



Australian Capital Territory

# Health Professionals Amendment Regulation 2004 (No 1)

**Subordinate Law SL2004-52**

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The Australian Capital Territory Executive makes the following regulation under the *Health Professionals Act 2004*.

Dated 17 November 2004.

SIMON CORBELL  
Minister

KATY GALLAGHER  
Minister

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# Health Professionals Amendment Regulation 2004 (No 1)

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made under the

**Health Professionals Act 2004**

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**1 Name of regulation**

This regulation is the *Health Professionals Amendment Regulation 2004 (No 1)*.

**2 Commencement**

This regulation commences on 18 November 2004.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

**3 Legislation amended**

This regulation amends the *Health Professionals Regulations 2004*.

**4 Regulations 1 and 2**

*substitute*

**1 Name of regulation**

This regulation is the *Health Professionals Regulation 2004*.

**2 Commencement**

- (1) Chapter 1, chapter 2, chapter 6 and the dictionary commence on 18 November 2004.
- (2) The remaining provisions (including, for example, schedule 1 and schedule 2) commence on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

- (3) If a provision of this regulation does not commence before 8 July 2005, it automatically commences on that day.

- (4) The Legislation Act, section 79 (1) (Automatic commencement of postponed law) does not apply to this regulation.

**5 New regulation 11 (4)**

*insert*

- (4) Subsection (1) does not apply if the health profession board is suspended.

**6 Division 2.3.1 heading, new note**

*insert*

*Note to div 2.3.1*

For first elections under this part or elections if a health profession board is suspended, see div 2.3.1A.

**7 Regulation 24 (7)**

*omit*

for

*substitute*

in relation to

**8 Regulation 25**

*omit*

**9 New regulation 26 (3)**

*insert*

- (3) A failure to comply with this section in relation to an election does not invalidate the election.

**10 Regulation 34 (2) (b) and (c)**

*substitute*

- (b) tell the board president of the health profession board about the election of each person elected; and
- (c) if fewer candidates are nominated for election than are required to be elected—tell the board president the number of candidates required to be elected who were not elected.

**11 New division 2.3.1A**

*insert*

**Division 2.3.1A Application of ch 2 to first elections and suspended boards****52A Application of ch 2 to first election for professions previously unregulated under the Act**

- (1) This section applies if a regulation (the *amending regulation*) amending schedule 1 to establish a health profession has been made and notified but has not commenced.
- (2) Appointments may be made to the health profession board under part 2.2, and elections may be conducted for members of the board under part 2.2 and part 2.3, as if the amending regulation had commenced.
- (3) Without limiting subsection (2)—
  - (a) anything may be done for the purpose of making an appointment or conducting an election; and
  - (b) a successful candidate for election may be declared elected.

- (4) For subsection (2), chapter 2 (Health profession boards) applies to the making of an appointment, or the conduct of an election, as if—
  - (a) a person who would be registered in the health profession if the amending regulation had commenced were registered in the health profession; and
  - (b) the words ‘, from the community representative list,’ were omitted from section 10 (3) (Appointment of board members); and
  - (c) section 11 (1) (Consultation about appointment to board) were omitted; and
  - (d) section 12 (Community representatives) were omitted; and
  - (e) the words ‘the board president and’ were omitted from section 35 (1) (If no candidates); and
  - (f) a reference in chapter 2 to the *board president* were a reference to the Minister; and
  - (g) any other necessary changes were made.
- (5) Without limiting subsection (4), anything that may or must be done under chapter 2 by or in relation to the board president may or must be done by or in relation to the Minister.
- (6) This section is additional to the Legislation Act, section 81 (Exercise of powers between notification and commencement).
- (7) However, if the health profession is regulated under a repealed Act, subsection (4) (c) applies in relation to the health profession board for the profession as if it read as follows:
  - ‘(c) the reference in section 11 (1) (Consultation about appointment to board) to the health profession board is taken to be a reference to the board established under the repealed Act that regulates the profession under that Act;’.



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- (8) Also, if the health profession is regulated under a repealed Act, an election under part 2.3 to the health profession board for that profession is not invalid only because a person registered, or taken to be registered, as a member of the profession when the election is held is not registered as a member of the profession when the schedule that establishes the board commences.
- (9) In this section:
- repealed Act* means an Act, other than the *Medical Practitioners Act 1930*, mentioned in the Act, section 136 (Repeals).
- (10) This section does not apply in relation to medical practitioners.
- Note* See s 52B.
- (11) Subsections (7) to (10) and this subsection expire on 8 July 2006.

