

2005

**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

HEALTH LEGISLATION AMENDMENT BILL 2005

EXPLANATORY STATEMENT

Circulated by authority of

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Minister for Health

EXPLANATORY STATEMENT

Outline

The *Health Legislation Amendment Bill 2005* contains amendments to:

- a) relocate the current abortion provisions of the *Medical Practitioners Act 1930* to the *Health Act 1993*; and
- b) repeal the *Medical Services (Fees) Act 1984*; and
- c) amend the *Health Professionals Act 2004* to:
 - (i) Allow for the establishment of midwifery as a separate health profession to nursing;
 - (ii) Extend the commencement date of the *Act* from 8 July 2005 to 8 July 2006;
 - (iii) Remove subsection 22(4) and subsection 37(7);
 - (iv) Make permanent in legislation changes originally made via the *Health Professionals Amendment Regulation 2004 (No1)*; and
 - (v) Allow veterinary surgeons to be included under the *Health Professionals Act 2004*.

Revenue/Cost Implications

There is no additional cost involved with the Bill

Part 1 - Preliminary

Clause 1 – Name of Act – states the title of the Act, which is the *Health Legislation Amendment Act*.

Clause 2 – Commencement – states when the Act commences. The Act will commence on the day after its notification day.

Clause 3 – Legislation amended – pt 2 – states that this part amends the legislation mentioned in schedule 1.

Clause 4 – Legislation repealed –provides that this Act repeals the *Medical Services (Fees) Act 1984* A1984-7.

Schedule 1 Amendments

Part 1.1 – Health Professionals Act 2004

Item 1.1 – Section 2(2) – substitutes a new subsection to specify that if the Act has not already commenced before the 9 July 2006 it will commence on that day.

Item 1.2 – Section 15(3) – substitutes a new subsection to specify that in relation to a health professional who is a veterinary surgeon, a health service is a service provided to an animal (the service user) for any of the purposes mentioned in subsection (1) (a) or (b). This amendment allows the health services provided by veterinary surgeons to animals to be covered by the Act.

Item 1.3 – Section 22(4) – omits this subsection to allow greater flexibility in accessing the provisions of the profession specific schedules in line with the *Legislation Act 2001*.

Item 1.4 – Section 26(3) – this amendment makes it clear that a health profession board does not have the power to suspend or cancel a health professional's registration. In the current provision, the board was obliged to apply to the health professions tribunal for the suspension or cancellation. The amendment now gives the board a discretion to make that application. The amendment makes permanent a temporary modification made in the *Health Professionals Regulation 2004*, by the *Health Professionals Amendment Regulation 2004 (No 1)*.

Item 1.5 – Section 37(5)(c) – this amendment extends the power to make regulations to prescribing when the registration of a health professional can be suspended, as well as cancelled. The amendment makes permanent a temporary modification made in the *Health Professionals Regulation 2004*, by the *Health Professionals Amendment Regulation 2004 (No 1)*.

Item 1.6 – Section 37(7) – omits this subsection to allow greater flexibility in accessing the provisions of the profession specific schedules in line with the *Legislation Act 2001*.

Item 1.7 – Section 40(2)(c) – this amendment adds paragraph (d), including in the health professions tribunal's functions the function of hearing applications to suspend or cancel the registration of health professionals. The amendment makes permanent a temporary modification made in the *Health Professionals Regulation 2004*, by the *Health Professionals Amendment Regulation 2004 (No 1)*.

Item 1.8 – Section 48 – substitutes a new section which states who may be a party to an application to suspend or cancel the registration of a health professional. The amendment is consequential on another amendment giving the tribunal the function of hearing applications to suspend or cancel a health professional's registration. The amendment makes permanent a temporary modification made in the *Health Professionals Regulation 2004*, by the *Health Professionals Amendment Regulation 2004 (No 1)*.

Item 1.9 – New Section 49A – inserts a new section setting out the criteria that the health professions tribunal must consider in deciding an application to suspend or cancel a health professional's registration. The amendment makes permanent a temporary modification made in the *Health Professionals Regulation 2004*, by the *Health Professionals Amendment Regulation 2004 (No 1)*.

