aware a registered health practitioner or student in respect of whom it is proposing to make a prohibition order is registered in a health profession other than the health profession in respect of which the Tribunal is making the order, the Tribunal must, before making the prohibition order—
  - (a) notify the Council and the National Board for that health profession, and the Commission, of the proposed order; and
  - (b) give the Council, National Board and Commission an opportunity to make a

submission.

- (7) An order may also provide that an application for review of the order under Division 8 may not be made until after a specified time.

**149D Council may refer contravention of disciplinary order to Tribunal [NSW]**

- (1) If a Council for a health profession reasonably believes a person has failed to comply with an order (or conditions imposed under an order) made by the Tribunal under this Subdivision, it may refer the matter to the Tribunal.
- (2) If the Tribunal finds the failure proved, it may exercise any power conferred on it by this Subdivision.

**149E Effect of cancellation and disqualification decisions of Tribunal [NSW]**

- (1) Despite any other provision of this Law, each of the following persons cannot make an application for registration as a health practitioner unless the Tribunal has made a reinstatement order under section 163B with respect to the person—
- (a) a person whose registration as such a health practitioner has been cancelled by the Tribunal under this Law;
- (b) a person who has been disqualified from being registered as such a health practitioner by the Tribunal under this Law.
- (2) Subsection (1) and Division 8 continue to apply in respect of a disqualified person and the disqualification order even if the period of disqualification has expired or specified conditions for the cessation of the disqualification have been complied with.

**Subdivision 7 Powers of a Council for protection of public [NSW]**

**150 Suspension or conditions of registration to protect public [NSW]**

- (1) A Council must, if at any time it is satisfied 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 if satisfied the action is otherwise in the public interest—
- (a) by order suspend a registered health practitioner's or student's registration; or
- (b) by order impose on a registered health practitioner's registration the conditions relating to the practitioner's practising the health profession the Council considers appropriate; or

- (c) by order impose on a student's registration the conditions the Council considers appropriate.
- (2) A suspension of a registered health practitioner's or student's registration under subsection (1) has effect until the first of the following happens—
  - (a) the complaint about the practitioner or student is disposed of;
  - (b) the suspension is ended by the Council.
- (3) If a Council for a health profession is satisfied a health practitioner or student registered in the profession has contravened a critical compliance order or condition, the Council must—
  - (a) suspend the practitioner's or student's registration until a complaint concerning the matter is dealt with by the Tribunal; and
  - (b) refer the matter to the Tribunal as a complaint.
- (4) A Council for a health profession may take action under this section—
  - (a) whether or not a complaint has been made or referred to the Council about the practitioner or student; and
  - (b) whether or not proceedings in respect of a complaint about the practitioner or student are before a Committee or the Tribunal.
- (5) Without limiting the conditions that may be imposed under subsection (1)(b), a Council may impose a condition requiring the registered health practitioner to undergo a performance assessment, but the condition has no effect unless the Commission agrees with the imposition of the condition.
- (6) A Council must give written notice of action taken under this section to the registered health practitioner or student concerned.
- (7) If a Council delegates any function of the Council under this section to a group of 2 or more persons, at least one of those persons must be a person who—
  - (a) is not a registered health practitioner or student in the health profession for which the Council is established; and
  - (b) has not at any time been registered as a health practitioner or student in that health profession under this Law or a corresponding prior Act.

#### **150A Review of certain decisions [NSW]**

- (1) A registered health practitioner or student may apply to a Council for the review of a decision of the Council under section 150 to—
  - (a) suspend the practitioner's or student's registration; or

- (b) impose conditions on the practitioner's or student's registration or alter conditions imposed on the practitioner's or student's registration.
- (2) On receiving an application for review, a Council—
  - (a) may refuse to reconsider its decision if, in the Council's opinion, the application is frivolous or vexatious; or
  - (b) must otherwise reconsider its decision, and in so doing must consider any new evidence or material submitted by the practitioner or student that the Council reasonably considers is relevant.
- (3) Following its reconsideration of a decision, a Council may—
  - (a) affirm or vary the decision; or
  - (b) set it aside and take any action the Council has the power to take under section 150.
- (4) A Council may vary or set aside a decision only if the Council is satisfied there has been a change in the registered health practitioner's or student's circumstances that justifies the variation or setting aside of the decision.

**150B Audio recording of meeting [NSW]**

- (1) A Council must cause an audio recording to be made of any proceedings of the Council in connection with the consideration by the Council of the exercise or proposed exercise of a function under this Subdivision in respect of a registered health practitioner or student—
  - (a) during which the practitioner or student, or the practitioner's or student's adviser, is present; or
  - (b) during which a person other than a member of the Council or a staff member of the Council is present and gives the Council oral information relevant to the Council's consideration.
- (2) A recording under this section is not admissible in evidence in—
  - (a) civil or criminal proceedings in a court of law (other than proceedings under this Law); or
  - (b) an inquest or inquiry under the [Coroners Act 2009](#).

**150C Power to remove or alter conditions or end suspension [NSW]**

- (1) A Council may, at any time—
  - (a) end a period of suspension imposed by the Council under this Subdivision; or

- (b) alter or remove conditions imposed under this Subdivision.
- (2) A Council may, at any time after taking action under section 150 with respect to a registered health practitioner or student (***the original action***), take any other action it could have taken under that section at the time of taking the original action.
- (3) The Council must give written notice of the action it takes under this section to the registered health practitioner or student concerned.

### **150D Referral of matter to Commission [NSW]**

- (1) A Council must, as soon as practicable but no later than 7 days after taking action under section 150, refer the matter to the Commission for investigation.
- (2) The Council may (despite any other Act or law) give to the Commission information obtained by the Council in connection with the exercise of functions under section 150 (including information, copies of documents or evidence obtained under section 150J) and a copy of a recording made under section 150B) in respect of the matter.
- (3) The matter must be dealt with by the Commission as a complaint made to the Commission against the registered health practitioner or student concerned.
- (4) The Commission must investigate the complaint or cause it to be investigated and, as soon as practicable after it has completed its investigation and if it considers it appropriate to do so, refer the complaint to the Tribunal or a Committee for the health profession in which the health practitioner or student is registered.

#### **Note—**

See section 145D which provides that both Council and the Commission have a duty to refer a complaint to the Tribunal if, at any time, either of them is of the opinion that the complaint, if substantiated, would provide grounds for the suspension or cancellation of the registered health practitioner's or student's registration.

- (4A) Despite subsections (3) and (4), the Commission is not required to investigate the complaint or cause it to be investigated if the matter that is the subject of the complaint is being, or has been, investigated as, or as part of, another complaint to the Commission.
- (5) This section does not apply if a Council takes action against a registered health practitioner or student under section 150—
  - (a) because, in the Council's opinion, the practitioner or student has an impairment; or
  - (b) that is action of a kind referred to in section 150(5).



### **150E Special provision—performance assessment [NSW]**

- (1) If the Commission agrees with the proposed imposition by a Council under section 150 of a condition on a registered health practitioner's registration requiring the practitioner to take part in a performance assessment, the matter giving rise to the proposal—
  - (a) must be dealt with by way of a performance assessment; and
  - (b) may, if the Council and the Commission agree, also be dealt with by the Commission as a complaint against the practitioner.
- (2) If the Commission does not agree with the imposition of the condition, the matter must be dealt with by the Commission as a complaint against the registered health practitioner.
- (3) The Council may (despite any other Act or law) provide to the Commission any information obtained by the Council in connection with the exercise of functions under section 150 (including any information, copies of documents or evidence obtained under section 150J and a copy of any recording made under section 150B) in respect of the matter.
- (4) If a matter is to be dealt with under this section by way of a performance assessment, it may be so dealt with despite anything to the contrary in section 154A.
- (5) If the matter is to be dealt with as a complaint, the Council must refer the matter to the Commission and the matter must be dealt with by the Commission as a complaint made to the Commission against the practitioner concerned.
- (6) The Commission must investigate the complaint or cause it to be investigated and, as soon as practicable after the investigation is completed, refer the complaint to a Committee for the health profession or the Tribunal.

**Note—**

See section 145D which provides that both Council and the Commission have a duty to refer a complaint to the Tribunal if, at any time, either of them is of the opinion the complaint, if substantiated, would provide grounds for the suspension or cancellation of the health practitioner's registration.

### **150F Special provisions—impairment [NSW]**

- (1) This section applies if a Council takes action against a registered health practitioner or student under section 150 because, in the Council's opinion, the practitioner or student has an impairment.
- (2) The Council must, as soon as practicable after taking that action and, in any event, within 7 days after taking that action, notify the Commission that it has

taken that action.

- (3) The Council must consult with the Commission to see if agreement can be reached as to whether the matter should be—
  - (a) dealt with as a complaint against the registered health practitioner or student; or
  - (b) referred to an Impaired Registrants Panel.
- (4) The matter is to be dealt with as a complaint against the registered health practitioner or student only if, following the consultation—
  - (a) the Council and the Commission agree it should be dealt with as a complaint; or
  - (b) either the Council or the Commission is of the opinion the matter should be dealt with as a complaint.
- (5) If the matter is to be dealt with as a complaint, the Council must refer the matter to the Commission and the matter must be dealt with by the Commission as a complaint made to the Commission against the registered health practitioner or student.
- (6) The Commission must investigate the complaint or cause it to be investigated and, as soon as practicable after the investigation is completed, consult with the Council about how the matter is to be dealt with, including, for example, by referring the complaint to the Tribunal or a Committee for the health profession in which the health practitioner or student is registered.

**Note—**

See section 145D which provides that both Council and the Commission have a duty to refer a complaint to the Tribunal if, at any time, either of them is of the opinion the complaint, if substantiated, would provide grounds for the suspension or cancellation of the health practitioner's or student's registration.

- (7) If the matter is not to be dealt with as a complaint, the Council must refer the matter to an Impaired Registrants Panel.

**150FA Critical impairment conditions [NSW]**

- (1) This section applies if a Council imposes or alters a condition under this Law on the registration of a health practitioner because of the impairment of the practitioner.

**Note—**

In relation to the alteration of conditions—see, for example, section 152K.

- (2) The Council may order that a contravention of a condition on the registration of

a health practitioner that it imposes or alters because of the impairment of the practitioner will result in the contravention being referred to the Commission to be dealt with as a complaint against the practitioner. Any such condition is then a ***critical impairment condition***.

- (3) If a Council for a health profession is satisfied a health practitioner registered in the profession has contravened a critical impairment condition—
  - (a) the Council must refer the matter to the Commission; and
  - (b) the matter may be dealt with by the Commission as a complaint made to the Commission against the practitioner.
- (4) If the Commission decides to deal with the matter as a complaint, the Commission must investigate the complaint or cause it to be investigated and, as soon as practicable after the investigation is completed, consult with the Council about how the matter is to be dealt with, including, for example, by referring the complaint to the Tribunal or a Committee for the health profession in which the health practitioner is registered.

**Note—**

See section 145D which provides that both a Council and the Commission have a duty to refer a complaint to the Tribunal if, at any time, either of them is of the opinion the complaint, if substantiated, would provide grounds for the suspension or cancellation of the health practitioner's or student's registration.

- (5) This section has effect despite anything to the contrary in this Law.

**150G (Repealed)**

**150H Duration of conditions—complaint matters [NSW]**

- (1) This section applies if—
  - (a) a Council for a health profession imposes conditions on the registration of a registered health practitioner or student under section 150; and
  - (b) the matter is dealt with as a complaint against the practitioner or student.
- (2) The conditions imposed by the Council have effect until the first of the following happens—
  - (a) the complaint about the registered health practitioner or student is disposed of;
  - (b) the conditions are removed by the Council.
- (3) This section—
  - (a) does not prevent conditions being imposed under another provision of this

Law; and

(b) is subject to anything done by the Tribunal on an appeal.

**150I Duration of conditions—impairment matters [NSW]**

- (1) This section applies if—
  - (a) a Council for a health profession imposes conditions on the registration of a registered health practitioner or student under section 150; and
  - (b) the matter is referred to an Impaired Registrants Panel.
- (2) The conditions imposed by the Council have effect until the first of the following happens—
  - (a) if the matter is subsequently dealt with by the Council as a complaint, the complaint about the registered health practitioner or student is disposed of;
  - (b) the conditions are removed by the Council.
- (3) The Council is not required to alter or remove the conditions merely because the registered health practitioner or student agrees to conditions being imposed on the practitioner's or student's registration in accordance with the recommendations of an Impaired Registrants Panel.
- (4) If the registered health practitioner or student agrees to conditions being imposed on the practitioner's or student's registration in accordance with the recommendations of an Impaired Registrants Panel, the practitioner or student may, by written notice to the Council, ask for the conditions imposed under this Subdivision to be altered or removed.
- (5) On receipt of the request, the Council must review the matter, and may—
  - (a) refuse to alter or remove the conditions; or
  - (b) alter or remove the conditions.
- (6) The Council must give the registered health practitioner or student written notice of its decision.
- (7) The Council may specify in the notice a period during which a further request by the registered health practitioner or student for the conditions to be altered or removed is not permitted.
- (8) The Council may reject a request that the conditions be altered or removed if it is made during that period.
- (9) This section—

- (a) does not prevent conditions being imposed under another provision of this Law; and
- (b) is subject to anything done by the Tribunal on an appeal.

### **150J Powers of Council to obtain information, records and evidence [NSW]**

- (1) If, in a Council's opinion, a person is capable of giving information, documents (including medical records) or evidence that would assist the Council in making a decision about action taken or proposed to be taken by the Council under this Subdivision, the Council may, by written notice given to the person, require the person to do one or more of the following—
  - (a) to give the Council, in writing signed by the person (or, in the case of a corporation, by a competent officer of the corporation), within the time and in the way specified in the notice, information of which the person has knowledge;
  - (b) to produce to the Council, in accordance with the notice, documents;
  - (c) to appear before the Council or a member of staff of the Council authorised by the President or Deputy President of the Council at a specified reasonable time and place and give evidence, either orally or in writing, and produce documents.
- (2) Information and documents may be given to a Council in compliance with this section despite any other Act or law.
- (3) A person who is subject to a requirement made under subsection (1) must not—
  - (a) without reasonable excuse, fail to comply with the requirement; or
  - (b) in purported compliance with the requirement, provide information, documents or evidence knowing the information, documents or evidence to be false or misleading in a material particular.

Maximum penalty—20 penalty units.

## **Subdivision 8 Duty of courts etc to refer matters to Executive Officer [NSW]**

### **151 Referral of mental health matters to Executive Officer [NSW]**

- (1) If a registered health practitioner or student is found to be a mentally ill person or a mentally disordered person in accordance with section 27 of the [Mental Health Act 2007](#), the person prescribed by the NSW regulations must cause notice of that fact to be given to—

- (a) the Executive Officer of the Council for the health profession in which the registered health practitioner or student is registered; and
  - (b) the National Board for the health profession in which the registered health practitioner or student is registered.
- (2) The notice, and the way in which the notice is given, must comply with any requirements prescribed by the NSW regulations.

**151A Referral of matters by courts [NSW]**

- (1) A court in this jurisdiction before which a person is convicted of an offence, or is made the subject of a criminal finding for a sex or violence offence or a drug related offence, must cause notice of the conviction or criminal finding, and of any penalty imposed on the person, to be given to the Executive Officer of a Council for a health profession if the court has reasonable grounds to believe that the person is or was, at the time the offence was committed, registered in the health profession.
- (2) If a coroner has reasonable grounds to believe the evidence given or to be given in proceedings conducted or to be conducted before the coroner may indicate a complaint could be made about a person who is or was registered in a health profession, the coroner may give a transcript of that evidence to the Executive Officer of the Council for the health profession.
- (3) If a notice or a transcript of evidence is given to the Executive Officer under this section—
- (a) a complaint is taken to have been made to a Council about the person to whom the notice or transcript relates; and
  - (b) the Executive Officer must give written notice of the notice or transcript of evidence to the National Board for the health profession in which the person is or was registered.
- (4) The coroner is not the complainant in relation to a complaint taken to have been made under subsection (3) and sections 144D(1), 144E and 144F do not apply to the complaint.

**151B Alternative reporting [NSW]**

- (1) The Secretary may approve alternative reporting requirements for the purposes of the giving of a notice or transcript under this Subdivision.
- (2) An alternative reporting requirement may authorise the giving of a notice or transcript in an alternative manner to that otherwise required by this Subdivision for giving the notice or transcript.

- (3) A person or court that gives a notice or transcript in accordance with an alternative reporting requirement approved by the Secretary for the giving of the notice or transcript is taken to have given the notice or transcript in accordance with the requirements of this Subdivision.

## **Division 4 Impairment [NSW]**

### **152 Persons may notify Council of impairment matters concerning practitioners or students [NSW]**

A person may notify a Council of a matter the person thinks indicates a registered health practitioner or student has or may have an impairment.

#### **152A Commission may refer impairment matters to Council [NSW]**

- (1) If the Commission becomes aware of a matter the Commission considers indicates a registered health practitioner or student has or may have an impairment, the Commission may refer the matter to the Council for the health profession in which the practitioner or student is registered.
- (2) This section does not affect the functions of a Council in relation to a complaint made to the Commission or a matter referred to the Commission for investigation.

#### **152B Council may require registered health practitioner to undergo examination [NSW]**

- (1) If a Council reasonably believes a registered health practitioner has or may have an impairment, the Council may, by written notice given to the practitioner, require the practitioner to undergo an examination by another registered health practitioner.
- (2) The notice must state—
  - (a) that the registered health practitioner is required to undergo an examination by a registered health practitioner; and
  - (b) the name of the registered health practitioner who is to conduct the examination; and
  - (c) if the examination is to be conducted at a particular time and place, the time and the place at which the examination is to be conducted; and
  - (d) that if the registered health practitioner fails to undergo the examination as required by the notice, the failure may constitute evidence that the practitioner does not have sufficient physical or mental capacity to practise the practitioner's health profession.

- (3) The fee charged by the registered health practitioner for conducting the examination must be at the expense of the Council.
- (4) If the registered health practitioner fails, without reasonable excuse, to comply with the notice, the failure is evidence the practitioner does not have sufficient physical or mental capacity to practise the practitioner's health profession.

**152C Council may require student to undergo examination [NSW]**

- (1) If a Council reasonably believes a student has or may have an impairment, the Council may, by written notice given to the student, require the student to undergo an examination by a registered health practitioner.
- (2) The notice must state—
  - (a) that the student is required to undergo an examination by a registered health practitioner; and
  - (b) the name of the registered health practitioner who is to conduct the examination; and
  - (c) if the examination is to be conducted at a particular time and place, the time and the place at which the examination is to be conducted; and
  - (d) that if the student fails to undergo the examination as required by the notice the Council may suspend the student's registration until the student undergoes the examination.
- (3) The fee charged by the registered health practitioner for conducting the examination is at the expense of the Council.
- (4) If the student fails, without reasonable excuse, to comply with the notice, the Council may suspend the student's registration until the student undergoes the examination.
- (5) The suspension takes effect when written notice of it is served on the educational provider with which the student is undertaking the approved program of study or that arranged the clinical training for the student.

**152D Referral of impairment matters concerning practitioners or students [NSW]**

- (1) A Council may decide to refer a matter to an Impaired Registrants Panel if the Council considers the matter indicates a registered health practitioner or student has or may have an impairment.
- (2) Subsection (1) applies whether or not the matter is the subject of a complaint to the Council.



- (3) If the Council is aware a complaint has been made to the Commission about a registered health practitioner or student who is the subject of a referral to an Impaired Registrants Panel, the Council must notify the Commission of the referral.

**152E Panel must inquire into matters referred to it [NSW]**

- (1) An Impaired Registrants Panel must inquire into any matter referred to it and may obtain reports and other information concerning the matter from any source it considers appropriate.
- (2) The Panel may ask the registered health practitioner or student who is the subject of the referral, to attend before the Panel for the purpose of enabling the Panel to obtain information on the matter and make an assessment.