**52B Application of ch 2 to first election of medical board under Act**

- (1) This section applies to the ACT Medical Board (the *medical board*).
- (2) Appointments may be made to the medical board under part 2.2, and elections may be conducted for members of the medical board under part 2.2 and part 2.3, as if schedule 1 and schedule 2 had commenced.
- (3) Without limiting subsection (2)—
- (a) anything may be done for the purpose of making an appointment or conducting an election; and
- (b) a successful candidate for election may be declared elected.
- (4) For subsection (2), chapter 2 (Health profession boards) applies to the making of an appointment, or the conduct of an election, as if—
- (a) a person who would be registered in the medical profession if schedule 1 and schedule 2 had commenced were registered in the medical profession; and

- (b) the words ‘, from the community representative list,’ were omitted from section 10 (3) (Appointment of board members); and
  - (c) the reference in section 11 (1) (Consultation about appointment to board) to the health profession board is taken to be a reference to the medical board established under the *Medical Practitioners Act 1930*; and
  - (d) section 12 (Community representatives) were omitted; and
  - (e) the words ‘the board president and’ were omitted from section 35 (1); and
  - (f) a reference in chapter 2 to the **board president** were a reference to the Minister; and
  - (g) any other necessary changes were made.
- (5) Without limiting subsection (4), anything that may or must be done under chapter 2 by or in relation to the board president may or must be done by or in relation to the Minister.
- (6) Anything done, or purported to have been done, under this regulation before the commencement of this section has effect after that commencement as if this section (and every other provision of this regulation) had been in force when the thing was done.
- (7) To remove any doubt, a failure to comply with section 26 (3) (List of health professionals) in relation to an election for the medical board, whether held before the commencement of this section or otherwise, does not invalidate the election.
- (8) An election under part 2.3 to the medical board is not invalid only because a person registered, or taken to be registered, as a medical practitioner when the election is held is not registered as a medical practitioner when schedule 2 commences.

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- (9) This section is additional to the Legislation Act, section 81 (Exercise of powers between notification and commencement).
- (10) This section expires on 8 July 2005.

**52C Application of ch 2 to elections if board suspended**

- (1) This section applies if the health profession board for a health profession is suspended.
- (2) Chapter 2 applies to the conduct of an election as if—
- (a) the words ‘the board president and’ were omitted from section 35 (1) (If no candidates); and
  - (b) a reference in chapter 2 to the *board president*, in relation to the suspended board, were a reference to the Minister; and
  - (c) any other necessary changes were made.
- (3) Without limiting subsection (2), anything that may or must be done under chapter 2 by or in relation to the health profession board president may or must be done by or in relation to the Minister.

**12 Part 2.3**

*renumber divisions when Act next republished under the Legislation Act*

**13 New section 158**

*insert*

**158 Modifications of Act, pt 15—Act, s 152**

- (1) The Act is modified by schedule 15.
- (2) This section, and schedule 15, expire on 18 November 2006.

**14 Further amendments, mentions of *president***

*omit*

president

*substitute*

board president

in

- regulation 35 (1)
- regulation 48 (1) (b)
- regulation 54 (2)
- regulation 55 (1) and (4)
- regulation 57 (2)
- regulation 58 (3) (b)
- regulation 59 (1) (b) and (4) (b)
- regulation 70 (b)
- regulation 78 (4) (c)
- regulation 86 (a)

**15 New schedule 15**

*insert*

**Schedule 15 Modifications of Act**

(see s 158)

**[1.1] Section 137 (1)**

*substitute*

- (1) This section applies to a health profession regulated under a repealed Act.

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**[1.2] Section 139 (1)**

*substitute*

- (1) This section applies if a person was registered under a repealed Act immediately before its repeal and the registration was subject to a condition.

**[1.3] New sections 150A to 150J**

*insert*

**150A People previously registered under repealed Act**

A reference in section 77 (Meaning of *registered health professional* for div 9.2) to a person who was registered at the time of an act or omission includes a reference to a person who was registered under a repealed Act at that time, whether or not the person is, or has at any time been, registered under this Act.