Item 1.10 – Section 84(2)(e) and (3) – omits the word 'period' and replaces it with the words 'maximum period' to make it clear that the period within which a health professional may make representations is the maximum period within which the representations may be made. The amendment makes permanent a temporary modification made in the *Health Professionals Regulation 2004*, by the *Health Professionals Amendment Regulation 2004 (No 1)*.

Item 1.11 – Section 86(3)(b) – substitutes a new subsection for consistency with section 86 (3) which sets out the action a health professions board can take in relation to a report, complaint or application for review of a condition on registration. This amendment is consequential on another amendment that requires a board to apply to the health professions tribunal to suspend or cancel a health professional's registration. The amendment makes permanent a temporary modification made in the *Health Professionals Regulation 2004*, by the *Health Professionals Amendment Regulation 2004 (No 1)*.

Item 1.12 – Section 122(2)(i) – substitutes a new subsection to replace the current section 122 (2) (i) which provides for a professional standards panel to refer a report, complaint, or application for a condition review, along with a standards inquiry report, to the health professions tribunal. This amendment requires a referral by the professional standards panel to be made to the health profession board with a recommendation that the board apply to the tribunal for the suspension or cancellation of the health professional's registration. The amendment makes permanent a temporary modification made in the *Health Professionals Regulation 2004*, by the *Health Professionals Amendment Regulation 2004 (No 1)*.

Item 1.13 – Section 122(3) – substitutes a new subsection consequential on the amendment of section 122(2)(i) by another amendment. The amendment makes permanent a temporary modification made in the *Health Professionals Regulation 2004*, by the *Health Professionals Amendment Regulation 2004 (No 1)*.

Item 1.14 – Section 136(1)(l) – substitutes a new subsection to allow for the *Veterinary Surgeons Act 1965* to be included in the transitional provisions of the *Health Professionals Act 2004*.

Item 1.15 – Section 136(2) – amends this subsection to include paragraph m consequential on the previous amendment to allow for the *Veterinary Surgeons Act 1965* to be included in the transitional provisions of the *Health Professionals Act 2004*.

Item 1.16 – Section 137(1) – substitutes a new subsection to make it clear that health professionals registered under Acts repealed by the *Health Professionals Act 2004* are also covered by that Act. The amendment makes permanent a temporary modification made in the *Health Professionals Regulation 2004*, by the *Health Professionals Amendment Regulation 2004 (No 1)*.

Item 1.17 – New section 137(3) – inserts a new subsection to make it clear that midwifery is a health profession that was regulated under the *Nurses Act 1988*. This amendment allows midwifery to be established as a separate health profession to nursing.

Item 1.18 – Section 139(1) – substitutes a new subsection to make it clear that the registration of a health professional, who was registered under an Act repealed by the *Health Professionals Act 2004* immediately before the Act was repealed, and whose registration was subject to a condition under the repealed Act, will also be subject to a condition under the *Health Professionals Act 2004*. The amendment makes permanent a temporary modification made in the *Health Professionals Regulation 2004*, by the *Health Professionals Amendment Regulation 2004 (No 1)*.

Item 1.19 – New sections 150A to 150D – inserts new sections 150A to 150D so that sections 150A and 150B make it clear that health professionals registered under Acts repealed by the *Health Professionals Act 2004* will be covered by that Act even if they were not registered immediately before the Acts were repealed. Section 150C provides that any action taken by a health profession board pursuant to an existing inquiry will not be required to be done again. Section 150D ensures that the medical board election and any future health profession board elections are valid. The amendment makes permanent a temporary modification made in the *Health Professionals Regulation 2004*, by the *Health Professionals Amendment Regulation 2004 (No 1)*.

Item 1.20 – Dictionary, new definition of public – inserts a new definition of public to include health services provided to animals by veterinary surgeons.

