

Australian Capital Territory

HEALTH LEGISLATION AMENDMENT BILL 2006 (No 2)

Explanatory Statement

Circulated with the authority of
Katy Gallagher MLA
Minister for Health

EXPLANATORY STATEMENT

Outline

The *Health Legislation Amendment Bill 2006(No 2)* has been developed to provide for the following three unrelated matters:

- a) Consequential amendments arising from the transfer of health professional registration legislation to the *Health Professionals Act 2004*;
- b) Amendments to health legislation for the purposes of consistency with the *Human Rights Act 2004*; and
- c) Other minor health portfolio amendments that are not suitable for a separate Bill or for inclusion in the Statute Law Amendment Bill (SLAB).

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 2006 (No 2)*.

Clause 2 – Commencement – states when the Act commences. The Act, other than schedule 1, commences 28 days after its notification day and schedule 1 will commence on the day after its notification day. In some cases where a special commencement provision has been used the amendment will commence on the date specified in the brackets.

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

Clause 4 – Legislation repealed – provides that this Act repeals the *Sexually Transmitted Diseases Act 1956 A1956-9* and the *Tuberculosis Act 1950 A1950-6*.

Schedule 1 Health Professionals Act 2004

Item 1.1 – Section 14 – substitutes a new section to clarify that the listed health professionals are health professionals for the purposes of the Act.

Item 1.2 – Section 17(2) – inserts a new subsection to remove any doubt that a person registered in a specialist area of a health profession is also a registered health professional for the purposes of the Act.

Item 1.3 – Section 23(c) – substitutes a new subsection to include the term specialist rather than specialty for consistency of language with other provisions in the Act.

Item 1.4 – Section 39A – substitutes a new definitions section for the purposes of Part 7 so as to include a definition for non presidential member as well as the existing definition of presidential member.

Item 1.5 – Section 40A(c) – substitutes a new subsection consequential on the amendments to be made to section 42 below relating to the composition of the health professions tribunal.

Item 1.6 – Section 42 and 43 – substitutes three new provisions to determine the composition of the health profession tribunal. The health profession tribunal can now be constituted by the presidential member sitting alone or the presidential member plus two non presidential members chosen by the presidential member from the health professions representative list provided for in section 43. These changes were necessary to overcome any allegation of bias raised against the tribunal in selecting the non presidential members of the Tribunal. In addition section 43A has been inserted to make it clear that the health profession tribunal panel is appointed for the duration of the first application only and while it can consider later applications it does not have to.

Item 1.7 – Section 44A and 44B – inserts two new sections to allow the health profession tribunal to continue to hear an application in the absence of a non presidential member if the presidential member considers it appropriate to do so. This amendment is necessary to allow the Tribunal to continue to hear an application if a non presidential member is unavailable for the panel for any reason.

Item 1.8 – New paragraph 58(2) (ca) – inserts a new subparagraph to allow the presidential member to require a party to undergo medical psychiatric or psychological assessment at the preliminary hearing stage. This assessment is necessary to facilitate the hearing and to ascertain whether the matter complained of is a professional standards problem or a personal health problem. The parties to the proceedings have the right to appear at the preliminary hearing and to make representations regarding this assessment.

Item 1.9 – New Section 59A – inserts a new section allowing the presidential member of the tribunal to issue a warrant to detain a person in order to bring the person before the tribunal. These changes are necessary to ensure the attendance of witnesses at disciplinary proceedings involving health professionals.

Item 1.10 – Section 61(5) – substitutes a longer 6 month period given that in practice the time of three months was manifestly too short a time frame in which to prepare a case for hearing.

Item 1.11 – New Section 62A – inserts a new section to make it clear that when the tribunal is considering an application it may exercise the powers and discretions given by the Act to the board or panel that made the decision as though the decision had not been made.

Item 1.12 – New Section 64(1)(m) – inserts a power to allow the tribunal to require a person to pay the reasonable costs of hearing the application.

Item 1.13 – Section 72(2) (d) – substitutes a new subsection to remove the word pharmaceuticals from the subsection therefore requiring pharmaceuticals provided over the internet to be provided only by registered health professionals.

Item 1.14 – new section 72A – inserts a new section to make it an offence to falsely represent that someone employed or engaged by the health professional is a registered health professional.

Item 1.15 – New section 73A – inserts a new section to make it an offence for a person who employs a health professional to direct that health professional to engage in conduct that would contravene a standard of practice that applies to the health professional.

Item 1.16 – New sections 75A and 75B – inserts two new sections the first retains an existing provision in the Optometrist Act 1956 which maintains the offence of supplying prescription spectacles or contact lenses if you are not a registered Optometrist and the second relates to offences in respect of the standard of drugs that a pharmacist can supply. Both these sections have been moved into the Act because of the restrictions on maximum penalties in subordinate legislation.