**150B People previously registered under Act or repealed Act**

In this Act:

*registered health professional*, in relation to a report under division 9.2 or a complaint, includes a person who was registered under this Act or a repealed Act at the time of the act or omission reported or complained about.

**150C Existing inquiries**

To remove any doubt, in an inquiry to which section 140 applies, anything done by a board in relation to a person registered at any time by the board, as part of an inquiry or otherwise, may, but need not, be done again under this Act by the health profession board that regulates a profession in relation to which the board was established.

**150D Application of s 26 (3)**

Section 26 (3) applies to a health profession board that wants to suspend or cancel a health professional's registration before 8 July 2006 as if it read as follows:

- (3) If a health profession wants a health professional's registration suspended or cancelled, the board cannot suspend or cancel the registration itself, but may apply to the health professions tribunal for suspension or cancellation.'

**150E Application of s 37 (5) (c)**

Section 37 (5) (c) applies to regulations made before 8 July 2006 as if it read as follows:

- (c) when (in addition to the circumstances already prescribed under this Act) a health profession may apply for the suspension or cancellation of registration; and'

**150F Application of s 84 (2) (e) and s 84 (3)**

- (1) This section applies to a notice under section 84 (2) given before 8 July 2006.
- (2) Section 84 (2) (e) applies in relation to the notice as if the word 'maximum' were inserted before the word 'period'.
- (3) Section 84 (3) applies in relation to the notice as if the word 'maximum' were inserted before the word 'period'.

**150G Application of s 86 (3) (b)**

- (1) This section applies to a matter to which part 10 (Joint consideration with commissioner) applies if the matter is considered before 8 July 2006.

(2) Section 86 (3) (b) applies to the matter as if it read as follows:

‘(b) apply to the tribunal for the suspension or cancellation of the registration of the health professional to whom the matter relates;’.

**150H Application of s 122 (2) (i) and s 122 (3)**

(1) This section applies if, before 8 July 2006, a professional standards panel is satisfied that a health professional has done something mentioned in section 122 (1).

(2) The professional standards panel may take action under section 122 (2) (i) as if it read as follows:

‘(i) refer the report, complaint, or application for a condition review, to the health profession board with—

(i) a recommendation that an application be made to the health profession tribunal for the suspension or cancellation of the health professional’s registration; and

(ii) the standards inquiry report on which the recommendation is based; and’.

(3) Section 122 (3) does not apply if the professional standards panel acts under section 122 (2) (i) as modified by subsection (2).

**150I Applications to health professions tribunal**

(1) This section applies to an application for the suspension or cancellation of the health professional’s registration made before 8 July 2006.

(2) For this Act, an application by a health profession board to the health professions tribunal for the suspension or cancellation of the health professional’s registration is to be dealt with by the tribunal, as far as practicable, in the same way as an application for review under part 7.

- (3) To remove any doubt, the parties to the application are the health profession board making the application, the health professional to whom the application relates and, with the tribunal's leave, anyone else.
- (4) In deciding whether to suspend or cancel the registration, the health professions tribunal must consider whether—
  - (a) the health professional has contravened a standard of practice that applied to the health professional; or
  - (b) the health professional is putting, or has put, public safety at risk.

**150J Appointment and election of health profession board members before Act fully commenced**

- (1) This section applies to any of the following powers under this Act that are to be, or have been, exercised in relation to a health profession board:
  - (a) a power to make an appointment to the board;
  - (b) a power to make a statutory instrument for the purposes of the board;
  - (c) a power to do anything in relation to the conduct of an election for members of the board.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).
- (2) To remove any doubt, the Legislation Act, section 81 (Exercise of powers between notification and commencement) is taken to apply, or is taken to have applied, to the exercise of the power even if—
  - (a) the power was exercised before the commencement of this section; or
  - (b) the power is exercised before this Act has fully commenced.



- (3) For the exercise of the power, this Act is taken to have fully commenced at the time of the exercise of the power.
- (4) Anything done, or purported to have been done, under this Act before the commencement of this section has effect after that commencement as if this section (and every other provision of this Act) had been in force when the thing was done.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (5) Subsection (4) is additional to subsections (2) and (3).
- (6) This section is additional to the Legislation Act, section 81.

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## Endnotes

### **1 Notification**

Notified under the Legislation Act on 17 November 2004.

### **2 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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