**152F Panel not to take action while Commission investigating [NSW]**

- (1) An Impaired Registrants Panel is not to investigate or take any other action in relation to a matter if the Panel is aware the matter is the subject of an investigation by the Commission, while the investigation is being conducted.
- (2) Subsection (1) does not apply if the Commission agrees to the continuation of the investigation or other action to be taken.

**152G Council to give notice of proposed inquiry [NSW]**

- (1) A Council must give notice to a registered health practitioner or student of any proposed inquiry by an Impaired Registrants Panel concerning the practitioner or student.
- (2) The notice must include sufficient details of the matters to which the inquiry is to relate.

**152H Practitioner or student entitled to make representations [NSW]**

- (1) A registered health practitioner or student who is the subject of an inquiry by an Impaired Registrants Panel is entitled to make oral or written representations to the Panel about the matters being or to be the subject of the inquiry.
- (2) This section does not prevent the Panel from conducting an inquiry in the absence of the registered health practitioner or student to whom it relates, if the practitioner or student has been given notice of the inquiry.

**152I Assessment, report and recommendations by Panel [NSW]**

- (1) An Impaired Registrants Panel must make an assessment about a matter referred to it, based on the results of its inquiry into the matter.

- (2) On the basis of its assessment, the Panel may do any one or more of the following—
  - (a) counsel the practitioner or student concerned or recommend the practitioner or student undertake specified counselling (including, but not limited to, psychological counselling);
  - (b) recommend the practitioner or student concerned to agree to conditions being placed on the practitioner's or student's registration or to having the practitioner's or student's registration suspended for a specified period;
  - (c) make recommendations to the Council that referred the matter to it as to action that the Panel considers should be taken in relation to the matter.
- (3) The Panel must give a written report about the matter to the Council that referred the matter to it.
- (4) The report must detail—
  - (a) the results of the Panel's inquiries and assessment in respect of the referral; and
  - (b) any action taken by the Panel in relation to it.

#### **152J Voluntary suspension or conditions on registration [NSW]**

A Council may impose conditions on a registered health practitioner's or student's registration, or suspend the practitioner's or student's registration, if—

- (a) an Impaired Registrants Panel has recommended the Council do so; and
- (b) the Council is satisfied the practitioner or student has voluntarily agreed to the conditions or suspension.

#### **152K Review of conditions [NSW]**

- (1) A registered health practitioner or student who agrees to conditions being imposed on the practitioner's or student's registration, or to have the registration suspended, may by written notice to the Council ask—
  - (a) that the conditions be altered or removed; or
  - (b) that the suspension be terminated or shortened.
- (2) On receipt of the request, the Council must require an Impaired Registrants Panel to review the matter and give a written report to the Council on the results of its review.
- (3) If the Panel recommends that the Council refuse to alter or remove any of the

conditions, or refuse to terminate or shorten the suspension, the Council may do so.

- (4) The Council must give the health practitioner or student written notice of its decision.
- (5) The Council may specify in the notice a period in which a further request by the practitioner or student under this section is not permitted.
- (6) The Council may refuse a request that the conditions be altered or removed, or that the suspension be terminated or shortened, if it is made during that period.

### **152L Some matters to be dealt with as complaints [NSW]**

- (1) If an Impaired Registrants Panel recommends that a registered health practitioner or student agree to conditions being imposed on the practitioner's or student's registration or to having the practitioner's or student's registration suspended and the practitioner or student fails to agree with the recommendation, the Council must deal with the matter that was the subject of the referral to the Panel as a complaint against the practitioner or student.
- (2) If the Panel recommends that a matter referred to it be dealt with as a complaint, the Council must deal with the matter as a complaint against the health practitioner or student concerned.
- (3) In any other case that the Council thinks it appropriate to do so, the Council may treat a matter that has been referred to an Impaired Registrants Panel as grounds for a complaint under this Law and may deal with the matter accordingly.

### **152M Prohibition or conditions on student [NSW]**

- (1) An Impaired Registrants Panel that investigates a matter about a student may recommend to the Council that referred the matter to the Panel that it is in the public interest for the Council—
  - (a) to suspend the student's registration; or
  - (b) to impose specified conditions on the student's registration.
- (2) If the Council is satisfied it is in the public interest to do so, the Council may by written order take the action recommended by the Panel.
- (3) The order takes effect when notice of it is served on the education provider with which the student is undertaking the approved program of study or who arranged clinical training for the student.
- (4) An order remains in force for the period, not more than 2 years, specified in the

order unless it is sooner revoked by the Council.

- (5) The Council may issue further orders in respect of a student but only on the recommendation of an Impaired Registrants Panel.

## **Division 5 Performance assessment [NSW]**

### **Subdivision 1 Preliminary [NSW]**

#### **153 Meaning of “professional performance” [NSW]**

For the purposes of this Division, a reference to the **professional performance** of a registered health practitioner is a reference to the knowledge, skill or judgment possessed and applied by the practitioner in the practice of the practitioner’s health profession.

#### **153A Meaning of “unsatisfactory” in relation to professional performance [NSW]**

For the purposes of this Division, the professional performance of a registered health practitioner is **unsatisfactory** if it is below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

### **Subdivision 2 Council may obtain performance assessment [NSW]**

#### **154 Power to obtain assessment [NSW]**

- (1) A Council may decide to have the professional performance of a registered health practitioner assessed under this Division if a matter comes to its attention that indicates the professional performance of the registered health practitioner, or any aspect of the practitioner’s professional performance, is or may be unsatisfactory.
- (2) Subsection (1) is not limited to matters that are the subject of a complaint or notification to the Council and may include a pattern of complaints about a registered health practitioner’s practice.

#### **154A Serious matters not to be referred for assessment [NSW]**

- (1) A Council must not have the professional performance of a registered health practitioner assessed if a matter giving rise to the proposed assessment—
- (a) raises a significant issue of public health or safety that, in the Council’s opinion, requires investigation by the Commission; or
- (b) raises a prima facie case of professional misconduct by the registered health

practitioner, or unsatisfactory professional conduct by the registered health practitioner.

- (2) The matter must be dealt with as a complaint.

**154B Persons may notify Council of professional performance matters [NSW]**

- (1) A person may notify the Council for a health profession of a matter the person thinks indicates the professional performance of a health practitioner registered in the profession is unsatisfactory.
- (2) The Council must not have the professional performance of the practitioner assessed on the basis of a notification if it is made anonymously.

**154C Commission may refer professional performance matters to Council [NSW]**

- (1) If the Commission becomes aware of a matter the Commission considers indicates the professional performance of a health practitioner registered in a health profession is unsatisfactory, the Commission may refer the matter to a Council for the profession.
- (2) This section does not affect the functions of a Council in relation to a complaint made to the Commission or a matter referred to the Commission for investigation.

**Subdivision 3 Assessment of professional performance by assessor [NSW]**

**155 How Council obtains an assessment [NSW]**

A Council has the professional performance of a registered health practitioner assessed by having one or more assessors conduct an assessment of the practitioner's professional performance, or of any particular aspect or aspects of the practitioner's professional performance.

**155A Information to be given to health practitioner [NSW]**

- (1) As soon as practicable after deciding to have the professional performance of a registered health practitioner assessed, a Council must give the practitioner written notice of the decision.
- (2) The notice must include the following—
  - (a) details of the matter that gave rise to the assessment;
  - (b) information about how the performance assessment process works.

**155B Report and recommendations by assessor [NSW]**

- (1) An assessor who is required by a Council to conduct a performance assessment in relation to a registered health practitioner must—
  - (a) conduct an assessment of the practitioner’s professional performance; and
  - (b) give a written report about the assessment to the Council.
- (2) The report must include the recommendations the assessor considers appropriate.
- (3) If more than one assessor is appointed to conduct a performance assessment in relation to a registered health practitioner, the report may be made jointly or separately, but in any case must be made in the way directed by the Council.

**155C Action that may be taken by Council [NSW]**

- (1) After receiving the report of an assessor about a performance assessment, a Council may—
  - (a) decide that no further action should be taken in respect of the registered health practitioner the subject of the report; or
  - (b) require a Performance Review Panel to conduct a performance review in relation to the practitioner; or
  - (c) make a complaint against the practitioner; or
  - (d) refer the matter to an Impaired Registrants Panel; or
  - (e) counsel the practitioner or direct the practitioner to attend counselling; or
  - (f) impose by order on the practitioner’s registration, with the consent of the practitioner, the conditions the Council considers appropriate.
- (2) A Council must make a complaint against the practitioner concerned if the assessment—
  - (a) raises a significant issue of public health or safety that, in the opinion of the Council, requires investigation by the Commission; or
  - (b) raises a prima facie case of professional misconduct by a registered health practitioner, or unsatisfactory professional conduct by a registered health practitioner.
- (3) This section does not limit a Council’s powers under section 150.

**Subdivision 4 Performance review by Performance Review**

## **Panel [NSW]**

### **156 Panel to conduct performance review [NSW]**

- (1) If required by a Council, a Performance Review Panel must conduct a review of the professional performance of a registered health practitioner.
- (2) The chairperson of the Panel must inform the registered health practitioner in writing that a performance review will be conducted not less than 14 days before the time and place appointed for the performance review.

### **156A Panel not to take action while Commission investigating [NSW]**

- (1) The Performance Review Panel is not to take any action in relation to the registered health practitioner if the Panel becomes aware the practitioner is the subject of a complaint that is being investigated by the Commission.
- (2) Subsection (1) does not apply if the Commission agrees to the continuation of the performance review.

### **156B Panel must refer certain matters to Council [NSW]**

- (1) The Performance Review Panel must terminate the performance review if, before or during the performance review, the Panel forms the opinion that—
  - (a) the performance review raises a significant issue of public health or safety that, in the Panel's opinion, requires investigation by the Commission; or
  - (b) the performance review raises a prima facie case of professional misconduct by the registered health practitioner, or unsatisfactory professional conduct by the registered health practitioner.
- (2) If the Panel terminates the performance review, it must refer the issue or case back to the Council with a recommendation that a complaint be made against the registered health practitioner.
- (3) The Council must deal with the matter in accordance with the recommendation.

### **156C Actions by Panel [NSW]**

- (1) At the completion of the performance review, the Performance Review Panel may make the recommendations to the Council about the registered health practitioner the Panel considers appropriate.
- (2) Without limiting subsection (1), if the Panel finds the professional performance of the registered health practitioner, or a particular aspect of the professional performance of the practitioner, is unsatisfactory, the Panel may do any one or more of the following things—

- (a) impose the conditions, relating to the practitioner's practise of the health profession, it considers appropriate on the practitioner's registration;
  - (b) order the practitioner to complete an educational course specified by the Panel;
  - (c) order the practitioner to report on the practitioner's practise of the health profession at the times, in the way and to the persons specified by the Panel;
  - (d) order the practitioner to seek and take advice, in relation to the management of the practitioner's practice, from the persons specified by the Panel.
- (3) The Panel must recommend to the Council that a complaint be made against the registered health practitioner if the Panel finds the matter—
- (a) raises a significant issue of public health or safety that requires investigation by the Commission; or
  - (b) raises a prima facie case of professional misconduct by the practitioner, or unsatisfactory professional conduct by the health practitioner.
- (4) If the Panel makes a recommendation that a complaint be made against the registered health practitioner, the Council must act in accordance with the recommendation.
- (5) In any other case that the Council thinks it appropriate to do so, the Council may make a complaint in respect of a matter that has been considered by a Performance Review Panel, after consulting with the Commission.

#### **156D Re-assessment [NSW]**

- (1) Without limiting section 156C, a Performance Review Panel may direct that a registered health practitioner's professional performance be re-assessed at a future date.
- (2) A Council must have one or more assessors conduct that assessment, when it is required, and report to the Council on the assessment.
- (3) The Council may take any action in respect of that assessment that is available to the Council under section 155C, including requiring a Performance Review Panel to conduct a further performance review in relation to the practitioner.

#### **156E Decision [NSW]**

- (1) A Performance Review Panel must give a written statement of a decision on a performance review of a registered health practitioner to—



- (a) the registered health practitioner; and
  - (b) the Council.
- (2) The statement of the decision must—
- (a) include reasons for the decision; and
  - (b) be given to the registered health practitioner and the Council within one month after the decision is made.
- (3) The Council may provide a copy of the statement of decision to the persons the Council or Panel thinks fit.

### **156F Statement need not contain confidential information [NSW]**

- (1) A Performance Review Panel is not required to include confidential information in the statement of a decision.
- (2) If the statement would be false or misleading if it did not include the confidential information, the Panel is not required to provide the statement.
- (3) If confidential information is not included in the statement given to a person or the statement is not given to a person because of subsection (2), the Panel must give a confidential information notice to the person.
- (4) A confidential information notice must be given within one month after the decision is made.
- (5) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court, subject to the provisions of this Law relating to protected reports.

## **Subdivision 5 Miscellaneous [NSW]**

### **157 Monitoring by Council [NSW]**

- (1) Following a performance review, the Council must—
  - (a) monitor compliance with any decisions or orders made by the Performance Review Panel; and
  - (b) from time to time, evaluate the effectiveness of those orders in improving the professional performance of the registered health practitioner concerned to a standard that is commensurate with other practitioners of an equivalent level of training or experience.
- (2) The Council may take any action under this Law in respect of a registered health

practitioner that it considers appropriate as a result of the exercise of its functions under subsection (1).

## **Division 6 Appeals to Tribunal [NSW]**

### **Subdivision 1 Appeals against actions of Committee [NSW]**

#### **158 Appeals against decisions of Committee [NSW]**

- (1) If a complaint about a registered health practitioner or student is referred to a Committee, the practitioner or student or the complainant, may appeal against any of the following to the Tribunal—
  - (a) a finding of the Committee;
  - (b) the exercise of a power by the Committee under Subdivision 3 of Division 3;
  - (c) the exercise by the Tribunal List Manager of a power under that Subdivision.

**Note—**

An appeal under this section is an external appeal to the Tribunal for the purposes of the [Civil and Administrative Tribunal Act 2013](#).

- (2) The appeal is to be dealt with by way of rehearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the inquiry, may be given.
- (3) The Tribunal may—
  - (a) dismiss the appeal; or
  - (b) make any finding or exercise any power the Tribunal could have made or exercised if the complaint had been originally referred to the Tribunal.
- (4) An appeal under this section does not affect any finding or exercise of power with respect to which it has been made until the Tribunal makes an order on the appeal.

#### **158A Appeals on points of law [NSW]**

- (1) A registered health practitioner or student about whom a complaint is referred to a Committee or the complainant may appeal with respect to a point of law to the Tribunal.

**Note—**

An appeal under this section is an external appeal to the Tribunal for the purposes of the [Civil and Administrative Tribunal Act 2013](#).

- (2) An appeal may be made—

- (a) during an inquiry—within 28 days after the date of the Committee’s decision on the point of law which is the subject of the appeal; or
  - (b) before the commencement of an inquiry but after the date of giving notice of the inquiry.
- (3) If an inquiry conducted by a Committee has not been completed when an appeal is made, the inquiry must not continue until the appeal has been disposed of.
- (4) The Committee must not make any decision that is inconsistent with the Tribunal’s determination with respect to the point of law.

## **Subdivision 2 Appeal against actions by Council [NSW]**

### **159 Right of appeal [NSW]**

- (1) A person may appeal to the Tribunal against any of the following decisions of a Council for a health profession—
- (a1) against a reprimand by the Council for the health profession under Division 3;
  - (a) against a suspension by the Council for the health profession under Division 3 or a refusal to end a suspension;
  - (b) against conditions imposed by the Council for the health profession on the person’s registration under section 127AA or Division 3 or 4 or the alteration of the conditions by the Council;
  - (c) against a refusal by the Council for the health profession to alter or remove conditions imposed by the Council under Division 3 in accordance with a request made by the person under section 150I;
  - (d) against a decision by the Council for the health profession to give a direction or make an order in relation to the person under section 148E;
  - (e) against a refusal by the Council for the health profession to alter or remove conditions imposed on the person’s registration, or to end a suspension, imposed under Division 4 in accordance with a request made by the person under section 152K.

#### **Note—**

An appeal under this section is an external appeal to the Tribunal for the purposes of the [Civil and Administrative Tribunal Act 2013](#).

- (2) An appeal may not be made in respect of a request by a person that is rejected by a Council because it was made during a period in which the request was not permitted under section 150I or 152K.

- (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.

### **159A Appeal by student against order [NSW]**

- (1) A student may appeal to the Tribunal against a decision of the Council for the health profession to issue an order—
  - (a) suspending the student’s registration; or
  - (b) imposing conditions on the student’s registration.

**Note—**

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

- (2) (Repealed)
- (3) The appeal must be made within 28 days, or the longer period as the Tribunal may allow in a particular case, after notice of the Council’s decision is given to the student.
- (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.
- (4) On an appeal, the Tribunal may by order terminate, vary or confirm the order, as it thinks proper.

### **159B Appeals on point of law [NSW]**

- (1) A registered health practitioner or student who is the subject of action taken by the Council for the health profession under section 150, 150A or 150C may appeal, with respect to a point of law, to the Tribunal.

**Note—**

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

- (2) Subsection (1) does not limit a right of appeal under section 159.
- (3) The Council must not make a decision that is inconsistent with the Tribunal’s decision with respect to a point of law under this section.
- (4) A registered health practitioner or student may not make an application to the Supreme Court for judicial review of action taken by a Council under section 150, 150A or 150C, being an application alleging any error of law, until an appeal under this section in respect of the point of law concerned has been made and

disposed of.

### **159C Tribunal's powers on appeal [NSW]**

- (1) On an appeal against a decision of a Council, the Tribunal may by order—
  - (a) confirm the decision; or
  - (b) set aside the decision; or
  - (c) set aside the decision and make a new decision (being a decision that the Council could have made).
- (2) The Tribunal's order must not cause a suspension or conditions imposed by a Council to have effect beyond the day on which a related complaint about the person is disposed of.

## **Subdivision 3 Appeal against actions of Performance Review Panel [NSW]**

### **160 Appeals against decisions of Panel [NSW]**

- (1) A registered health practitioner who is the subject of a performance review may appeal to the Tribunal against a decision of the Performance Review Panel or any order or direction made by the Panel under Division 5.

**Note—**

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

- (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.
- (3) The Tribunal may, as it thinks appropriate—
  - (a) dismiss the appeal; or
  - (b) make any finding or exercise any power or combination of powers that the Performance Review Panel could have made or exercised.

### **160A Appeals on points of law [NSW]**

- (1) A registered health practitioner who is the subject of a performance review may appeal with respect to a point of law to the Tribunal.

**Note—**

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

- (2) An appeal may be made—
  - (a) during a performance review—within 28 days after the date of the Performance Review Panel’s decision on the point of law that is the subject of the appeal; or
  - (b) before the commencement of a performance review but after the date the practitioner is informed of the performance review.
- (3) If a performance review has not been completed when an appeal is made, the Performance Review Panel must not continue with the performance review until the appeal has been disposed of.
- (4) The Performance Review Panel must not make any decision that is inconsistent with the Tribunal’s determination with respect to the point of law.

## **Subdivision 4 Miscellaneous [NSW]**

### **161 When appeal must be made [NSW]**

An appeal under this Division or Division 14A, other than an appeal on a point of law, must be made—

- (a) within 28 days after the day the person making the appeal was given written notice of the reasons for the decision being appealed against; or
- (b) within the longer period allowed by the Tribunal.

### **161A (Repealed)**

### **161B Appeal does not stay decision [NSW]**

An appeal under this Division does not operate to stay the effect of the decision being appealed against unless the Tribunal otherwise orders.