Part 1.2 – Health Professionals Legislation Amendment Act 2004

Item 1.21 – Section 2(1), table 2, item 11 – adds the new schedule 11A dealing with Veterinary Surgeons to the commencement provision and to make the commencement provisions consistent with the section 136 transitional provisions of the *Health Professionals Act 2004*.

Item 1.22 – Section 2(1), note, paragraph (l) – adds the *Veterinary Surgeons Act 1965* to the drafters note dealing with section 136 of the *Health Professionals Act 2004*.

Item 1.23 – Schedule 1, amendment 1.18, new section 3, definition of election, note – amends the drafters note to include *Veterinary Surgeons Act 1965*.

Item 1.24 – Schedule 1, amendment 1.19, new section 3, definition of prescribed Act, note – amends the drafters note to include *Veterinary Surgeons Act 1965*.

Item 1.25 – Schedule 1, amendment 1.20, new section 3, definition of register, note – amends the drafters note to include *Veterinary Surgeons Act 1965*.

Item 1.26 – Schedule 1, amendment 1.21, new section 3, definition of registered practitioner, note – amends the drafters note to include *Veterinary Surgeons Act 1965*.

Item 1.27 – Schedule 1, amendment 1.23, new section 8(3), note – amends the drafters note to include *Veterinary Surgeons Act 1965*.

Item 1.28 – Schedule 1, amendment 1.25, new section 3, definition of board, note – amends the drafters note to include *Veterinary Surgeons Act 1965*.

Item 1.29 – Schedule 1, amendment 1.26, new section 3, definition of proceeding, note – amends the drafters note to include *Veterinary Surgeons Act 1965*.

Item 1.30 – Schedule 1, amendment 1.27, new section 11(4), note – amends the drafters note to include *Veterinary Surgeons Act 1965*.

Item 1.31 – Schedule 1, amendment 1.33, new section 15, definition of Health Professionals Act, paragraph (b) (ix) – amends the definition of *Health Professionals Act* to include *Veterinary Surgeons Act 1965*.

Item 1.32 – Schedule 5, part 5.11 – omits this schedule on account of the inclusion of veterinary surgeons under the *Health Professionals Act 2004*.

Item 1.33 – New schedule 11A – inserts a new schedule 11A covering the consequential amendments in respect of veterinary surgeons including amendments to the *Legislation Act 2001* the *Drugs of Dependence Act 1989* and the *Pharmacy Act 1931* to make the definitions of veterinary surgeons consistent with their inclusion under the *Health Professionals Act 2004*. The new schedule also expressly repeals all notifiable instruments and disallowable instruments that relate to the *Veterinary Surgeons Act 1965*.

Item 1.34 – Schedule 12, part 12.1 – omits this schedule on account of the inclusion of veterinary surgeons under the *Health Professionals Act 2004*.

Part 1.3 – Health Professionals Regulation 2004

Item 1.35 – Section 2(3) – omits the date 8 July 2005 and substitutes the date 9 July 2006 to make the commencement consistent with the commencement of the *Health Professionals Act 2004*.

Item 1.36 – Section 158 – omits this section which was the enabling section for schedule 15. That schedule made temporary modifications to the *Health Professionals Act 2004*. These temporary modifications are made permanent by other amendments.

Item 1.37 – Schedule 15 – omits this schedule which provided temporary modifications made to the *Health Professionals Act 2004*. These temporary modifications are made permanent by other amendments to the *Health Professionals Act 2004*.

Part 1.4 - Medical Practitioners Act 1930

Item 1.38 – Section 55A heading – omits pt 4B and substitutes pt 5B

Item 1.39 – Section 55B heading – omits registered medical practitioner and substitutes doctor. This is consistent with the terminology used in the new health professional's legislation.

Item 1.40 – Section 55B – omits registered medical practitioner and substitutes doctor. This is consistent with the terminology used in the new health professional's legislation.

Item 1.41 – Section 55C – omits section 55D(1) and substitutes section 30D(1).

Item 1.42 – Part 4B (as amended) – relocates this part to the *Health Act 1993* as part 5A (section 30A to section 30E).