## **Division 7**

### **162, 162A (Repealed)**

## **Division 8 Reviews [NSW]**

### **163 Appropriate review body [NSW]**

- (1) For the purposes of this Division, the **appropriate review body** is—
  - (a) if the order being reviewed provides that it may be reviewed by a Council, the Council; or
  - (a1) if the Tribunal List Manager decides, on application by the person the

subject of the review or the Commission, that a Council is the appropriate review body, the Council; or

(b) if the Tribunal List Manager decides, on application by the person the subject of the review, that a National Board is the appropriate review body, the National Board; or

(c) otherwise, the Tribunal.

(2) An application for review by a person must be lodged with the Executive Officer of the Council for the health profession in which the person is or was registered.

(3) The Executive Officer must refer the application to the appropriate review body.

### **163A Right of review [NSW]**

(1) A person may apply to the appropriate review body for a review of—

(a) a prohibition order made in relation to the person; or

(b) a relevant order made in relation to the person.

(2) A person may also apply to the appropriate review body for a review of an order made under this Division.

(3) An application for review of an order may not be made—

(a) while the terms of the order provide that an application for review may not be made; or

(b) while an appeal to the Tribunal or the Supreme Court in respect of the same matter is pending.

(4) In this section—

**decision-making entity** means the following—

(a) a Committee;

(b) a Performance Review Panel;

(b1) a Council, but only in relation to orders made under this Division, Subdivision 5 of Division 3 or section 155C (1) (f);

(c) an existing health practitioner tribunal (within the meaning of Part 2 of Schedule 1 to the *Civil and Administrative Tribunal Act 2013*) or the Chairperson or Deputy Chairperson of such a tribunal;

(d) the Tribunal or the Tribunal List Manager;

- (e) the Supreme Court;
- (f) a review body in New South Wales, when deciding a matter under section 127A.

**relevant order**, in relation to a person, means any of the following orders made by a decision-making entity—

- (a) an order that the person's registration as a registered health practitioner or student is suspended; or
- (b) an order that the person's registration be cancelled or that the person is disqualified from being registered in a particular health profession; or
- (c) an order that conditions be imposed on the person's registration in a health profession.

### **163B Powers on review [NSW]**

- (1) The appropriate review body must conduct an inquiry into an application for review and may then do any of the following—
  - (a) dismiss the application;
  - (b) make an order ending or shortening the period of the suspension concerned;
  - (c) make a reinstatement order;
  - (d) make an order altering or removing the conditions to which the person's registration is subject, including by imposing new conditions;
  - (e) make an order—
    - (i) ending or shortening the period of a prohibition order; or
    - (ii) altering or removing the conditions to which the person is subject under a prohibition order, including by imposing new conditions.
- (2) If the appropriate review body makes an order altering a critical compliance condition, or removing a critical compliance condition and imposing a new condition, the altered condition or new condition is a **critical compliance condition** unless the body orders otherwise.
- (3) A **reinstatement order** is an order that the person may be registered in accordance with Part 7 if—
  - (a) the person makes an application for registration to the National Board; and
  - (b) the relevant National Board decides to register the person.



- (3A) Any condition imposed on a person's registration by the National Board under Part 7 applies but only to the extent that it is not inconsistent with conditions imposed or altered by the appropriate review body under subsection (4).
- (4) The appropriate review body may also impose conditions on the person's registration or alter the conditions to which the person's registration is to be subject under the reinstatement order.
- (5) The order on a review under this section may also provide that the order is not to be reviewed under this Division until after a specified time.

### **163C Inquiry into review application [NSW]**

- (1) A review under this Division is a review to determine the appropriateness, at the time of the review, of the order concerned.
- (2) The review is not to review the decision to make the order, or any findings made in connection with the making of that decision.
- (3) In addition to any other matter the review may take into account, the review must take into account any complaint made or notified to a Council or a National Board, or a former Board under a repealed Act, about the person, whether the complaint was made or notified before or after the making of the order that is the subject of the review and whether or not the complaint was referred under Subdivision 2 of Division 3 or any other action was taken on the complaint.
- (4) A Council and the Commission are entitled to appear at any inquiry conducted by the Tribunal under this Division.

## **Division 9 Enforcement powers [NSW]**

### **164 Appointment of authorised persons [NSW]**

- (1) The Secretary may appoint a person as an authorised person for the purposes of this Division.
- (2) The Secretary must provide an authorised person with a certificate of authority.

### **164A Powers of authorised persons [NSW]**

- (1) An authorised person may exercise the powers conferred by this section for the purpose of—
  - (a) ascertaining whether the NSW provisions (including any conditions or suspension imposed under the NSW provisions) are being complied with or have been contravened; or
  - (b) investigating a complaint made or intended to be made under Division 3.

- (2) An authorised person may, with the approval of the Council for a health profession, given on the particular occasion, enter and inspect at any reasonable time premises that the authorised person believes on reasonable grounds are being used for the carrying on of the practice of the health profession.
- (3) While on premises entered under this section or under the authority of a search warrant under section 164B, an authorised person may do any one or more of the following—
  - (a) require any person on the premises to produce any records in the possession or under the control of that person relating to the carrying on of the practice of the health profession;
  - (b) inspect, take copies of, or extracts or notes from, the records and, if the authorised person considers it necessary to do so for the purpose of obtaining evidence, seize the records;
  - (c) examine and inspect any apparatus or equipment used or apparently used in the course of the practice of the health profession;
  - (d) take photographs, films and audio, video and other recordings as the authorised person considers necessary;
  - (e) require any person on the premises to answer questions or otherwise furnish information in relation to the carrying on of the practice of a health profession or a contravention of a NSW provision;
  - (f) require the owner or occupier of the premises to give the authorised person the assistance and facilities as is or are reasonably necessary to enable the authorised person to exercise the functions of an authorised person under this section.
- (4) An authorised person is not entitled to enter a part of premises used for residential purposes, except—
  - (a) with the consent of the occupier of the part; or
  - (b) under the authority of a search warrant.
- (5) An authorised person must, when exercising on any premises any function of the authorised person under this section, produce the authorised person's certificate of authority to any person apparently in charge of the premises who requests its production.
- (6) If an authorised person seizes any records under this section, they may be kept by the authorised person until the completion of any proceedings (including proceedings on appeal) in which they may be evidence but only if the person

from whom the records were seized is given, within a reasonable time after the seizure, a copy of the records certified by an authorised person as a true copy.

- (7) A copy of a record given under subsection (6) is, as evidence, of equal validity to the record of which it is certified to be a copy.

#### **164B Search warrants [NSW]**

- (1) A person appointed under this Division as an authorised person may apply to an authorised officer for the issue of a search warrant for premises if the authorised person believes on reasonable grounds—

- (a) a NSW provision is being contravened on the premises; or
- (b) there is on the premises evidence of a contravention of a provision of this Law or the NSW regulations.

- (2) The authorised officer may, if satisfied there are reasonable grounds for doing so, issue a search warrant authorising an authorised person named in the warrant—

- (a) to enter and inspect the premises; and
- (b) to exercise on the premises any function of an authorised person under section 164A.

- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

- (4) In this section—

**authorised officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

#### **164C Offences [NSW]**

- (1) A person must not—

- (a) prevent an authorised person from exercising any function conferred or imposed on the authorised person under this Division; or
- (b) hinder or obstruct an authorised person in the exercise of a function conferred or imposed on the authorised person under this Division; or
- (c) without reasonable excuse, refuse or fail to comply with any requirement made or to answer any question asked by an authorised person under this Division; or
- (d) give an authorised person information knowing it to be false or misleading in

a material particular.

Maximum penalty—

(a) for an offence under paragraph (a) or (b)—50 penalty units; or

(b) for an offence under paragraph (c) or (d)—20 penalty units.

- (2) It is a sufficient defence to a prosecution for the offence under paragraph (c) of failing to answer a question asked by an authorised person if the defendant satisfies the court that the defendant did not know, and could not with reasonable diligence have ascertained, the answer to the question.

#### **164D Self-incrimination [NSW]**

- (1) A person is not excused from answering a question asked by an authorised person under this Division on the ground the answer might tend to incriminate the person.
- (2) However, information furnished by an individual in answering a question asked by an authorised person under this Division is not admissible against the individual in criminal proceedings (except proceedings for an offence against section 164C) if—
- (a) the individual objected at the time of doing so on the ground it might incriminate the individual; or
- (b) the individual was not warned on that occasion that the individual may object to furnishing the information on the ground it might incriminate the individual.
- (3) A person is not excused from producing a record to an authorised person under this Division on the ground the record might tend to incriminate the person, and the record is not inadmissible in evidence against the person in criminal proceedings on the ground the record might incriminate the person.

#### **Note—**

Section 187 of the [Evidence Act 1995](#) provides that the privilege against self-incrimination does not apply to bodies corporate.

#### **164E Offence of impersonating authorised person [NSW]**

A person must not—

(a) impersonate an authorised person; or

(b) falsely represent the person is an authorised person.

Maximum penalty—50 penalty units.

### **164F Authorised persons to produce certificate of authority [NSW]**

An authorised person must, on exercising in a place a function of the authorised person under this Division, produce the person's certificate of authority to any person apparently in charge of the place who requests its production.

### **164G Council may require further information from practitioner or student [NSW]**

- (1) A Council for a health profession may, by written notice given to a registered health practitioner or student registered in the profession, require the practitioner or student to give to the Council, within a reasonable period specified in the notice, further information about any complaint or other matter concerning the practitioner or student.
- (2) A registered health practitioner or student must not—
  - (a) without reasonable excuse, fail to comply with a requirement under this section; or
  - (b) in purported compliance with a requirement under this section, provide information knowing it to be false or misleading in a material particular.

Maximum penalty—20 penalty units.

## **Division 10 Constitution and proceedings of Tribunal**

### **Subdivision 1 Interpretation**

#### **165 Definitions [NSW]**

In this Division—

**Division member** means a Division member of the Occupational Division of the Tribunal.

**medical practitioner proceedings** means proceedings involving a health practitioner who practises in the medical profession or a student of that profession.

**senior judicial officer** means a person who is—

- (a) a Judge of the Supreme Court (or a Judge or other person having the same status as a Judge of the Supreme Court), or
- (b) a Judge of the District Court.

#### **165A Relationship with NCAT Act [NSW]**

The provisions of this Division are intended to apply despite anything to the contrary

in the *Civil and Administrative Tribunal Act 2013*.

## **Subdivision 2 Constitution of Tribunal**

### **165B Constitution of Tribunal for complaints, applications and appeals [NSW]**

- (1) If a complaint is referred to the Tribunal or an application or appeal is made to the Tribunal under this Law—
  - (a) the Tribunal must inform the Council for the health profession of the referral, application or appeal; and
  - (b) the Council for the health profession must select 3 persons (whether or not they are currently Division members) to sit as members of the Tribunal in the proceedings.

**Note—**

Schedule 5 to the *Civil and Administrative Tribunal Act 2013* provides the President must appoint a person as an occasional member for particular proceedings entered in the Health Practitioner List if that person has been selected for participation in the proceedings in accordance with any applicable procedures specified by or under this Law. If a person selected under subsection (1) (b) is not already a Division member, the President will be required to appoint the person as an occasional member in relation to the proceedings.

- (2) Except as provided by subsections (4), (5) and (5A), the Tribunal, when conducting an inquiry or hearing an appeal under this Law, is to be constituted by—
  - (a) 1 Division member who is an Australian lawyer of at least 7 years' standing or, in the case of medical practitioner proceedings, 1 Division member who is a senior judicial officer; and
  - (b) 2 health practitioners selected for appointment by the Council as occasional members under subsection (1) (b) who are registered in the same health profession as the health practitioner or student the subject of the inquiry or appeal; and
  - (c) 1 lay person (that is, a person who is not registered in the health profession) selected for appointment by the Council as an occasional member under subsection (1) (b) from among a panel of lay persons for the time being nominated by the Minister.
- (3) If the health profession has divisions, at least one and, if practicable, both, of the health practitioners referred to in subsection (2) (b) must be registered in the same division of the health profession as the health practitioner or student the subject of the inquiry or hearing.
- (4) The Tribunal, when constituted to hear appeals under this Law that are restricted

to points of law, is to be constituted by—

- (a) in the case of medical practitioner proceedings, 1 Division member who is a senior judicial officer; or
  - (b) in any other case, 1 Division member who is an Australian lawyer of at least 7 years' standing.
- (5) The Tribunal, when constituted to exercise a function under section 146D or 148G, is to be constituted by a Division member selected by the Tribunal List Manager.
- (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).
- (6) A person is not to be selected to sit on the Tribunal if the person is a member of the Council.
- (7) An inquiry or appeal conducted or heard by the Tribunal under this Law may relate to more than one health practitioner or student if the complaint or complaints the subject of the inquiry or appeal arise from the same conduct.

### **165C Effect of vacancy on Tribunal [NSW]**

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

***presiding member*** means the member referred to in section 165B (2) (a).

## **Subdivision 3 Proceedings of Tribunal [NSW]**

### **165D Joinder of complaints [NSW]**

The Tribunal may, subject to the rules of procedural fairness, order the joinder of more than one complaint against the same or different health practitioners in proceedings.

### **165E Time when orders take effect [NSW]**

An order of the Tribunal under this Law takes effect on—

- (a) the day on which the order is made; or
- (b) the later day specified in the order.

### **165F Powers of Tribunal exercised by Supreme Court [NSW]**

A power of the Tribunal exercised under this Law by the Supreme Court is, except for the purposes of an appeal, taken to have been exercised by the Tribunal.

### **165G Executive Officer to be informed of disciplinary action [NSW]**

The Tribunal must inform the Executive Officer of the Council for a health profession of the exercise of any power under this Part by the Tribunal in relation to that profession.

## **Subdivision 4 Inquiries and appeals before Tribunal [NSW]**

### **165H No inquiry required if complaint admitted [NSW]**

No inquiry need be conducted into a complaint referred to the Tribunal under this Law if the registered health practitioner or student who is the subject of the complaint admits the subject-matter of the complaint in writing to the Tribunal.

### **165I Notice of time and place of inquiry or appeal [NSW]**

The Tribunal must give not less than 14 days' notice of an inquiry or appeal under this Law to each of the following—

- (a) the registered health practitioner or student the subject of the inquiry or appeal;
- (b) the Council for the health profession;
- (c) the National Board for the health profession;
- (d) for an inquiry into a complaint, the Commission;
- (e) the Chairperson of the relevant Committee, if appropriate.



### **165J Representation before Tribunal [NSW]**

- (1) At an inquiry conducted or appeal heard under this Law by the Tribunal, the registered health practitioner or student and any complainant concerned are entitled to attend and to be represented by—
  - (a) an Australian legal practitioner; or
  - (b) with the leave of the member presiding, another adviser.
- (2) The Tribunal may grant leave for another person to appear (whether in person or by an Australian legal practitioner or another adviser) at an inquiry or appeal if the Tribunal is satisfied that it is appropriate for the person to appear.
- (3) This section does not prevent the Tribunal from proceeding in the absence of the registered health practitioner or student concerned, as long as the practitioner or student has been given notice of the inquiry or appeal.

### **165K When hearings may be closed to public [NSW]**

Despite section 49 (2) of the *Civil and Administrative Tribunal Act 2013*, the Tribunal may make an order that a hearing for proceedings under this Law be conducted wholly or partly in private only if it is satisfied that it is desirable to do so in the public interest for reasons connected with the subject-matter of the proceedings or the nature of the evidence to be given.

### **165L Interlocutory orders [NSW]**

- (1) The Tribunal may, during any proceedings under this Law, exercise any power or combination of powers conferred on the Tribunal by section 149A, except the power to caution or reprimand.
- (2) The Tribunal may, in respect of an appeal under section 159B, make an order staying the decision of the Council appealed against until the appeal has been disposed of.
- (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.

### **165M Tribunal to provide details of decisions [NSW]**

- (1) As soon as practicable after making a decision on an inquiry or an appeal under this Law (bearing in mind the public welfare and seriousness of the matter), the Tribunal must give a written statement of the decision to—
  - (a) the parties; and
  - (b) the Council for the health profession in which the practitioner or student is registered (regardless of whether it is a party).
- (2) The statement of a decision must—
  - (a) set out any findings on material questions of fact; and
  - (b) refer to any evidence or other material on which the findings were based; and
  - (c) give the reasons for the decision.
- (3) The Tribunal may also provide the statement of a decision to the persons the Tribunal thinks fit.
- (4) Unless the Tribunal has ordered otherwise, the Tribunal is to make publicly available a statement of a decision given by it under this section if the decision is in respect of a complaint that has been proved or admitted in whole or in part.
- (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.

### **166-167G (Repealed)**

## **Division 11 Professional Standards Committees [NSW]**

### **Subdivision 1 Preliminary [NSW]**

#### **168 Definitions [NSW]**

In this Division—

**Committee** means a Professional Standards Committee.

**relevant health practitioner** means a health practitioner registered under this Law in the—

- (a) medical profession; or
- (b) nursing and midwifery profession.

## **Subdivision 2 Establishment and membership of Committees [NSW]**

### **169 Establishment of Committees [NSW]**

- (1) There are to be Professional Standards Committees established for the purposes of this Law.
- (2) A Committee has and may exercise the jurisdiction and functions conferred or imposed on it by or under this Law.

### **169A Council to establish Committee when required [NSW]**

- (1) A Council must establish a Committee when a complaint about a relevant health practitioner is referred to a Committee.
- (2) A Council establishes a Committee by appointing 4 persons to sit as the Committee for the purpose of conducting an inquiry into the complaint.

### **169B Membership of Committee [NSW]**

- (1) A Committee consists of—
  - (a) 2 registered health practitioners who—
    - (i) are registered in the same health profession as the relevant health practitioner the subject of the proceedings before the Committee; and
    - (ii) have the qualifications, if any, prescribed by the NSW regulations for that profession; and
  - (b) one person who is an Australian lawyer and not a registered health practitioner and who is to be appointed by the Council as Chairperson of the Committee; and
  - (c) one person, appointed from among a panel of persons for the time being nominated by the Minister, who—
    - (i) is not a registered health practitioner or student in the same health profession as the relevant health practitioner the subject of the proceedings before the Committee; and
    - (ii) has not at any time been registered as a health practitioner or student in that health profession under this Law or a corresponding prior Act.
- (2) A person who is a member of the Council may not be appointed to sit on a Committee.
- (3) A member of a Committee, while sitting on the Committee, is entitled to be paid

by the Council at a rate decided by the Minister.

- (4) The rate must be decided by the Minister in consultation with the Council.

## **Subdivision 3 Proceedings of Committees [NSW]**

### **170 Multiple inquiries [NSW]**

One or more Committees may conduct more than one inquiry at the same time.

#### **170A How a Committee decides [NSW]**

- (1) A decision supported by at least 3 members of a Committee on any question arising during an inquiry is the decision of the Committee.
- (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.

#### **170B Time when orders take effect [NSW]**

An order of a Committee takes effect on—

- (a) the day the order is made; or
- (b) if a later day is specified in the order, that day.

#### **170C Committee to inform Executive Officer of its actions under disciplinary provisions [NSW]**

A Committee must inform the Executive Officer of the exercise of any power by the Committee under Subdivision 3 of Division 3.

#### **170D Chairperson may exercise certain powers of Committee [NSW]**

- (1) The Chairperson of a Committee may exercise the following powers of the Committee—
  - (a) the power to terminate an inquiry;
  - (b) the power to hand down a decision of the Committee on an inquiry;
  - (c) the power to make a decision concerning any interlocutory issue before the Committee.
- (2) A power of the Committee exercised by the Chairperson of the Committee is taken to have been exercised by the Committee.

#### **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.

## **Subdivision 4 Inquiries before Committees [NSW]**

### **171 Committee to hold inquiry into complaint [NSW]**

- (1) A Committee must hold an inquiry into a complaint about a relevant health practitioner that is referred to it.
- (2) No inquiry need be held into the complaint if the relevant health practitioner admits the subject-matter of the complaint in writing to the Committee.
- (3) On appointment, the Chairperson of the Committee must fix a time and place for the holding of an inquiry by the Committee into the complaint.
- (4) The Chairperson must give not less than 14 days' notice of the inquiry to—
  - (a) the relevant health practitioner; and
  - (b) the complainant, if any; and
  - (c) (Repealed)
  - (d) the Council for the health profession in which the practitioner is registered; and
  - (e) the Commission.

### **171A Procedure for inquiry [NSW]**

- (1) Subject to this section, the Committee may conduct proceedings on the inquiry as it thinks fit.
- (2) Proceedings of the Committee are to be open to the public unless the Committee directs otherwise.
- (3) The Committee is not to direct that proceedings are to be closed to the public

unless satisfied it is desirable to do so in the public interest because of—

- (a) the subject-matter of the inquiry; or
- (b) the nature of the evidence to be given.

- (4) The Committee may be assisted by an Australian lawyer appointed, at the request of the Committee, by the Executive Officer of the Council.

#### **171B Representation at inquiry [NSW]**

- (1) At the inquiry held by the Committee, the relevant health practitioner and any complainant are entitled to attend and to be represented by—
  - (a) an Australian legal practitioner; or
  - (b) with the leave of the Chairperson of the Committee, another adviser.
- (2) Subsection (1) does not prevent the Committee from addressing questions directly to the relevant health practitioner.
- (3) The Committee may grant leave for any other person to appear at the inquiry if the Committee is satisfied it is appropriate for the person to appear.
- (4) This section does not prevent the Committee from proceeding in the absence of the relevant health practitioner or the complainant, if the practitioner or complainant has been given notice of the inquiry.

#### **171C Adjournments and interlocutory orders [NSW]**

- (1) The Committee may adjourn proceedings for any reason it thinks fit.
- (2) The Committee may, during any proceedings, exercise any power or combination of powers conferred on a Committee by section 146B, except the power to caution or reprimand.

#### **171D Committee must refer certain matters to Tribunal [NSW]**

- (1) The Committee must immediately terminate the inquiry if, before or during the inquiry, the Committee—
  - (a) forms the opinion the complaint, if substantiated, may provide grounds for the suspension or cancellation of the registration of the relevant health practitioner; or
  - (b) becomes aware the Council or the Commission has referred the complaint or another complaint about the practitioner to the Tribunal.
- (2) Subsection (1)(a) does not apply to a complaint that the Council decided not to refer to the Tribunal because the allegations on which it, and any other pending

complaint against the practitioner, was founded related solely or principally to the practitioner's physical or mental capacity to practise the practitioner's profession.

- (3) If the Committee terminates an inquiry, it must refer the complaint to the Tribunal unless it has already been referred to the Tribunal.
- (4) (Repealed)
- (5) The Committee must inform the Council when it takes any action under this section.

**171E Committee to provide details of decision [NSW]**

- (1) The Committee must give a written statement of its decision on the inquiry to the following within one month after the decision is made—
  - (a) the complainant;
  - (b) the relevant health practitioner;
  - (c) the Council.
- (2) The statement of decision must—
  - (a) set out any findings on material questions of fact; and
  - (b) refer to any evidence or other material on which the findings were based; and
  - (c) give reasons for the decision.
- (3) The Committee may also give the statement of decision to any other person the Committee thinks fit.
- (4) The Council—
  - (a) must make publicly available the statement of decision if the decision is in respect of a complaint that has been proved or admitted in whole or in part; and
  - (b) may disseminate any other statement of decision as the Council thinks fit.
- (5) Subsection (4) does not apply if the Committee has ordered that the statement is not to be made publicly available.

**171F Statement need not contain confidential information [NSW]**

- (1) A Committee is not required to include confidential information in a statement of a decision given to a person.

- (2) If the statement would be false or misleading if it did not include the confidential information, the Committee is not required to provide the statement.
- (3) If confidential information is not included in the statement of a decision given to a person, or a statement is not given to a person because of subsection (2), the Committee must give the person a confidential information notice.
- (4) A confidential information notice must be given within one month of the decision.
- (5) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court, subject to the provisions of this Law relating to protected reports.

### **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.

## **Division 12 Assessment Committees [NSW]**

### **172 Definitions [NSW]**

In this Division—

**Committee** means an Assessment Committee.

**relevant health practitioner** means a health practitioner registered under this Law other than a health practitioner registered in the—

- (a) medical profession; or
- (b) nursing and midwifery profession.

### **172A Establishment of Committees [NSW]**

- (1) There are to be Assessment Committees established for the purposes of this Law.
- (2) A Committee has and may exercise the jurisdiction and functions conferred or imposed on it by or under this Law.

### **172B Membership of Committee [NSW]**

- (1) A Committee consists of the following members appointed by the Council—



- (a) 3 registered health practitioners who—
    - (i) are registered in the same health profession as the relevant health practitioner the subject of the proceedings before the Committee; and
    - (ii) have the qualifications, if any, prescribed by the NSW regulations for that profession; and
  - (b) one person, appointed from among a panel of persons for the time being nominated by the Minister, who—
    - (i) is not a registered health practitioner or student in the same health profession as the relevant health practitioner the subject of the proceedings before the Committee; and
    - (ii) has not at any time been registered as a health practitioner or student in that health profession under this Law or a corresponding prior Act.
- (2) If the health profession has divisions, at least one and, if practicable, all, of the members appointed under subsection (1)(a) must be registered in the same division of the health profession as the health practitioner the subject of the complaint.
- (3) A person who is a member of the Council may not be appointed to sit on a Committee.
- (4) A member of a Committee, while sitting on the Committee, is entitled to be paid by the Council at a rate decided by the Minister.
- (5) The rate must be decided by the Minister in consultation with the Council.

### **172C Multiple inquiries [NSW]**

One or more Committees may conduct more than one assessment at the same time.

## **Division 13 Impaired Registrants Panels [NSW]**

### **173 Establishment of Impaired Registrants Panels [NSW]**

- (1) There are to be Impaired Registrants Panels established for the purposes of this Law.
- (2) A Panel has and may exercise the jurisdiction and functions conferred or imposed on it by or under this Law or any other Act.

### **173A Council to establish Panel when required [NSW]**

- (1) If a Council decides to refer a matter to an Impaired Registrants Panel, it must appoint 2 or 3 persons to sit as the Panel for the purpose of dealing with the

matter.

- (2) A panel must include—
  - (a) at least one person who is registered in the same health profession as the registered health practitioner or student who is the subject of the Panel's proceedings; and
  - (b) at least one medical practitioner.
- (3) If the health profession has divisions, the member appointed under subsection (2)(a) must be registered in the same division of the health profession as the registered health practitioner or student the subject of the complaint.
- (4) A person may be appointed to sit on a Panel whether or not the person is a member of the Council, but not if the person has previously dealt with the particular matter before the Panel in the person's capacity as a member of the Council.
- (5) A member of a Panel, while sitting on the Panel, is entitled to be paid at the rate decided by the Minister in consultation with the Council.

### **173B Decisions of Panel [NSW]**

- (1) If an Impaired Registrants Panel consists of 2 members—
  - (a) a decision supported by both members of the Panel is the decision of the Panel; and
  - (b) if the members of the Panel disagree as to any matter dealt with by the Panel, the Panel's report to the Council must include details of the disagreement and the reasons for it.
- (2) If a Panel consists of 3 members—
  - (a) a decision supported by a majority of the members of the Panel is the decision of the Panel; and
  - (b) the Panel's report to the Council must include any minority decision.

## **Division 14 Performance Review Panels and assessors [NSW]**

### **174 Establishment of Performance Review Panels [NSW]**

- (1) There are to be Performance Review Panels established for the purposes of this Law.
- (2) A Panel has and may exercise the jurisdiction and functions conferred or

imposed on it by or under this Law or any other Act.

#### **174A Membership of Performance Review Panels [NSW]**

- (1) If a Council decides to require a Performance Review Panel to conduct a performance review of the professional performance of a registered health practitioner, the Council must appoint 3 persons to sit as the Panel for the purpose of that performance review.
- (2) Of those 3 persons—
  - (a) 2 are to be registered health practitioners registered in the same health profession as the health practitioner to whom the proceedings relate; and
  - (b) one is to be a person who—
    - (i) is not a registered health practitioner or student in the same health profession as the health practitioner to whom the proceedings relate; and
    - (ii) has not at any time been registered as a health practitioner or student in that health profession under this Law or a corresponding prior Act.
- (3) If the health profession has divisions, at least one and, if practicable, both, of the members appointed under subsection (2)(a) must be registered in the same division of the health profession as the health practitioner the subject of the complaint.
- (4) One of the members of the Panel must be appointed by the Council as Chairperson of the Panel.
- (5) A person may be appointed to sit on a Panel whether or not the person is a member of the Council, but not if the person has previously dealt with the particular matter before the Panel in the person's capacity as a member of the Council.
- (6) A member of a Panel, while sitting on the Panel, is entitled to be paid by the Council at a rate decided by the Minister in consultation with the Council.

#### **174B Decisions of Panel [NSW]**

A decision supported by a majority of members of a Performance Review Panel is the decision of the Panel.

#### **174C Certain powers may be exercised by Chairperson [NSW]**

- (1) The Chairperson of a Performance Review Panel may exercise the following functions of a Panel—

- (a) the power to terminate a performance review;
  - (b) the power to hand down a decision of the Panel on a performance review.
- (2) A power of a Performance Review Panel that is exercised by the Chairperson of the Panel under this Law is taken to have been exercised by the Panel.

#### **174D Assessors [NSW]**

- (1) A Council may appoint suitably qualified persons to be assessors for the purposes of this Law.
- (2) Assessors are to be appointed on the terms and conditions decided by the Council.
- (3) An assessor has the functions conferred on an assessor by this Law and any other functions, in connection with Division 5, conferred on the assessor by the Council.

### **Division 14A Appeals [NSW]**

#### **175 Appellable decisions [NSW]**

- (1) A person who is the subject of any of the following decisions (an **appellable decision**) may appeal against the decision to the appropriate responsible tribunal for the appellable decision—
  - (a) a decision by a National Board to refuse to register the person;
  - (a1) a decision by a National Board to withdraw the person's registration;
  - (b) a decision by a National Board to refuse to endorse the person's registration;
  - (c) a decision by a National Board to refuse to renew the person's registration;
  - (d) a decision by a National Board to refuse to renew the endorsement of the person's registration;
  - (e) a decision by a National Board to impose or change a condition on a person's registration or the endorsement of the person's registration, other than—
    - (i) a condition relating to the person's qualification for general registration in the health profession; and
    - (ii) a condition imposed by section 112(3)(a);
  - (f) a decision by a National Board to refuse to change or remove a condition imposed on the person's registration or the endorsement of the person's

registration;

- (g) a decision by a National Board to refuse to change or revoke an undertaking given by the person to the Board.

**Note—**

An appeal under this section to the Tribunal in its capacity as an appropriate responsible tribunal is an external appeal to the Tribunal for the purposes of the [Civil and Administrative Tribunal Act 2013](#).

- (2) For the purposes of subsection (1), the **appropriate responsible tribunal** for an appellable decision is—
  - (a) for a decision in relation to a registered health practitioner, the responsible tribunal for the participating jurisdiction in which the practitioner’s principal place of practice is located; or
  - (b) for a decision in relation to a student, the responsible tribunal for the participating jurisdiction in which the student is undertaking the approved program of study or clinical training; or
  - (c) for a decision in relation to another person—
    - (i) the responsible tribunal for the participating jurisdiction in which the person lives; or
    - (ii) if the person does not live in a participating jurisdiction, the responsible tribunal for the participating jurisdiction nominated by the National Board that made the appellable decision and specified in the notice given to the person of the appellable decision.
- (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.

**Note—**

This section is a substituted New South Wales provision.

### **175A Parties to the proceedings [NSW]**

The parties to proceedings relating to an appellable decision being heard by a responsible tribunal are—

- (a) the person who is the subject of the appellable decision; and
- (b) the National Board that made the appellable decision.

**Note—**

This section is a substituted New South Wales provision.

### **175B Costs**

The responsible tribunal may make any order about costs it considers appropriate for the proceedings.

**Note—**

This section is a Health Practitioner Regulation National Law provision (see section 201 of the National Law).

### **175C Decision**

- (1) After hearing the matter, the responsible tribunal may—
  - (a) confirm the appellable decision; or
  - (b) amend the appellable decision; or
  - (c) substitute another decision for the appellable decision.
- (2) In substituting another decision for the appellable decision, the responsible tribunal has the same powers as the entity that made the appellable decision.

**Note—**

This section is a Health Practitioner Regulation National Law provision (see section 202 of the National Law).

**Note—**

Section 203 of the Health Practitioner Regulation National Law is not applicable to New South Wales.

## **Division 14B Miscellaneous [NSW]**

### **176 Notice from adjudication body [NSW]**

- (1) If an adjudication body, other than a court, makes a decision in relation to a health practitioner or student registered in a health profession, it must give written notice of the decision to the National Board for the profession.
- (2) For the purposes of subsection (1), in this jurisdiction a decision by an adjudication body is any of the following—
  - (a) a decision by the adjudication body to impose or agree to conditions on a registered health practitioner's or student's registration;
  - (b) a decision by the adjudication body to suspend a registered health practitioner's or student's registration;
  - (c) a decision by the adjudication body to cancel a registered health practitioner's or student's registration.

**Note—**

This subsection is an additional New South Wales provision.

- (3) The notice must state—
- (a) the decision made by the adjudication body; and
  - (b) the reasons for the decision; and
  - (c) the date the decision takes effect; and
  - (d) any action the National Board must take to give effect to the decision.

**176A Implementation of decisions**

- (1) A National Board must give effect to a decision of an adjudication body unless the decision is stayed on appeal.
- (2) Without limiting subsection (1), the National Board must, if the notice given to the Board states that a health practitioner's or student's registration is cancelled, remove the practitioner's or student's name from the appropriate register kept by the Board.

**Note—**

This section is a Health Practitioner Regulation National Law provision (see section 205 of the National Law).

**176B National Board to give notice to registered health practitioner's employer and other entities [NSW]**

- (1) This section applies if—
  - (a) a National Board—
    - (i) decides to take health, conduct or performance action against a registered health practitioner; or
    - (ii) receives notice from an adjudication body that the adjudication body has decided to take health, conduct or performance action against a registered health practitioner; or
    - (iii) receives notice from a co-regulatory authority that an adjudication body in the co-regulatory jurisdiction has decided to take health, conduct or performance action against a registered health practitioner; and
  - (b) the National Board has been given practice information under section 132 or becomes aware of practice information it should have been given under that section.

- (2) If the practice information given to the National Board, or of which the Board becomes aware, is information referred to in section 132(4), definition of **practice information**, paragraph (a) and includes the names of other registered health practitioners, the Board, as soon as practicable after an event specified in subsection (1)(a) occurs, may give written notice of the decision to—
- (a) the named registered health practitioners with whom the practitioner currently shares premises and the cost of the premises; and
  - (b) the named registered health practitioners with whom the practitioner previously shared premises and the cost of the premises if the Board reasonably believes the practitioner’s health, conduct or performance while the practitioner shared the premises with the registered health practitioners posed—
    - (i) a risk of harm to a person or a class of persons; or
    - (ii) a risk to public health or safety.
- (3) If the practice information given to the Board, or of which the Board becomes aware, is information referred to in section 132(4), definition of **practice information**, paragraph (b), the Board, as soon as practicable after an event specified in subsection (1)(a) occurs—
- (a) if the registered health practitioner has a current practice arrangement with an entity named in the information—must give written notice of the decision to the entity; or
  - (b) if the practitioner had a previous practice arrangement with an entity named in the information—may give written notice of the decision to the entity if the Board reasonably believes the practitioner’s health, conduct or performance while the practitioner had a practice arrangement with the entity posed—
    - (i) a risk of harm to a person or a class of persons; or
    - (ii) a risk to public health or safety.
- (4) In this section—

**decision** means a decision of a National Board or adjudication body to take health, conduct or performance action against a registered health practitioner.

### **176BA Council to notify employers and accreditors about conditions concerning health, conduct or performance of health practitioners [NSW]**

- (1) This section applies if a Council makes any of the following decisions (a **condition decision**) with respect to a registered health practitioner under this



Law—

- (a) to impose conditions on the practitioner's registration concerning the health, conduct or performance of the practitioner;
  - (b) to alter or remove conditions that the Council has imposed on the practitioner's registration concerning the health, conduct or performance of the practitioner.
- (2) The Council must, as soon as practicable after it makes a condition decision with respect to a registered health practitioner, give written notice of the decision to each employer or accreditor of the practitioner.
- (3) The Council may also, if it considers it appropriate, give written notice of a condition decision with respect to a registered health practitioner to an entity that becomes the practitioner's employer or accreditor after the decision is made.
- (4) The notice must include the details of the conditions that have been imposed or removed or the alterations that have been made to conditions that have been imposed.
- (5) If the notice given by the Council is about a condition that is imposed, altered or removed because of an impairment of the registered health practitioner, the practitioner's employer or accreditor must ensure that the nominated or agreed information recipient discloses or uses information about the impairment only for the purpose of—
- (a) the supervision or oversight of the practitioner during the course of the practitioner's work for the employer or accreditor; or
  - (b) ensuring the safety of patients at premises used by the practitioner during the course of the practitioner's work for the employer or accreditor.

Maximum penalty (subsection (5))—

- (a) in the case of an individual—20 penalty units; or
  - (b) in the case of a body corporate—50 penalty units.
- (6) An employer or accreditor of a registered health practitioner may nominate another person to be the nominated information recipient for the purposes of subsection (5), but only if the person is—
- (a) involved in the supervision or oversight of registered health practitioners of the kind concerned during the course of their work; or
  - (b) responsible for ensuring the safety of patients at premises used by

registered health practitioners of the kind concerned during the course of their work.

(7) If an employer or accreditor has not nominated a person to be the nominated information recipient for the purposes of subsection (5), the Council may, after consulting the employer or accreditor (and, if it considers it appropriate, the registered health practitioner concerned), provide information about the impairment to an agreed information recipient who is a person of a kind referred to in subsection (6) (a) or (b).

(8) In this section and section 176BB—

**accreditor**, in relation to a registered health practitioner, means a licensee for a private health facility under the *Private Health Facilities Act 2007* that has accredited the health practitioner to provide services at the facility.

**employer**, in relation to a registered health practitioner, means an entity that has—

- (a) employed the health practitioner or other person under a contract of employment to provide services to or for the entity; or
- (b) appointed or engaged the health practitioner or other person under any other kind of contract or agreement to provide services to or for the entity.

**176BB Council to notify employers and accreditors about suspension or cancellation of registration and possible contravention of conditions [NSW]**

(1) A Council must, as soon as practicable after one of the following decisions is made in relation to a registered health practitioner, give written notice of the decision to each employer or accreditor of the practitioner concerned—

- (a) a decision by the Council to suspend the registered health practitioner's registration;
- (b) in relation to the Council for the health profession in which the practitioner is registered—
  - (i) a decision by the Tribunal to suspend the registered health practitioner's registration; and
  - (ii) a decision by the Tribunal to cancel the registered health practitioner's registration.

(2) If a Council reasonably believes that a registered health practitioner has contravened a condition imposed on the practitioner's registration, the Council may, if it considers it appropriate, give written notice of the alleged contravention to each employer or accreditor of the practitioner.

### **176C Adjudication body to consider impact of decision on third parties [NSW]**

- (1) If an adjudication body proposes to make a decision that, in the body's opinion, will impose an appreciable burden on an identifiable third party in connection with a registered health practitioner's practice or clinical training undertaken by a student, the body—
  - (a) must give the third party an opportunity to make submission to the body with respect to the decision; and
  - (b) must take the submission into account before giving the direction or making the order.
- (2) If an adjudication body makes a decision that will, in the body's opinion, impose an appreciable burden on an identifiable third party in connection with a registered health practitioner's practice or clinical training undertaken by a student, the body must give the third party notice of the decision as soon as practicable after it is made.
- (3) An example of a decision that may impose an appreciable burden on an identifiable third party in connection with a registered health practitioner's practice is a decision that has the effect of requiring the practice of a registered health practitioner to be supervised by an identified third party.
- (4) In this section—

***adjudication body*** means—

- (a) a Committee;
- (b) a Council;
- (c) a Panel;
- (d) the Tribunal.

***third party*** means a health service provider other than the registered health practitioner to whom an inquiry relates, but does not include a person or body exercising functions conferred by this Law or the [Health Care Complaints Act 1993](#).

**Note—**

This section is a New South Wales provision.

### **176D Effect of suspension [NSW]**

- (1) If a person's registration as a health practitioner or student is suspended under

this Law, the person is taken during the period of suspension not to be registered under this Law, other than for the purposes of this Part.

**Note—**

This subsection is a Health Practitioner Regulation National Law provision (see section 207 of the National Law).

- (2) Accordingly, a reference in any other Act or instrument to a registered health practitioner does not include a reference to a health practitioner whose registration is suspended.
- (3) When a suspension imposed under this Law ends, the person's rights and privileges as a registered health practitioner or student in the health profession are revived, subject to—
  - (a) any other action taken by the Council for the profession under Subdivision 7 of Division 3 of Part 8 or Division 4 of Part 8; or
  - (b) any order of the Tribunal on a complaint referred to the Tribunal.

**176E Protection from liability for certain publications [NSW]**

- (1) A publication in good faith of a written statement of a decision made by a Council, a Committee or a Panel does not subject a protected person to any liability (including liability in defamation).
- (2) In this section—

***protected person*** means—

- (a) a Council, a Committee or a Panel or a member of a Council, a Committee or a Panel; or
- (b) the proprietor, editor or publisher of a newspaper; or
- (c) the proprietor or broadcaster of a radio or television station or the producer of a radio or television show; or
- (d) an Internet service provider or Internet content host; or
- (e) a member of staff of, or a person acting at the direction of, a person or entity referred to in this definition; or
- (f) a person, or a person belonging to a class of persons, prescribed by the NSW regulations for the purposes of this section.

**Note—**

This section is a New South Wales provision.

### **176F Confidentiality of protected reports**

- (1) A person must not, directly or indirectly—
  - (a) disclose a protected report to another person that the person has obtained in the exercise of the person's functions under this Law; or
  - (b) make a record of, or disclose to another person, information contained in a protected report that the person has obtained in the exercise of the person's functions under this Law

Maximum penalty—50 penalty units.

- (2) Subsection (1) does not apply to the disclosure by a person of a protected report or information contained in a protected report—
  - (a) for the purpose of exercising functions under this Law; or
  - (b) to the Commission.
- (3) A protected report may not be admitted or used in civil proceedings before a court other than with the consent of—
  - (a) the person giving the report; and
  - (b) the person the subject of the report.
- (4) A person may not be compelled to produce a protected report, or to give evidence in relation to the report or its contents, in civil proceedings before a court.

### **[16] Section 216 Duty of confidentiality**

Insert after section 216 (2) (b)—

- (ba) for a person exercising functions under a NSW provision, the disclosure is to the National Agency or a National Board; or

**Note—**

See also section 176F which provides for the confidentiality of protected reports.

**Note—**

This paragraph is an additional New South Wales provision.

### **[16A] Section 221A**

Insert before section 222—

## **221A Definitions [NSW]**

In this division—

**prohibition order** means the following—

- (a) a prohibition order under section 149C(5),
- (b) a decision by the responsible tribunal of another participating jurisdiction that makes a decision to prohibit a person, either permanently or for a stated period, from doing 1 or more of the following—
  - (i) providing a health service or a specified health service,
  - (ii) using a title or a specified title,
- (c) a decision under section 107(4)(b) of the *Health Ombudsman Act 2013* of Queensland.

**Note—**

This section is an additional New South Wales provision.

## **[17] Section 236A**

Insert after section 236—

### **236A Protection from personal liability for persons exercising functions under NSW provisions [NSW]**

- (1) A protected person is not personally liable for anything done or omitted to be done in good faith—
  - (a) in the exercise of a function under this Law; or
  - (b) in the reasonable belief that the act or omission was the exercise of a function under this Law.
- (2) Any liability resulting from an act or omission that would, but for subsection (1), attach to a protected person attaches instead to the Council for the health profession on whose behalf, or in relation to which, the protected person was exercising functions.
- (3) In this section—

**protected person** means a person exercising functions under a NSW provision.

**Note—**

This section is an additional New South Wales provision.

**[18] Section 244A**

Insert after section 244—

**244A Evidentiary certificates for NSW provisions [NSW]**

- (1) A certificate purporting to be signed by the Executive Officer of a Council and stating any of the following matters is prima facie evidence of the matter—
- (a) a stated document is one of the following things made, given, issued or kept under a NSW provision—
    - (i) an appointment, approval or decision;
    - (ii) a notice, direction or requirement;
    - (iii) a record, or an extract from a record;
  - (b) a stated document is another document kept under a NSW provision;
  - (c) on a stated day, or during a stated period, an appointment as an authorised person was, or was not, in force for a stated person;
  - (d) on a stated day, a stated person was given a stated notice or direction under a NSW provision;
  - (e) on a stated day, a stated requirement was made of a stated person under a NSW provision;
  - (f) on a stated day before 1 July 2010, or during a stated period before 1 July 2010, a stated person was or was not registered as a health practitioner or a student under a repealed Act;
  - (g) on a stated day before 1 July 2010, or during a stated period before 1 July 2010, a registration under a repealed Act was or was not subject to a stated condition;
  - (h) on a stated day before 1 July 2010, a registration under a repealed Act was suspended or cancelled or otherwise ceased to have effect (whether or not for a specified period).

(2) In this section—

**registration** under a repealed Act includes any other form of authorisation, for example, a practising certificate, endorsement, or the like.

**repealed Act** means an Act that was repealed by the [Health Practitioner Regulation Amendment Act 2010](#).

**Note—**

This section is an additional New South Wales provision.

**[19] Section 247A**

Insert after section 247—

**247A NSW regulations [NSW]**

- (1) The Governor may make regulations, not inconsistent with this Law, for or with respect to any matter that by a NSW provision of this Law is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to a NSW provision of this Law.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following matters—
  - (a) standards applicable to premises used for pharmacy businesses for or with respect to the safe and competent delivery of pharmacy services;
  - (b) the inspection by or on behalf of the Pharmacy Council of New South Wales of pharmacy businesses;
  - (c) the infection control standards to be followed by health practitioners practising in this jurisdiction;
  - (d) the records to be kept by health practitioners practising in this jurisdiction;
  - (e) the reimbursement by the Councils of the costs incurred by the Ministry of Health in establishing the national registration and accreditation scheme.
- (3) A matter for which the first regulations made under this section make provision is taken to be a matter for which a regulatory impact statement is not required for the purposes of the *Subordinate Legislation Act 1989*.
- (4) In this section and Schedule 5C—

**Governor** means the Governor with the advice of the Executive Council, and includes a reference to a person for the time being lawfully administering the Government.

**Note—**

This section is an additional New South Wales provision.

**[20] Section 293**

Omit the section. Insert instead—



**293**

**Note—**

This section is not applicable to New South Wales.

**[21] Section 295**

Omit the section. Insert instead—

**295**

**Note—**

This section is not applicable to New South Wales.

**[22] Section 296 Records relating to registration and accreditation**

Omit section 296 (1) (b). Insert instead—

(b)

**Note—**

This paragraph is not applicable to New South Wales.

**[23] Section 297**

Omit the section. Insert instead—

**297**

**Note—**

This section is not applicable to New South Wales.

**[24] Section 298**

Omit the section. Insert instead—

**298**

**Note—**

This section is not applicable to New South Wales.

**[24AA] Section 321 Offences relating to prohibition orders made before commencement**

Omit the section. Insert instead—

**321**

**Note—**

This section is not applicable to New South Wales.

**[24A] Schedule 5 Investigators**

Omit “(section 163)”.

**[25] Schedules 5A-5F**

Insert after Schedule 5—

## **Schedule 5A Savings and transitional provisions [NSW]**

**Note—**

This Schedule is an additional New South Wales provision.

### **Part 1 NSW Regulations [NSW]**

#### **1 Savings and transitional regulations [NSW]**

- (1) The NSW regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts—
  - the *Health Practitioner Regulation (Adoption of National Law) Act 2009*
  - the *Health Practitioner Regulation Amendment Act 2010*
  - the *Health Legislation Amendment Act 2012*
  - any Act that amends this Law
- (2) Any such provision may, if the NSW 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 on the NSW legislation website, 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.

### **Part 2 Provisions consequent on enactment of **Health****

## **Practitioner Regulation Amendment Act 2010 [NSW]**

### **Division 1 Preliminary [NSW]**

#### **2 Definitions [NSW]**

In this Part—

**commencement** means commencement of this Part.

### **Division 2 Complaints and disciplinary proceedings [NSW]**

#### **3 Complaints made but not being dealt with on commencement [NSW]**

- (1) This clause applies if, immediately before the commencement, a former Board had received but not started dealing with a complaint about a person registered in a health profession by the Board.
- (2) From the commencement, the complaint is taken to have been made to the Council established for the profession.

#### **4 Relevant matters still being dealt with on participation day [NSW]**

- (1) This clause applies if, immediately before the commencement, any of the following referrals, actions, applications or appeals (**relevant matters**) had been started but not completed under a repealed Act—
  - (a) the referral of a matter to an Impaired Registrants Panel;
  - (b) the referral of the professional performance of a health practitioner for assessment;
  - (c) the referral of a complaint to a Committee;
  - (d) the referral of a matter to a Performance Review Panel;
  - (e) an application for a review;
  - (f) action by a former Board to suspend, or impose conditions on, a registered health practitioner's registration under public protection provision;
  - (g) the referral of a complaint or another matter to a Tribunal;
  - (h) an appeal or application to a Tribunal;
  - (i) an appeal to the Supreme Court.
- (2) From the commencement, the relevant matter is to continue to be dealt with under the repealed Act under which it was made.

- (3) After the relevant matter has been decided under the repealed Act, any further proceedings or appeal in relation to the matter the subject of the relevant matter is to be dealt with under this Law as if the relevant matter had been decided under this Law.
- (4) For the purposes of this clause, the repealed Act applies—
  - (a) as if a reference to the former Board were a reference to the Council; and
  - (b) with any other changes that are necessary or convenient.
- (5) The National Board for the health profession must give effect to a decision made in relation to a relevant matter under a repealed Act, and the decision continues to apply, as if it were a decision made under this Law.
- (6) In this clause—

**public protection provision** means any of the following provisions—

  - (a) section 54 of the *Chiropractors Act 2001*;
  - (b) section 72 of the *Dental Practice Act 2001*;
  - (c) section 66 of the *Medical Practice Act 1992*;
  - (d) section 48 of the *Nurses and Midwives Act 1991*;
  - (e) section 58 of the *Optometrists Act 2002*;
  - (f) section 54 of the *Osteopaths Act 2001*;
  - (g) section 67 of the *Pharmacy Practice Act 2006*;
  - (h) section 55 of the *Physiotherapists Act 2001*;
  - (i) section 54 of the *Podiatrists Act 2003*;
  - (j) section 54 of the *Psychologists Act 2001*.

## 5 Complaints about dental prosthetists [NSW]

- (1) This clause applies if, immediately before the commencement, the Dental Technicians Registration Board under the *Dental Technicians Registration Act 1975*—
  - (a) had received but not started dealing with a complaint about a dental prosthetist; or
  - (b) had started but not completed dealing with a complaint about a dental prosthetist.

- (2) From the commencement, the complaint is—
  - (a) taken to have been made to the Dental Council of New South Wales; and
  - (b) to be dealt with under this Law in the way agreed between the Dental Council of New South Wales and the Commission.

## **6 Complaints about dental technicians [NSW]**

- (1) This clause applies if, immediately before the commencement, the Dental Technicians Registration Board under the *Dental Technicians Registration Act 1975*—
  - (a) had received but not started dealing with a complaint about a dental technician; or
  - (b) had started but not completed dealing with a complaint about a dental technician.
- (2) From the commencement, the complaint is taken to be a complaint made to the Commission about the professional conduct of the dental technician.
- (3) For the purposes of subclause (2), a code of conduct prescribed under section 10AM of the *Public Health Act 1991* is taken to have applied to the dental technician's practice of the profession before the commencement as if the dental technician had not been required to be registered under a health registration Act.
- (4) If, after the complaint is dealt with, an order is made in relation to the dental technician that does either or both of the following, the order is taken to be a prohibition order for the purposes of Division 3 of Part 2A of the *Public Health Act 1991*—
  - (a) prohibits the dental technician from providing health services or specified health services for the period specified in the order or permanently;
  - (b) places conditions on the provision of health services by the dental technician for the period specified in the order or permanently.

## **7 Existing orders in relation to dental technicians' registration [NSW]**

- (1) This clause applies if, immediately before the commencement, an order was in force in relation to a dental technician that did either or both of the following—
  - (a) prohibited the dental technician from providing health services or specified health services for the period specified in the order or permanently;
  - (b) placed conditions on the provision of health services by the dental technician for the period specified in the order or permanently.

- (2) From the commencement, the order is taken to be a prohibition order for the purposes of Division 3 of Part 2A of the *Public Health Act 1991*.

## **Division 3 Appointments [NSW]**

### **8 Board members [NSW]**

- (1) A person who, immediately before the commencement, was a member of a former Board for a health profession is taken, after the commencement, to be a member of the Council for that profession as if the person had been appointed under this Law.
- (2) The person holds office as a member of the Council until the earlier of the following days—
- (a) the day that is 2 years after the commencement;
  - (b) the day a NSW regulation made for section 41E in relation to the membership of that Council commences;
  - (c) the day the person otherwise vacates office under this Law.
- (3) For the purposes of clause 12(2) of Schedule 5C, the period for which the person held consecutive terms of office as a member of a former Board immediately before the commencement is to be taken into account in calculating the total period for which the person has held office.
- (4) However, the person may be appointed for one more term of office under this Law even if the person has held office for consecutive terms of office totalling more than 9 years.
- (5) Subclauses (2) and (4) apply despite—
- (a) anything in clause 12 of Schedule 5C; or
  - (b) anything in the member's instrument of appointment as in force immediately before the commencement.

### **9 President and Deputy President of former Board [NSW]**

- (1) If a person referred to in clause 8 was, immediately before the commencement, the President of a former Board for a health profession the person is taken, after the commencement, to be the President of the Council for the health profession under this Law.
- (2) If a person referred to in clause 8 was, immediately before the commencement, the Deputy President of a former Board for a health profession the person is taken, after the commencement, to be the Deputy President of the Council for

the health profession under this Law.

## **10 Tribunals [NSW]**

- (1) A person who, immediately before the commencement, was the Chairperson of a Tribunal for a health profession under a repealed Act is taken, after the commencement, to be the Chairperson of the Tribunal for that profession under this Law as if the person had been appointed under this Law.
- (2) A person who, immediately before the commencement, was a Deputy Chairperson of a Tribunal for a health profession under a repealed Act is taken, after the commencement, to be the Deputy Chairperson of the Tribunal for that profession under this Law as if the person had been appointed under this Law.
- (3) A person who, immediately before the commencement, was a member of a panel of lay persons for a Tribunal for a health profession under a repealed Act is taken, after the commencement, to be a member of a panel of lay persons for the Tribunal for that profession under this Law.
- (4) A person to whom this clause applies continues to hold office until the earlier of the following—
  - (a) the day the person's term of appointment under the repealed Act would have ended if that Act had not been repealed;
  - (b) the day the person otherwise vacates office under this Law.

## **11 Professional Standards Committees [NSW]**

- (1) A person who, immediately before the commencement, was a member of a panel of lay persons for Professional Standards Committees for a health profession under a repealed Act is taken, after the commencement, to be a member of a panel of lay persons for Professional Standards Committees for that profession under this Law.
- (2) The person continues to be a member of the panel until the earlier of the following—
  - (a) the day that is 2 years after the commencement;
  - (b) the person resigns or is removed from the panel by the Minister.

## **12 Committees [NSW]**

- (1) A person who, immediately before the commencement, was a member of a Committee for a health profession is taken, after the commencement, to be a member of the Assessment Committee for that profession under this Law as if the person had been appointed under this Law.

(2) The person continues to hold office until the earlier of the following—

- (a) the day that is 2 years after the commencement;
- (b) the person otherwise vacates office under this Law.

(3) In this clause—

**Committee** means the following—

- (a) the Chiropractic Care Assessment Committee constituted under the *Chiropractors Act 2001*;
- (b) the Dental Care Assessment Committee constituted under the *Dental Practice Act 2001*;
- (c) the Optometry Care Assessment Committee constituted under the *Optometrists Act 2002*;
- (d) the Osteopathy Care Assessment Committee constituted under the *Osteopaths Act 2001*;
- (e) the Pharmacy Care Assessment Committee constituted under the *Pharmacy Practice Act 2006*;
- (f) the Physiotherapy Standards Advisory Committee constituted under the *Physiotherapists Act 2001*;
- (g) the Podiatry Standards Advisory Committee constituted under the *Podiatrists Act 2003*;
- (h) the Psychological Care Assessment Committee constituted under the *Psychologists Act 2001*.

### **13 Assessors [NSW]**

A person who was, immediately before the commencement, appointed as an assessor under a repealed Act by a former Board constituted for a health profession is taken after the commencement to have been appointed as an assessor under this Law by the Council established for that profession.

## **Division 4 Staff [NSW]**

### **14 Definitions [NSW]**

In this Division—

**HPCA Division** means the Health Professional Councils Authority Division of the Government Service.



**HPRB Division** means Health Professional Registration Boards Division of the Government Service.

**new employer** means an employer to whom a person's employment is transferred under this Division.

**relevant former board** means the following—

- (a) the Dental Board of New South Wales;
- (b) the New South Wales Medical Board;
- (c) the Pharmacy Board of New South Wales.

**transferred employee** means a person whose employment is transferred under this Division.

### **15 Staff employed by HPRB Division [NSW]**

- (1) A person who was, immediately before the commencement, a member of staff of the HPRB Division is, from the commencement, taken to be a member of staff of the HPCA Division employed on the same terms and conditions that applied to the member immediately before the commencement.
- (2) Subclause (1) does not prevent the terms and conditions on which a member of staff is employed being varied.
- (3) The Minister may, by written order, transfer the employment of a member of staff of the HPCA Division to the employment of the National Agency.
- (4) A member of staff may decline to be transferred to the National Agency.

### **16 Staff employed by relevant former board [NSW]**

- (1) The Minister may, by written order, transfer the employment of a member of staff of a relevant former board to the employment of the National Agency or the HPCA Division.
- (2) A member of staff of a relevant former board may decline to be transferred to the National Agency or the HPCA Division.

### **17 Continuity of employment [NSW]**

The continuity of a transferred employee's employment is taken not to have been broken by the transfer of employment, and service with the Government Service or relevant former board that is continuous service up to the time of transfer is deemed for all purposes to be service with the new employer.

## **18 Accrued leave entitlements [NSW]**

A transferred employee retains any rights to sick leave, annual leave or long service leave accrued or accruing immediately before the transfer of employment (other than accrued leave for which the employee has, on ceasing to be an employee of the Government Service or relevant former board, been paid the monetary value under any other entitlement of the employee).

## **19 Transfer payments [NSW]**

A transferred employee is not entitled to receive any payment or other benefit (including in the nature of severance pay or redundancy or other compensation) merely because the employee ceased to be an employee of the Government Service or relevant former board, or the employee's contract of employment with the Government Service or relevant former board was terminated, as a result of the transfer of employment.

## **Division 5 Financial matters [NSW]**

### **20 Education and research account [NSW]**

- (1) An amount in an Education and Research Account established by a former Board for a health profession under a repealed Act is taken to be transferred to the Education and Research Account established by the Council for that profession under this Law.
- (2) An amount that had been appropriated from the Education and Research Account under the repealed Act for or towards a purpose specified under that Act but not paid before the commencement is to be paid by the Council for the health profession under this Law.

### **21 Education Account for dental technicians [NSW]**

- (1) As soon as practicable after the commencement, the Dental Council of New South Wales must establish an account named the Dental Technicians Education Account.
- (2) The Council must pay into the Education Account the amounts decided in accordance with the NSW regulations.
- (3) Money in the Education Account may be expended by the Council only for purposes relating to the education of dental technicians.
- (4) An expenditure of money in the Education Account must not be made unless it is authorised by a committee of the Council consisting of 5 members.
- (5) The committee must consist of—

- (a) at least 2 members who are dental technicians; and
  - (b) no more than 2 members who are dentists.
- (6) An expenditure of money in the Education Account may be authorised by the committee only if 4 of the members of the committee support the expenditure.
- (7) All the money in the Education Account must be expended within 3 years after the Account is established.
- (8) When all the money in the Education Account has been expended the Council must close the Account.
- (9) In this clause—
- dental technician*** means a person, other than a dentist or dental prosthetist, who is engaged in the mechanical construction, or renewal or repair, of artificial dentures or restorative dental appliances.

## **Division 6 Pharmacy businesses [NSW]**

### **22 Approval, authorisation or consent given under [Pharmacy Practice Act 2006](#) continues [NSW]**

- (1) An approval, authorisation or consent in force under Division 2 of Part 3 of the [Pharmacy Practice Act 2006](#) immediately before the commencement continues after the commencement as if it had been given under Schedule 5F.
- (2) Without limiting subclause (1), the approval, authorisation or consent continues subject to any conditions that applied to it immediately before the commencement.

### **23 Application for approval, authorisation or consent [NSW]**

An application for an approval, authorisation or consent made under Part 3 of the [Pharmacy Practice Act 2006](#) but not decided immediately before the commencement is taken, after the commencement, to be an application made to the Pharmacy Council of New South Wales under Schedule 5F.

### **24 Appointment of responsible pharmacist continues [NSW]**

An appointment under clause 9 of the [Pharmacy Practice Regulation 2008](#) in force immediately before the commencement continues after the commencement as if it had been made under this Law.

### **25 Register of Pharmacies [NSW]**

The Register of Pharmacies kept under the [Pharmacy Practice Act 2006](#) immediately

before the commencement is taken, from the commencement, to be the Register of Pharmacies kept by the Pharmacy Council of New South Wales under this Law.

## **26 Inspectors [NSW]**

A person who immediately before the commencement was an inspector under the *Pharmacy Practice Act 2006* is taken, from the commencement, to be an authorised person appointed under this Law.

## **Division 7 Miscellaneous [NSW]**

### **27 Principal place of practice [NSW]**

A person who was, immediately before the commencement, registered as a health practitioner under a repealed Act is taken on the commencement to have declared the address recorded for the person in the Register kept under that Act as being the person's principal place of practice.

### **28 References to former Boards in conditions [NSW]**

- (1) This clause applies if—
  - (a) a registered health practitioner's or student's registration is subject to a condition under section 279; and
  - (b) the condition includes a reference to a former Board.
- (2) From the commencement, the reference to the former Board is taken to be a reference to—
  - (a) the Council established for the same health profession as the profession for which the former Board was established; or
  - (b) if the Council gives the registered health practitioner or student written notice that the reference is taken to be a reference to the National Board for the profession, the National Board.

## **Part 3 Provision consequent on enactment of *Statute Law (Miscellaneous Provisions) Act (No 2) 2010* [NSW]**

### **29 Protected reports [NSW]**

The amendment to the definition of *protected report* in section 138 (1) made by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2010* applies to a report the subject of that amendment whether prepared before, on or after the commencement of that amendment.

## **Part 4 Provisions consequent on enactment of *Health***

## Legislation Amendment Act 2012 [NSW]

### 30 Definition [NSW]

In this Part—

**amending Act** means the *Health Legislation Amendment Act 2012*.

### 31 Mandatory notifications [NSW]

Section 143A as inserted by the amending Act does not extend to a notification under Division 2 of Part 8 that was made before the commencement of that section.

### 32 Suspension or conditions of registration to protect public [NSW]

Section 150 (7) as substituted by the amending Act does not apply to a delegation made by a Council before that substitution.

### 33 Membership of Committees [NSW]

- (1) The substitution of section 169B (1) (c) by the amending Act does not affect any Committee that was established before that substitution.
- (2) The substitution of section 172B (1) (b) by the amending Act does not affect any Committee that was established before that substitution.

### 34 Membership of Performance Review Panels [NSW]

The substitution of section 174A (2) (b) by the amending Act does not affect any Performance Review Panel that was established before that substitution.

## Part 5 Provision consequent on enactment of Health Legislation Amendment Act 2013 [NSW]

### 35 Appointments of acting members and acting President of Councils

The amendment of clause 11 (1) and (3) of Schedule 5C by the *Health Legislation Amendment Act 2013* does not affect the appointment of any person holding office as an acting member or an acting President of a Council immediately before the commencement of that amendment.

## Part 6 Provision consequent on enactment of Health Practitioner Regulation Legislation Amendment Act 2014 [NSW]

### 36 Application of amendment concerning requirement for reinstatement

### **order before registration [NSW]**

- (1) Without limiting section 287, section 149E, as inserted by the *Health Practitioner Regulation Legislation Amendment Act 2014*, extends to persons whose registrations as health practitioners were cancelled, or who were disqualified from being registered as health practitioners, by the Tribunal (or a predecessor of the Tribunal) before the commencement of section 149E.

**Note—**

Section 287 makes provision for cancellations of registration and disqualifications from registration made under corresponding prior Acts to continue to have effect under this Law as if they were decisions made by the responsible tribunal under this Law. As a result, subclause (1) includes such cancellations and disqualifications as well as cancellations and disqualifications under this Law. The subclause also extends to decisions made by the former health practitioner tribunals before their abolition and replacement by the Tribunal.

- (2) However, subclause (1) does not affect any application for registration that was made and granted before the commencement of section 149E.

## **Part 7 Provision consequent on enactment of *Health Practitioner Regulation National Law (NSW) Amendment (Review) Act 2016* [NSW]**

### **37 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.

## **Part 8 Provision consequent on enactment of *Health Practitioner Regulation Amendment Act 2017* [NSW]**

### **38 Setting of inaugural fee by Secretary for paramedicine [NSW]**

Until such time as the amount of the complaints element for registration fees payable by paramedics is first set in accordance with section 26A of the Law, the Secretary of the Ministry of Health may instead set the amount.

## **Part 9 Provisions consequent on enactment of *Health Legislation Amendment Act (No 2) 2018* [NSW]**

### **39 Appeal against reprimand by Council [NSW]**

Section 159 (1) (a1) of this Law extends to a reprimand given before the commencement of that paragraph even if the reprimand was not given by way of an

order.

#### **40 Tribunal's powers on appeal [NSW]**

Section 159C (1) of this Law, as substituted by the *Health Legislation Amendment Act (No 2) 2018*, extends to an appeal that has been made but not finally disposed of before that substitution.

#### **41 Effect of suspension [NSW]**

Section 176D of this Law, as substituted by the *Health Legislation Amendment Act (No 2) 2018*, extends to a suspension that was imposed before that substitution.

### **Part 10 Provision consequent on enactment of *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018***

#### **42 Sexual touching and sexual act include former acts of indecency**

The reference in paragraph (b) of the definition of **sex or violence offence** in section 138 (1) to sexual touching or sexual acts is taken, in a reference to an offence committed before the amendment of that definition by the *Criminal Legislation Amendment (Child Sexual Abuse) Act 2018*, to include a reference to acts of indecency.

### **Part 11 Provision consequent on enactment of *Health Legislation (Miscellaneous) Amendment Act (No 2) 2022***

#### **43 Notice of appeal**

The amendment made to this Law, section 161(a) by the *Health Legislation (Miscellaneous) Amendment Act (No 2) 2022* does not apply to a decision of which notice other than written notice of the reasons for the decision was given before the commencement of the amendment.

### **Schedule 5B Provisions relating to performance assessments [NSW]**

#### **Note—**

This Schedule is an additional New South Wales provision.

### **Part 1 Provisions relating to assessors [NSW]**

#### **1 General [NSW]**

(1) An assessor may exercise the powers conferred by this Part only for the purpose of conducting a performance assessment when required by a Council or a

Performance Review Panel.

- (2) The performance assessment must be conducted in accordance with any directions given by the Council or the Performance Review Panel.
- (3) If the Council or the Panel instructs the assessor to limit the performance assessment to a particular aspect or aspects of the registered health practitioner's professional performance, the assessment must be limited to that aspect or those aspects.
- (4) However, the assessor may assess other aspects of the professional performance of the registered health practitioner if during the course of the performance assessment the assessor forms the opinion that other aspects of the professional performance of the practitioner may be unsatisfactory and should be assessed.

## **2 Entry to premises [NSW]**

- (1) An assessor may at any reasonable time enter and inspect—
  - (a) any premises that the assessor reasonably believes are used by a registered health practitioner in connection with his or her professional practice; and
  - (b) any premises in or on which the assessor reasonably believes records relating to the carrying out of a professional practice by a registered health practitioner are kept.
- (2) An assessor may enter premises only—
  - (a) with the consent of the occupier and the health practitioner to whom the performance assessment relates; or
  - (b) after having given the occupier of the premises, and the health practitioner to whom the performance assessment relates, at least 14 days notice of the assessor's intention to enter the premises.
- (2A) The notice referred to in subclause (2) (b) may be given by the assessor or by another person on behalf of the assessor.
- (3) On premises entered on the basis that they are used by a registered health practitioner in connection with his or her professional practice, an assessor has the following powers—
  - (a) power to examine any equipment that the assessor reasonably believes is, has or may be used in connection with the professional practice;
  - (b) power to take photographs of the premises, or of any equipment on the premises (being equipment that the assessor reasonably believes is, has or



- may be used in connection with the professional practice);
- (c) power to require the production of and inspect any stocks of any substance or drugs in or about those premises;
  - (d) power to require any person on those premises to produce any records in the possession or under the control of that person relating to the carrying out of that professional practice;
  - (e) power to take copies of, or extracts or notes from, the records;
  - (f) power to ask questions of any person on those premises;
  - (g) power to require the owner or occupier of those premises to provide the assessor with the assistance and facilities reasonably necessary to enable the assessor to exercise the functions of an assessor under this clause.
- (4) On premises entered on the basis that records relating to the carrying out of professional practice by a registered health practitioner are kept there, an assessor has the following powers—
- (a) power to require any person on those premises to produce any records in the possession or under the control of that person and relating to the carrying out of that professional practice;
  - (b) power to take copies of, or extracts or notes from, the records.
- (5) This clause does not authorise an assessor to enter any part of premises that is being used for residential purposes except with the consent of the occupier.
- (6) This clause does not authorise an assessor to require a person to answer any question, and a failure or refusal by a person to answer any question does not constitute an offence against clause 5.
- (7) However, a failure or refusal by a registered health practitioner, without reasonable excuse, to answer any question asked by an assessor is evidence that the professional performance of the registered health practitioner is unsatisfactory.

### **3 Power to conduct assessment exercise [NSW]**

- (1) A Council may, by notice given to a registered health practitioner who is the subject of a performance assessment, require the practitioner to take part in an assessment exercise.
- (2) An assessment exercise is an exercise during which the assessor observes and assesses the professional performance of the registered health practitioner.

- (3) If practicable an assessment exercise must be based on an actual clinical situation (that is, an actual consultation or examination or the giving or performance of any other treatment, by a registered health practitioner).
- (4) However, an assessment exercise may be based on a simulated clinical situation (for example, a mock consultation) if an actual clinical situation is not practicable in the circumstances.
- (5) The time and place for, and the length of, the assessment exercise must be reasonable.
- (6) A failure or refusal by a registered health practitioner to take part in, or to continue with, an assessment exercise does not constitute an offence against clause 5.
- (7) However, a failure or refusal by a registered health practitioner, without reasonable excuse, to take part in or to continue with an assessment exercise is evidence that the professional conduct of the registered health practitioner is unsatisfactory.
- (8) This clause does not authorise an assessor to be present during any examination of a person, or at the giving or performance of any other health service or treatment by a registered health practitioner in respect of a person, without the consent of the person.

#### **4 Answers to questions [NSW]**

- (1) Any information furnished by a person in answering a question asked by an assessor for the purposes of a performance assessment is not admissible against the person in civil proceedings before a court except with the consent of the person.
- (2) Subclause (1) does not extend to any information furnished by a person that is a record required to be kept by or under this Law or any other Act.

#### **5 Offences [NSW]**

A person must not—

- (a) prevent an assessor from exercising a function conferred or imposed on the assessor under this Schedule; or
- (b) hinder or obstruct an assessor in the exercise of a function conferred or imposed on the assessor under this Schedule; or
- (c) furnish an assessor with information knowing it to be false or misleading in a material particular.

Maximum penalty—

- (a) for an offence under paragraph (a) or (b)—50 penalty units; or
- (b) for an offence under paragraph (c)—20 penalty units.

## **6 Offence of impersonating assessor [NSW]**

A person must not impersonate or falsely represent that the person is an assessor.

Maximum penalty—50 penalty units.

## **7 Certificates of authority [NSW]**

- (1) An assessor must be provided with a certificate of authority in a form approved by the Council that appointed the assessor.
- (2) An assessor must, on exercising in any place any function of the assessor under this Schedule, produce the assessor's certificate of authority to any person apparently in charge of the place who requests its production.

## **Part 2 Provisions relating to performance reviews [NSW]**

### **8 Conduct of performance review [NSW]**

- (1) A performance review must be conducted in the way decided by the Performance Review Panel.
- (2) The performance review must be conducted—
  - (a) with as little formality and technicality, and as much expedition, as the requirements of this Law and the proper consideration of the matter permit; and
  - (b) in the absence of the public.
- (3) In conducting a performance review a Performance Review Panel is not bound by the rules of evidence but may inform itself on any matter in any way it thinks appropriate.

### **9 Power to summon witnesses and take evidence [NSW]**

- (1) The Chairperson of a Performance Review Panel may summon a person to appear at a performance review and to produce the documents (if any) referred to in the summons.
- (2) The Chairperson of the Panel may require a person appearing at the performance review to produce a document.
- (3) A person served with a summons to appear at a performance review to give

evidence must not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Panel.

Maximum penalty—20 penalty units.

- (4) A person appearing at a performance review to give evidence must not, without reasonable excuse—

- (a) fail to answer a question that the person is required to answer by the Chairperson of the Panel; or
- (b) fail to produce a document that the person is required to produce by this clause.

Maximum penalty—20 penalty units.

## **10 Power to obtain documents [NSW]**

- (1) A member of a Performance Review Panel may, by notice in writing served on a person, require the person—

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Performance Review Panel or a person authorised by the Panel in that behalf; and
- (b) to produce, at that time and place, to the person so specified a document specified in the notice.

- (2) A person who fails, without reasonable excuse, to comply with a notice served on the person under this clause is guilty of an offence.

Maximum penalty—20 penalty units.

## **11 Practitioner entitled to make representations [NSW]**

- (1) A registered health practitioner who is the subject of a performance review is entitled to attend at the performance review and make oral or written representations to the Performance Review Panel with respect to the subject matter of the performance review.
- (2) The registered health practitioner is entitled to be accompanied by an Australian legal practitioner or other adviser, but is not entitled to be represented by the Australian legal practitioner or other adviser.
- (3) This clause does not prevent a Performance Review Panel from conducting a

performance review in the absence of the registered health practitioner, as long as the practitioner has been informed of the performance review.

## **12 Panel may obtain reports [NSW]**

A Performance Review Panel may, for the purpose of conducting a performance review, obtain a report from a person who, in the Panel's opinion, is sufficiently qualified or experienced to give expert advice on the matter that is the subject of the performance review.

## **13 Assessors may assist Panel [NSW]**

- (1) The Council that established a Performance Review Panel may appoint one or more assessors to assist the Panel with the performance review.
- (2) The Panel may direct an assessor—
  - (a) to conduct an assessment of the professional performance of a registered health practitioner, and report on that assessment to the Panel; and
  - (b) to provide the other assistance in connection with the performance review the Panel directs.

## **14 Release of information [NSW]**

- (1) The Chairperson of a Performance Review Panel may, if the Chairperson thinks it appropriate in the particular circumstances of the case (and whether or not on the request of the practitioner concerned or any other person)—
  - (a) direct that the name of any witness is not to be disclosed in the performance review; or
  - (b) direct that all or any of the following matters are not to be published—
    - (i) the name and address of any witness;
    - (ii) the name and address of a registered health practitioner;
    - (iii) any specified evidence;
    - (iv) the subject-matter of the performance review.
- (2) A direction may be amended or revoked at any time by the Chairperson of the Panel.
- (3) A direction may be given before or during a performance review, but must not be given before the performance review unless notice is given of the time and place appointed by the Chairperson of the Panel for consideration of the matter to the following persons—

- (a) a person who requested the direction;
  - (b) the practitioner concerned;
  - (c) another person the person presiding thinks fit.
- (4) A person who contravenes a direction given under this clause is guilty of an offence.

Maximum penalty—

- (a) in the case of a corporation, 150 penalty units; or
- (b) in any other case, 20 penalty units.

## **Schedule 5C Provisions relating to the members and procedure of Councils [NSW]**

**Note—**

This Schedule is an additional New South Wales provision.

### **Part 1**

#### **1-9 (Repealed)**

### **Part 2 Members of Councils [NSW]**

#### **10 President and Deputy President of Council [NSW]**

- (1) Of the members of a Council—
  - (a) one who is registered in the health profession for which the Council is established must be appointed as President of the Council; and
  - (b) one must be appointed as Deputy President of the Council.
- (2) The appointments are to be made in and by the relevant instrument of appointment as a member of the Council, or by another instrument executed by the Governor.
- (3) A person who is the President or Deputy President vacates office as President or Deputy President if the person—
  - (a) is removed from that office by the Governor under subclause (4); or
  - (b) resigns that office by instrument in writing addressed to the Minister; or
  - (c) ceases to be a member.

- (4) The Governor may remove a member from the office of President or Deputy President.

## **11 Acting members and acting President [NSW]**

- (1) The Minister may, from time to time, appoint a person to act in the office of a member of a Council during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be a member.
- (2) The Deputy President may act in the office of President during the illness or absence of the President, and while so acting has and may exercise all the functions of the President and is taken to be the President.
- (3) The Minister may, from time to time, appoint a member to act in the office of President during the illness or absence of both the President and Deputy President, and the member, while so acting, has and may exercise all the functions of the President and is taken to be the President.
- (4) A person is not eligible to be appointed under subclause (1) to act in the office of a member of the Council required to be a registered health practitioner nominated by a particular body unless the person is a member of that body.
- (5) The Minister may remove any person from any office to which the person was appointed under this clause.
- (6) A person while acting in the office of a member is entitled to be paid the remuneration (including travelling and subsistence allowances) decided by the Minister from time to time.
- (7) For the purposes of this clause, a vacancy in the office of a member, the President or the Deputy President is taken to be an absence from office of the member, President or Deputy President.

## **12 Terms of office [NSW]**

- (1) Subject to this Schedule, a member of a Council holds office for the period, not exceeding 3 years, specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person may not hold office as a member of a Council for consecutive terms of office totalling more than 9 years (excluding any period served because of the operation of clause 8 (2) (a) of Schedule 5A).

## **13 Remuneration [NSW]**

- (1) A member of a Council is entitled to be paid the remuneration (including travelling and subsistence allowances) decided by the Minister from time to

time.

- (2) A member of a Council is, while sitting on an inquiry, entitled to be paid at a rate decided by the Minister.
- (3) A Council may pay a member of the Council who performs any service for the Council the amount the Minister considers appropriate.

#### **14 Filling of vacancy in office of member [NSW]**

If the office of any member of a Council becomes vacant, a person must be nominated by the Minister to fill the vacancy.

#### **15 Casual vacancies [NSW]**

- (1) A member of a Council vacates office if the member—
  - (a) dies; or
  - (b) absents himself or herself from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings; or
  - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (d) becomes a mentally incapacitated person; or
  - (e) is convicted in this jurisdiction of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in this jurisdiction of an offence that, if committed in this jurisdiction, would be an offence so punishable; or
  - (f) ceases to have any qualification necessary for his or her appointment as a member, other than the nomination of a particular person or body; or
  - (g) resigns the office by instrument in writing addressed to the Minister; or
  - (h) is removed from office by the Governor under subclause (2) or (3).
- (2) The Governor may remove a member from office.
- (3) Without limiting subclause (2), the Governor may remove from office a member who contravenes the provisions of clause 16.



## **16 Disclosure of financial interests [NSW]**

- (1) A member of a Council who has a direct or indirect financial interest—
  - (a) in a matter that is being considered, or is about to be considered, at a meeting of the Council; or
  - (b) in a thing being done or about to be done by the Council;must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.
- (2) A disclosure by a member at a meeting of a Council that the member—
  - (a) is a member, or is in the employment, of a specified company or other body; or
  - (b) is a partner, or is in the employment, of a specified person; or
  - (c) has some other specified interest relating to a specified company or other body or a specified person;is taken to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.
- (3) A Council must cause particulars of any disclosure made under this clause to be recorded in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of the fee decided by the Council from time to time.
- (4) After a member has, or is taken to have, disclosed the nature of an interest in any matter or thing pursuant to this clause, the member must not, unless the Council otherwise determines—
  - (a) be present during any deliberation of the Council, or take part in any decision of the Council, with respect to that matter; or
  - (b) exercise any functions under this Law with respect to that thing.
- (5) Even if a member contravenes the provisions of this clause, the contravention does not invalidate any decision of the Council or the exercise of any function under this Law.
- (6) This clause does not apply to or in respect of an interest of a member in a matter or thing which arises merely because the member is a registered health practitioner.
- (7) A reference in this clause to a meeting of the Council includes a reference to a

meeting of a committee of the Council.

## **17 Effect of certain other Acts [NSW]**

- (1) Part 4 of the *Government Sector Employment Act 2013* does not apply to or in respect of the appointment of a member of a Council and a member is not, as a member, subject to that Act.
- (2) If by or under any other Act provision is made—
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
  - (b) prohibiting the person from engaging in employment outside the duties of that office;that provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Law as a member.
- (3) The office of a member is not for the purposes of any Act, an office or place of profit under the Crown.

## **Part 3 Procedure of Councils [NSW]**

### **18 General procedure [NSW]**

The procedure for the calling of meetings of a Council and for the conduct of business at those meetings is, subject to this Law, as decided by the Council.

### **19 Quorum [NSW]**

- (1) Except as otherwise provided by this Law, the quorum for a meeting of the Council is the number equal to half of the number of its members or, if half is not a whole number, the next highest whole number.
- (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.

### **20 Presiding member [NSW]**

- (1) The President or, in the absence of the President, the Deputy President or in the absence of both of them, another member of a Council elected to chair the meeting by the members present, must preside at a meeting of the Council.
- (2) The person presiding at any meeting of a Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## 21 Voting [NSW]

A decision supported by a majority of the votes cast at a meeting of a Council at which a quorum is present is the decision of the Council.

## 22 Minutes [NSW]

A Council must cause full and accurate minutes to be kept of the proceedings of each meeting of the Council.

# Schedule 5D Proceedings before Professional Standards Committees or the Tribunal [NSW]

### Note—

This Schedule is an additional New South Wales provision.

## 1 Definition [NSW]

(1) In this Schedule—

**Committee** means a Professional Standards Committee.

(2) A reference in this Schedule (however expressed) to proceedings before the Tribunal is a reference to proceedings before the Tribunal under this Law.

## 2 Proceedings generally [NSW]

In proceedings before it, a Committee or the Tribunal is not bound to observe the rules of law governing the admission of evidence, but may inform itself of any matter in the way it thinks fit.

## 3 Power to summon witnesses and take evidence [NSW]

(1) The Chairperson or Deputy Chairperson of a Committee may summon a person to appear in proceedings before the Committee to give evidence and to produce the documents (if any) referred to in the summons.

### Note—

See sections 46, 47 and 48 of the [Civil and Administrative Tribunal Act 2013](#) concerning the powers of the Tribunal with respect to witnesses and evidence.

(2) The person presiding at the proceedings may require a person appearing in the proceedings to produce a document.

(3) A Committee may, in proceedings before it, take evidence on oath or affirmation and, for that purpose a member of the Committee—

(a) may require a person appearing in the proceedings to give evidence either to take an oath or to make an affirmation in a form approved by the person

presiding; and

- (b) may administer an oath to or take an affirmation from a person so appearing in the proceedings.
- (4) A person served with a summons to appear in proceedings before a Committee and to give evidence must not, without reasonable excuse—
- (a) fail to attend as required by the summons; or
  - (b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Committee.
- (5) A person appearing in proceedings to give evidence must not, without reasonable excuse—
- (a) when required to be sworn or affirm—fail to comply with the requirement; or
  - (b) fail to answer a question that the person is required to answer by the person presiding; or
  - (c) fail to produce a document that the person is required to produce by this clause.

Maximum penalty—20 penalty units.

#### **4 Power to obtain documents [NSW]**

- (1) A member of a Committee or the Tribunal may, by notice in writing served on a person, require the person—
- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Committee or the Tribunal or a person authorised by the Committee or the Tribunal in that behalf; and
  - (b) to produce, at that time and place, to the person so specified a document specified in the notice.
- (2) A person who fails, without reasonable excuse, to comply with a notice served on the person under this clause is guilty of an offence.

Maximum penalty—20 penalty units.

- (3) The power conferred by this clause is in addition to any other power conferred on the Tribunal by the [Civil and Administrative Tribunal Act 2013](#) with respect to the provision of documents.

#### **5 Evidence of other proceedings [NSW]**

- (1) A Committee or the Tribunal may receive and admit on production any of the

following, as evidence in any proceedings—

- (a) the judgment and findings of a court (whether civil or criminal and whether or not of this jurisdiction);
- (b) the verdict or findings of a jury of a court (whether civil or criminal and whether or not of this jurisdiction);
- (c) the judgment and findings of a tribunal (whether or not of this jurisdiction);
- (d) a finding, decision or determination of a Professional Standards Committee established under this Law or a corresponding prior Act;
- (e) a decision of a performance and professional standards panel established under the Health Practitioner Regulation National Law;
- (f) a certificate of the conviction of or the making of a criminal finding in respect of any person;
- (g) a transcript of the depositions or of shorthand notes, duly certified by the Registrar or clerk of the court or tribunal as correct, of the evidence of witnesses taken in a court or tribunal referred to in paragraphs (a)–(c);

where the Committee or the Tribunal is of the opinion that the judgment, findings, verdict, certificate, decision, determination or evidence is relevant to the proceedings.

- (1A) A Committee or the Tribunal may receive and admit on production, as evidence in any proceedings, a thing seized under the authority of a search warrant where the Committee or Tribunal is of the opinion that the thing seized is relevant to the proceedings.
- (2) If the Committee or the Tribunal is of the opinion that evidence admitted under subclause (1) or (1A) is capable of establishing that a registered health practitioner has engaged in conduct that is sufficiently similar to the conduct alleged against the practitioner in the proceedings, it may rely on the evidence in—
  - (a) making a finding that a registered health practitioner is guilty of unsatisfactory professional conduct or professional misconduct; or
  - (b) exercising any of its powers under Subdivision 3 or 6 of Division 3 of Part 8.
- (3) The power conferred by this clause is in addition to any other power conferred on the Tribunal by the *Civil and Administrative Tribunal Act 2013* with respect to the use of evidence.

## **6 Additional complaints [NSW]**

- (1) A Committee or the Tribunal may in proceedings before it deal with one or more complaints about a registered health practitioner or student.
- (2) If, during the proceedings, it appears to the Committee or the Tribunal that, having regard to any matters that have arisen, another complaint could have been made against the practitioner or student concerned—
  - (a) whether instead of or in addition to the complaint which was made; and
  - (b) whether or not by the same complainant;the Committee or the Tribunal may take that other complaint to have been referred to it and may deal with it in the same proceedings.
- (3) In proceedings in which a Committee or the Tribunal is dealing with more than one complaint about a registered health practitioner or student, the Committee or the Tribunal may have regard to all the evidence before it (whether the evidence arose in relation to a complaint in respect of which the Committee or the Tribunal is making a finding or any other complaint or complaints in the proceedings) when making any of the following findings—
  - (a) a finding on a question of fact in relation to the conduct of a registered health practitioner or student;
  - (b) a finding that a registered health practitioner is guilty of unsatisfactory professional conduct or professional misconduct.
- (4) If another complaint is taken to have been referred to a Committee or the Tribunal under subclause (2), the complaint may be dealt with after such an adjournment (if any) as is, in the Committee's or Tribunal's opinion, just and equitable in the circumstances.

## **7 Release of information [NSW]**

- (1) The person presiding in proceedings before a Committee or the Tribunal may, if the person presiding thinks it appropriate in the particular circumstances of the case (and whether or not on the request of a complainant, the registered health practitioner or student concerned or any other person)—
  - (a) direct that the name of any witness is not to be disclosed in the proceedings;  
or
  - (b) direct that all or any of the following matters are not to be published—
    - (i) the name and address of any witness;
    - (ii) the name and address of a complainant;

- (iii) the name and address of a registered health practitioner or student;
  - (iv) any specified evidence;
  - (v) the subject-matter of a complaint.
- (2) A direction may be amended or revoked at any time by the person presiding.
- (3) A direction may be given before or during proceedings, but must not be given before the proceedings unless notice is given of the time and place appointed by the person presiding for consideration of the matter to—
- (a) a person who requested the direction; and
  - (b) the complainant or the registered health practitioner or student concerned, as appropriate; and
  - (c) another person the person presiding thinks fit.
- (4) For the purposes of this clause, a reference to the name of any person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.
- (5) A person who contravenes a direction given under this clause is guilty of an offence.
- Maximum penalty—
- (a) in the case of a corporation, 150 penalty units; or
  - (b) in any other case, 20 penalty units.

## **8 Authentication of documents by Committee [NSW]**

Every document requiring authentication by a Committee may be sufficiently authenticated if signed by the Chairperson of that Committee or by a member of that Committee.

### **Note—**

See section 87 (Authentication of documents) of the [Civil and Administrative Tribunal Act 2013](#) in relation to the Tribunal.

## **9 Nominal complainant [NSW]**

- (1) In any proceedings before a Committee or the Tribunal, a person appointed by the Commission—
- (a) may act as nominal complainant in place of the actual complainant; and
  - (b) when so acting, is, for the purposes of this Law and the NSW regulations, to be taken to be the person who made the complaint.

- (2) A reference in this Law to a complainant includes a reference to a nominal complainant.

### **10 Intervention by Secretary and Commission [NSW]**

Without limiting the operation of clause 9, the Secretary personally (or a person employed in the Ministry of Health appointed by the Secretary) or a person appointed by the Commission may intervene, and has a right to be heard, in any proceedings before a Committee or the Tribunal.

### **11 Expedition of inquiries and appeals [NSW]**

- (1) It is the duty of a Committee or the Tribunal to hear inquiries and appeals under this Law and to determine those inquiries and appeals expeditiously.
- (2) Without limiting subclause (1)—
- (a) an inquiry or appeal related to action taken by the Council under section 150 must be listed for hearing by a Committee or the Tribunal as soon as practicable; and
  - (b) a Committee or the Tribunal may postpone or adjourn proceedings before it as it thinks fit.

### **12 Certain complaints may not be heard [NSW]**

- (1) A Committee or the Tribunal may decide not to conduct an inquiry, or at any time to terminate an inquiry or appeal, if—
- (a) any of the following circumstances apply—
    - (i) a complainant fails to comply with a requirement made of the complainant by the Committee or the Tribunal;
    - (ii) the person about whom the complaint is made ceases to be a registered health practitioner or student;
    - (iii) the complaint before the Committee or the Tribunal is withdrawn; and
  - (b) in the opinion of the Committee or the Tribunal it is not in the public interest for the inquiry or appeal to continue.
- (2) A Committee or the Tribunal must not conduct or continue any inquiry or any appeal if the registered health practitioner or student concerned dies.
- (3) The power conferred on a Committee or the Tribunal by this clause may be exercised by the Chairperson of the Committee or the member of the Tribunal presiding and, if exercised by the Chairperson or member, is taken to have been exercised by the Committee or the Tribunal.



### **13 Tribunal may award costs [NSW]**

- (1) The Tribunal may order the complainant (if any), the registered health practitioner or student concerned, or any other person entitled to appear (whether as of right or because leave to appear has been granted) at an inquiry or appeal before the Tribunal to pay costs to another person as decided by the Tribunal.
- (2) When an order for costs has taken effect, the Tribunal is, on application by the person to whom the costs have been awarded, to issue a certificate setting out the terms of the order and stating that the order has taken effect.
- (3) The person in whose favour costs are awarded may file the certificate in the District Court, together with an affidavit by the person as to the amount of the costs unpaid, and the Registrar of the District Court must enter judgment for the amount unpaid together with any fees paid for filing the certificate.
- (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.
- (4) This clause applies instead of section 60 (Costs) of the [Civil and Administrative Tribunal Act 2013](#).

## **Schedule 5E Provisions relating to Assessment Committee [NSW]**

### **Note—**

This Schedule is an additional New South Wales provision.

## **Part 1 Preliminary [NSW]**

### **1 Definition [NSW]**

In this Schedule—

**Committee** means an Assessment Committee.

## **Part 2 Members [NSW]**

### **2 Chairperson of Committee [NSW]**

One of the members referred to in section 172B(1)(a) must be appointed by the Council as the Chairperson of the Committee.

### **3 Term of office [NSW]**

Subject to this Schedule, a member of a Committee holds office for the period, not exceeding 4 years, specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

### **4 Remuneration [NSW]**

A member of a Committee is entitled to be paid the remuneration (including travelling and subsistence allowances) decided by the Minister from time to time.

### **5 Filling of vacancy in office of member [NSW]**

If the office of any member of a Committee becomes vacant, a person is, subject to this Law, to be appointed to fill the vacancy.

### **6 Casual vacancies [NSW]**

- (1) A member of a Committee is taken to have vacated office if the member—
- (a) dies; or
  - (b) absents himself or herself from 4 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for being absent from those meetings; or
  - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (d) becomes a mentally incapacitated person; or
  - (e) is convicted in this jurisdiction of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in this jurisdiction of an offence that, if committed in this jurisdiction, would be an offence so punishable; or
  - (f) resigns the office by instrument in writing addressed to the Council; or
  - (g) is removed from office by the Council under subclause (3).
- (2) Without limiting subclause (1), a member who is appointed under section 172B(1)(a) and who ceases to be a registered health practitioner is taken to have vacated office.
- (3) The Council may remove a member from office.

## Part 3 Procedure of the Committee [NSW]

### 7 General procedure [NSW]

The procedure for the calling of meetings of a Committee and for the conduct of business at those meetings is, subject to this Law, to be as decided by the Committee.

### 8 Quorum [NSW]

The quorum for a meeting of a Committee is 3 members.

### 9 Voting [NSW]

A decision supported by a majority of the votes cast at a meeting of a Committee at which a quorum is present is the decision of the Committee.

### 10 Presiding member [NSW]

- (1) The Chairperson of a Committee or, in the absence of the Chairperson, another member of the Committee elected to chair the meeting by the members present, presides at a meeting of the Committee.
- (2) The person presiding at any meeting of a Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## Schedule 5F Pharmacies [NSW]

### Note—

This Schedule is an additional New South Wales provision.

## Part 1 Preliminary [NSW]

### 1 Definitions [NSW]

In this Schedule—

**approved premises** means premises approved under clause 12.

**associated professional services room**, in relation to a pharmacy business, means a professional services room specified as being associated with the pharmacy business in an approval in force under clause 3.

**Council** means the Pharmacy Council of New South Wales.

**exempted body corporate** means a body corporate that carries on, or has a financial interest in, a pharmacy business under clause 7.

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

**firm** means a partnership or other unincorporated association of persons.

**holding company** has the same meaning as it has in the [Corporations Act 2001](#) of the Commonwealth.

**listed corporation** has the same meaning as it has in the [Corporations Act 2001](#) of the Commonwealth.

**pharmacists' body corporate** means a body corporate all the shareholders and directors of which are pharmacists.

**pharmacists' partnership** means a partnership consisting only of pharmacists.

**pharmacy** means premises in or on which a person carries on a pharmacy business and includes—

- (a) the portion (if any) of the premises in or on which the person sells or offers for sale goods of any kind; and
- (b) a professional services room;

but does not include premises located in a public hospital controlled by a public health organisation (within the meaning of the [Health Services Act 1997](#)).

**pharmacy business** means the business of a pharmacist or pharmaceutical chemist in which the dispensing and compounding of prescriptions for any substance specified in the Poisons List proclaimed under section 8 of the [Poisons and Therapeutic Goods Act 1966](#) occurs.

**Price Information Code of Practice** means the *Price Information Code of Practice* published by the Therapeutic Goods Administration of the Commonwealth, as in force on 25 February 2008.

**professional services room** means premises in or on which a person carries on a pharmacy business that involves only—

- (a) the preparation and packaging of drugs, or the packaging of drugs, by or under the personal supervision of a pharmacist, for supply to individual patients or to a health care facility for supply to patients or residents of that facility; and
- (b) the storage of those drugs.

**public hospital** has the meaning given by the [Health Services Act 1997](#).

**Register of Pharmacies** means the Register of Pharmacies kept by the Council under clause 14.

**security interest**, in respect of a pharmacy business, means a mortgage, bill of sale or charge over, or other arrangement of a kind prescribed by the NSW regulations in respect of, a pharmacy business, that secures the payment of a debt or performance of some other obligation under a contract or other legally enforceable arrangement.

## 2 Meaning of “financial interest” [NSW]

- (1) A **financial interest** means a direct or indirect monetary or financial interest and includes—
- (a) a proprietary interest, including a proprietary interest as a sole proprietor, partner, director, member or shareholder, or trustee or beneficiary; and
  - (b) an interest, whether proprietary or otherwise, in a pharmacy business that a person has because the person is a member or shareholder of—
    - (i) an exempted body corporate; or
    - (ii) a holding company, whether a listed corporation or not, of an exempted body corporate that is not a listed corporation; and
  - (c) an interest, whether proprietary or otherwise, in a pharmacy business that a person has because the person is a trustee or beneficiary of a trust, the trust property of which includes shares in—
    - (i) an exempted body corporate; or
    - (ii) a holding company, whether a listed corporation or not, of an exempted body corporate that is not a listed corporation; and
  - (d) an interest, whether proprietary or otherwise, in a pharmacy business that a person has because the person is a trustee or beneficiary of a trust, being a trust the trustees of which, in their capacity as the trustees of that trust, carry on or have a financial interest in the business.
- (2) However, a **financial interest** does not include—
- (a) an interest in a pharmacy business that a person has because the person is—
    - (i) a member of a friendly or other society that has a financial interest in a pharmacy business permitted by clause 6; or
    - (ii) a member of a listed corporation that is an exempted body corporate; or
  - (b) an interest in a pharmacy business that a person has because the person is a member of an exempted body corporate (other than a listed corporation referred to in subclause (1)(b)(ii)), but only if the person was a member of

the body corporate before the commencement of Schedule 7.12 to the *Pharmacy Practice Act 2006*; or

- (c) an interest a person has in the profits of a pharmacy business because the person is an employee employed in that business, other than an interest constituted by legal or beneficial ownership of shares or other securities of a body corporate (issued as part of an employee share scheme or otherwise); or
- (d) an interest that is prescribed by the NSW regulations as not constituting a financial interest for the purposes of this Schedule.

## **Part 2 Control of pharmacies [NSW]**

### **3 Pharmacies to be approved and holders of financial interests registered [NSW]**

- (1) A person must not carry on a pharmacy business unless—
  - (a) the premises on which the pharmacy business is carried on are the subject of a current approval of the Council; and
  - (b) all holders of a financial interest in the pharmacy business are registered in the Register of Pharmacies.

Maximum penalty—50 penalty units.

- (2) Despite subclause (1)(b), a person who has lodged an application under clause 12(1)(b) may carry on the pharmacy business to which the application relates until the Council decides the application if—
  - (a) the premises at which the business is carried on are the subject of a current approval of the Council; and
  - (b) a holder of a financial interest in the business who is not the subject of the application is registered in the Register of Pharmacies.
- (3) To avoid doubt, any failure to register a financial interest that is a security interest with respect to a pharmacy business does not—
  - (a) affect the validity, priority or enforceability of the security interest or of the agreement or other arrangement providing for the security interest; or
  - (b) otherwise limit the effect of the security interest or the agreement or other arrangement providing for the security interest.

### **4 Notification of financial interests in pharmacy businesses [NSW]**

- (1) A person who intends to acquire a financial interest in a pharmacy business

(other than an interest referred to in clause 5(4)) must, at least 14 days before acquiring the interest, give written notice to the Council of the following matters—

- (a) the nature of the interest and the date on which it is intended to be acquired;
- (b) the basis on which the person is entitled to hold the interest under this Schedule (for example, as a pharmacist, a pharmacists' body corporate or a friendly or other society);
- (c) a copy of any bill of sale in relation to the acquisition;
- (d) a copy of any sale agreement for the business;
- (e) a copy of any partnership agreement for the business;
- (f) a copy of any lease for the pharmacy;
- (g) a copy of any agreement under which any other person has a financial interest in the business;
- (h) a copy of any agreement, between persons who have financial interests in the business, that makes provision for any rights the persons possess because of having the financial interests;
- (i) a copy of any agreement for the provision of management services to the business or to any pharmacists' body corporate that owns an interest in the business;
- (j) a copy of any agreement (except a contract of employment) between any person who has a financial interest in the business and any entity in respect of the provision of accounting, information technology, human resources or other support services to the business;
- (k) if a pharmacists' body corporate or a pharmacist is acting as a trustee (whether of a fixed trust, unit trust, discretionary trust or other kind of trust), a copy of any relevant trust deed;
- (l) a copy of any security interest in respect of the business.

Maximum penalty—50 penalty units.

- (2) A person who acquires a financial interest in a pharmacy business as referred to in clause 5(4) must, within 28 days after acquiring the interest, give written notice to the Council of that fact, the nature of the interest concerned and the date on which it was acquired.

Maximum penalty—50 penalty units.

- (3) A person who ceases to have a financial interest in a pharmacy business must, within 14 days after doing so, give written notice to the Council of that fact and the nature of the interest concerned.

Maximum penalty—50 penalty units.

- (4) The NSW regulations may prescribe additional matters to be included in a notice under this clause.

## **5 Restrictions on who may have financial interest in pharmacy business [NSW]**

- (1) A person must not own or otherwise have a financial interest in a pharmacy business (including as a partner or member of a firm) unless as one of the following—

- (a) a pharmacist;
- (b) a partner in a pharmacists' partnership;
- (c) a pharmacists' body corporate or a member of a pharmacists' body corporate.

Maximum penalty—100 penalty units.

- (2) Subclause (1) does not prevent a person from having a financial interest in a pharmacy business—

- (a) if the person—
  - (i) comes into possession of the business or any assets of the business as a result of a default on an obligation secured by a security interest; and
  - (ii) does not have the financial interest for more than 6 months (or the longer period specified by the Council by written notice given to the person) from the date the person comes into possession of the pharmacy business or assets; or
- (b) if the person has the interest for a period of not more than 6 months (or the longer period specified by the Council by written notice given to the person) and the person has the interest because the person—
  - (i) is the executor, administrator or trustee of the estate of a deceased person who carried on the pharmacy business on the day of his or her death; or
  - (ii) is appointed or authorised under the laws relating to bankruptcy to



administer the property of the person who carried on a pharmacy business and who has become bankrupt; or

(c) if the person—

- (i) is a pharmacist whose registration is cancelled or suspended; and
- (ii) owned or otherwise had a financial interest in a pharmacy business immediately before the cancellation or suspension took effect; and
- (iii) does not have the financial interest for a period of more than 6 months immediately following the day on which the cancellation or suspension took effect; or

(d) in circumstances prescribed by the NSW regulations.

(3) Despite subclause (2)(b) and (c), a person may have a financial interest in a pharmacy business under those paragraphs only if the business is in the charge of a pharmacist who personally supervises the carrying on of that business.

(4) A person who has a financial interest in a pharmacy business under subclause (2)(c) must not, during the period during which the person holds the interest, enter or be in premises in which that business is carried on unless the person—

- (a) has the Council's consent; and
- (b) complies with any conditions imposed by the Council in giving its consent.

(5) The Council may, at any time—

- (a) vary or revoke a consent; or
- (b) vary or revoke a condition imposed on a consent.

(6) A person who holds provisional, limited or non-practising registration in the pharmacy profession is taken not to be a pharmacist for the purposes of subclause (1) during the period of that registration.

**Note—**

Clauses 6 and 7 provide for the exemption from subclause (1) of friendly and other societies and certain bodies corporate, respectively, in the circumstances set out in those clauses.

## **6 Exemption for friendly societies [NSW]**

(1) Clause 5 does not prevent a friendly society from owning or otherwise having a financial interest in a pharmacy business in accordance with a written approval given by the Minister.

(2) An approval must not be given unless—

- (a) the Minister is satisfied the net profits arising from the operation of the pharmacy business will be applied solely to the provision of benefits (other than benefits in the form of dividends or shares) to members of the friendly society; and
  - (b) the Minister is satisfied the operation of the pharmacy business is justified in the interests of members of the friendly society or of members of the public, or both; and
  - (c) the friendly society has nominated a pharmacist to be responsible for—
    - (i) ensuring there is displayed at or near the main entrance of each premises in which the business is carried on the owner's name; and
    - (ii) ensuring drug price information displayed in premises in which the business is carried on does not contravene the Price Information Code of Practice.
- (3) The Minister may—
- (a) give an approval unconditionally or subject to conditions; or
  - (b) at any time, vary or revoke an approval.
- (4) The Minister must revoke an approval given to a friendly society if the Minister is satisfied.
- (a) the net profits arising from the operation of the pharmacy business will no longer be applied solely to the provision of benefits to members of the friendly society in accordance with subclause (2)(a); or
  - (b) there is no longer a pharmacist nominated as being responsible for the matters specified in subclause (2)(c).
- (5) Clause 5 does not prevent a friendly or other society that was, immediately before the repeal of section 27A(1) of the *Pharmacy Act 1964*, lawfully carrying on a pharmacy business under that provision, from owning or otherwise having a financial interest in a pharmacy business.
- (6) An approval granted to a friendly or other society under section 27A(2) of the *Pharmacy Act 1964* and in force immediately before the repeal of that Act is taken to be an approval granted to the friendly society or other society (as if it were a friendly society), and in force, under subclause (1).
- (7) Subclause (4) does not apply in relation to a society referred to in subclause (6) that, immediately before the repeal of section 27A of the *Pharmacy Act 1964*, no longer satisfied the criteria referred to in section 27A(3)(a) of that Act.

- (8) A friendly or other society to which subclause (1), (5) or (6) applies must not own or otherwise have a financial interest in more than 6 pharmacy businesses.
- Maximum penalty—100 penalty units.
- (9) A pharmacy business and an associated professional services room are counted as one pharmacy business for the purposes of subclause (8).

## **7 Exemption for certain bodies corporate [NSW]**

- (1) Clause 5 does not prevent an existing body corporate from continuing to carry on a pharmacy business or continuing to have a financial interest in a pharmacy business in accordance with—
- (a) clause 21 of the *Pharmacy (General) Regulation 1998* as in force immediately before its repeal; and
- (b) subclause (2).
- (2) The existing body corporate must nominate a pharmacist to be responsible for—
- (a) ensuring there is displayed at or near the main entrance of each premises in which the business is carried on the owner's name; and
- (b) ensuring drug price information displayed in premises in which the business is carried on does not contravene the Price Information Code of Practice.
- (3) In this clause—

**existing body corporate** means a body corporate that, immediately before the repeal of the *Pharmacy (General) Regulation 1998*, lawfully carried on a pharmacy business or had a financial interest in a pharmacy business under clause 21 of that Regulation.

### **Note—**

The definition of **financial interest** in clause 2 operates to prohibit a person (other than a pharmacist, a partner in a pharmacists' partnership or a pharmacists' body corporate or a member of a pharmacists' body corporate) from having a financial interest (including as a shareholder) in a body corporate to which this clause applies (other than a listed corporation). That prohibition, however, does not apply where the person was a member of the body corporate before the commencement of Schedule 7.12 to the *Pharmacy Practice Act 2006*.

## **7A Exemption for State Vaccine Centres [NSW]**

- (1) The Secretary of the Ministry of Health may, by notice published in the Gazette, exempt a State Vaccine Centre from some or all of the provisions of this Schedule for the period specified in the notice.
- (2) An exemption granted under this clause is subject to any conditions specified in

the notice published in the Gazette.

(3) The Secretary must not grant an exemption under this clause unless the Secretary is satisfied that it is in the public interest to do so.

(4) In this clause—

**State Vaccine Centre** means premises designated by the Secretary of the Ministry of Health for the storage and distribution of vaccines or medicines, or both.

## **8 Indicating a corporation or firm to be a pharmacy business [NSW]**

(1) A corporation must not indicate it is a pharmacy business unless it is—

- (a) a pharmacists' body corporate that carries on a pharmacy business; or
- (b) a friendly or other society that has a financial interest in a pharmacy business permitted by clause 6 and that carries on that business; or
- (c) an exempted body corporate that carries on a pharmacy business.

Maximum penalty—50 penalty units.

(2) A person must not indicate a corporation is a pharmacy business if the person knows, or ought reasonably to know, an indication by the corporation itself would be a contravention of subclause (1).

Maximum penalty—50 penalty units.

(3) A partner or member of a firm must not indicate the firm is a pharmacy business unless the firm is a pharmacists' partnership that carries on a pharmacy business.

Maximum penalty—50 penalty units.

(4) This clause does not apply to a person who has a financial interest in a pharmacy business as referred to in clause 5(5), but only in relation to indications made in the course of, and in relation to, carrying on that business.

## **9 Restriction on number of pharmacy businesses in which pharmacists may have a financial interest [NSW]**

(1) A pharmacist must not (whether as an individual or as a partner in a pharmacists' partnership or a member of a body corporate) own or otherwise have a financial interest in more than 5 pharmacy businesses in this jurisdiction.

Maximum penalty—100 penalty units.

(2) A pharmacy business and an associated professional services room are counted

as one pharmacy business for the purposes of subclause (1).

## **10 Certain provisions in certain instruments to be void [NSW]**

- (1) Any of the following provisions in a lease or a licence, or an arrangement that creates a security interest, in respect of a pharmacy business is void—
  - (a) a provision that requires the lessee or the licensee, or the grantor of the security interest (as the case may be), to purchase or otherwise obtain goods or services in connection with the business from the lessor or the licensor, or the grantee of the security interest;
  - (b) a provision that gives to the lessor, the licensor or the grantee power to control the way in which the business is to be carried on (including power to decide whether or not the pharmacy may participate in any public health programs);
  - (c) a provision that gives to the lessor, the licensor or the grantee access to the books of account kept for the business, other than for the purposes of determining whether or not the lessee, the licensee or grantor is complying with the terms and conditions of the lease, licence or arrangement;
  - (d) a provision that provides that the lessor, the licensor or the grantee is to receive consideration that varies according to the profits or takings of the business.
- (2) Subclause (1)(b) does not affect a provision relating to the opening or closing hours of a pharmacy business that is located in a retail shopping centre.

## **11 Pharmacist to be in charge of every pharmacy business [NSW]**

- (1) A pharmacy business carried on in approved premises must be in the charge of a pharmacist who must personally supervise the carrying on of the business.
- (2) If a pharmacy business is carried on in approved premises in contravention of subclause (1), the following persons are guilty of an offence—
  - (a) the owner of the pharmacy business;
  - (b) the pharmacist in charge of the approved premises, if the pharmacist is required under the terms of the pharmacist's employment to be in charge of the approved premises at the time of the contravention.

Maximum penalty—100 penalty units.

- (3) It is a defence in proceedings against an owner for a contravention of subclause (1) if the owner proves to the satisfaction of the court that the owner used all due diligence to prevent the contravention.

- (4) To avoid doubt, during a period in which a pharmacy business carried on in an associated professional services room, and the pharmacy business with which the premises are associated, operate simultaneously, subclause (1) requires each business to be in the charge of a separate pharmacist who must personally supervise the carrying on of each business.
- (5) A person who holds provisional, limited or non-practising registration in the pharmacy profession is taken not to be a pharmacist for the purposes of this clause during the period of that registration.

### **Part 3 Approval of premises and registration of financial interests [NSW]**

#### **12 Application for approval of premises or registration of financial interest [NSW]**

- (1) An application for either of the following may be made to the Executive Officer of the Council—
  - (a) an approval of premises as suitable for carrying on a pharmacy business by a pharmacist;
  - (b) registration of the holder of a financial interest in a pharmacy business.
- (2) An application for an approval of premises must be made—
  - (a) in the form approved by the Council; and
  - (b) by the owner, or one of the owners, of the pharmacy business.
- (3) An application for registration of the holder of a financial interest must be made—
  - (a) in the form approved by the Council; and
  - (b) by the following person—
    - (i) the owner, or one of the owners, of the pharmacy business;
    - (ii) if required to be made during any period in which a person referred to in clause 5(4)(a) or (b) assumes the administration of the pharmacy business, that person;
    - (iii) if required to be made during a period in which a person assumes the administration of the pharmacy business under a security interest granted in respect of the pharmacy business, that person.
- (4) A person who is the owner of a pharmacy business to be carried on in a

professional services room may apply for approval of the premises only if—

- (a) the person is the owner of a pharmacy business that is carried on in approved premises other than a professional services room; and
  - (b) in the application, the person nominates the pharmacy business (or, if the owner of more than one such pharmacy business, nominates one of the businesses) as the business with which the professional services room is associated.
- (5) The application must be accompanied by the fee prescribed by the NSW regulations.
- (6) The Council may require the application to be verified by a statutory declaration.
- (7) The Council may decide to—
- (a) refuse the application; or
  - (b) approve the premises or register the holder of the financial interest.
- (8) The Council must not approve premises—
- (a) that fail to comply with a standard prescribed for the premises by the NSW regulations; or
  - (b) that are within or partly within, or adjacent or connected to, a supermarket and that the public can directly access from within the premises of the supermarket.
- (9) The NSW regulations may prescribe standards for the purposes of subclause (8)(a) only for or with respect to the safe and competent delivery of pharmacy services.
- (10) The Council may revoke an approval of premises if—
- (a) the premises do not comply with a standard prescribed for the premises by the NSW regulations; or
  - (b) the premises become premises of a type described in subclause (8)(b); or
  - (c) the Council becomes aware the premises are no longer being used for the purposes of carrying on a pharmacy business.
- (11) In this clause—
- supermarket** means any retail store, or market, selling food and other domestic goods, whether or not by self-service operation and regardless of size, but does not include a retail store or market—

- (a) commonly known as a department store; or
- (b) in which food or produce is sold only in a cafe, coffee shop, restaurant or other prepared food or beverage counter.

### **13 Appeals against refusal to approve pharmacy or to register holder of financial interest [NSW]**

- (1) A person aggrieved by any of the following decisions of the Council may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of the decision—
  - (a) a decision relating to an application for the approval of premises;
  - (b) a decision relating to an application for the approval of the registration of the holder of a financial interest;
  - (c) a decision to revoke an approval of premises.
- (2) For the purposes of a review, an application for an approval or for registration that has not been dealt with by the Council is taken to have been refused on—
  - (a) the day that is one month after the application was lodged; or
  - (b) if a later day was decided by the Council and notified to the applicant before the day referred to in paragraph (a), that day.

### **14 Council to keep register [NSW]**

- (1) The Council must keep a register (a **Register of Pharmacies**) containing particulars of—
  - (a) approved premises; and
  - (b) registered holders of financial interests.
- (2) The Register of Pharmacies must be kept in the form decided by the Council.
- (3) The Register of Pharmacies must be available for inspection—
  - (a) at the office of the Council at all reasonable times; and
  - (b) in the other ways (for example, by Internet access) and at the times decided by the Council.
- (4) The Council may charge a fee for an inspection of the Register of Pharmacies, not exceeding the amount prescribed by the NSW regulations.
- (5) The Council may make the alterations and additions to the Register of Pharmacies that are necessary to ensure the information recorded in the



Register is accurate.

## **Part 4 Declarations and information [NSW]**

### **15 Annual declaration to be submitted [NSW]**

- (1) A person who holds a financial interest in a pharmacy business must, on or before the declaration date in each year, give to the Council, in the form approved by the Council, a declaration for the declaration period specifying the following information—
  - (a) the nature of the interest;
  - (b) the basis on which the person is entitled to hold the interest under this Law (for example, as a pharmacist, a member of a pharmacists' body corporate, a friendly or other society under clause 6 or a body corporate under clause 7);
  - (c) the number of pharmacy businesses in which the person has a financial interest;
  - (d) in relation to each pharmacy business the person owns, a description of the policies or systems in place to ensure safe and competent delivery of pharmacy services;
  - (e) any other information prescribed by the NSW regulations.

Maximum penalty—20 penalty units.

- (1A) The declaration must be accompanied by the fee prescribed by the NSW regulations.
- (2) The Council may require the declaration to be verified by statutory declaration.
- (3) In this clause—

***declaration date*** means a date notified to pharmacy owners by the Council in writing at least one month in advance.

***declaration period*** means the period of 12 months ending 2 months before the declaration date.

### **16 Direction to supply information about financial interests [NSW]**

- (1) The Council may, by written notice given to a person, require the person to give the Council, within the time specified in the notice, specified information or a specified document relating to a financial interest the person has in a pharmacy business.

(2) The person must not—

- (a) fail or refuse to comply with the notice to the extent the person is capable of complying with it; or
- (b) in purported compliance with the notice, knowingly give information or produce a document that is false or misleading.

Maximum penalty—50 penalty units.