Item 1.17 – Section 129(5) – adds the words another territory law or another law applying in the ACT to make it clear that this provision is subject to the *Human Rights Act 2004* and the *Evidence Act (Commonwealth)* that applies in the ACT.

Item 1.18 – New part 13A – inserts a new heading for Part 13A which is necessary for the relocation of part 4A of the Optometrist Act 1956 made in Part 2.12 below.

Item 1.19 – New sections 130A to 130C – inserts new sections 130A to 130C from the *Pharmacy Act 1937* so that these sections are not lost when the Pharmacy Schedule is made later this year. There has also been some modernisation of the language to make it consistent with current drafting standards.

Item 1.20 – New Section 150L – inserts a new section to make permanent a modification made to the *Nurses Act 1988* before it was repealed to remove from the legislation register four notices of disciplinary proceedings involving action taken against nurses in the ACT.

Item 1.21 – New Section 151 – inserts a new section to provide a power for the making of transitional regulations.

Item 1.22 –Section 153 – substitutes a new expiry date of 9 January 2009 for Part 15 which covers the transitional provisions. Extending the date of expiry of these transitional provisions is necessary to ensure that health professionals registered under the current registration Acts continue to be registered under the new profession specific schedules.

Item 1.23 – Dictionary, new definition of deals with – inserts a new definition of deals with consequent on the changes made to section 44 above.

Item 1.24 – Dictionary, new definition of health professions representative list – inserts a new definition of health professions representative list referred to in sections 42 and 43 above.

Schedule 2 Other Amendments

Part 2.1 – Cemeteries and Crematoria Regulation 2003

Item 2.1 – Section 9(1) (b) – adds midwife into the subsection consequent on the separation of the midwifery profession from nursing.

Part 2.2 – Children and Young People Act 1999

Item 2.2 – Section 159(1) (c) – adds midwife into the subsection consequent on the separation of the midwifery profession from nursing and adds enrolled nurse specifically to avoid reliance on the drafting device whereby registered nurse includes enrolled nurse.

Item 2.3 – Dictionary, note 2, new dot points – inserts new dot points consequent on the change to section 159 above.

Part 2.3 – Crimes Act 1900

Item 2.4 – Section 76(2) – redrafts this section to add midwife consequent on the separation of the midwifery profession from the nursing profession.

Item 2.5 – Dictionary, note 2, new dot points – inserts new dot points consequent on the change to section 76 above.

Part 2.4 – Drugs of Dependence Act 1989

Item 2.6 – Section 3(1), note – substitutes two drafters notes explaining that the *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

Item 2.7 – Section 3(1), definitions of enrolled nurse and nurse – these terms are omitted as they are defined in the *Legislation Act 2001* as advised in the above drafters notes.

Item 2.8 – Section 43(1)(b) – redrafts this section to add midwife consequent on the separation of the midwifery profession from the nursing profession.

Item 2.9 – Section 61(2)(b) (ii) – redrafts this section to add midwife consequent on the separation of the midwifery profession from the nursing profession.

Item 2.10 – Section 61(3), (4) and (5) and Section 84(2) – redrafts this section to add midwife consequent on the separation of the midwifery profession from the nursing profession.

Item 2.11 – Section 86(1) – redrafts this section to add midwife consequent on the separation of the midwifery profession from the nursing profession.

Item 2.12 – Section 120(4)(a) (i) – redrafts this section to add midwife consequent on the separation of the midwifery profession from the nursing profession.

Item 2.13 – Section 160(1), definition of exempt person, paragraph (c) (i) and (ii) – redrafts this section to add midwife consequent on the separation of the midwifery profession from the nursing profession.

Item 2.14 – Section 160(1), new definitions – inserts new definitions for student midwife and student nurse consequent on the changes made to section 160 and the definition of exempt person.

Item 2.15 – Section 170(1)(b) – redrafts this section to add midwife consequent on the separation of the midwifery profession from the nursing profession.

Item 2.16 – Section 170(3)(c) – redrafts this section to add midwife consequent on the separation of the midwifery profession from the nursing profession.

Item 2.17 – Section 171(4) (d) – redrafts this section to add midwife consequent on the separation of the midwifery profession from the nursing profession.

Item 2.18 – Section 173(6) (b) – redrafts this section to add midwife consequent on the separation of the midwifery profession from the nursing profession.

Part 2.5 – Firearms Act 1996

Item 2.19 – Section 115 (4), definition of health professional, paragraph (a) – redrafts this section to add midwife consequent on the separation of the midwifery profession from the nursing profession.

Part 2.6 – Food Act 2001

Item 2.20 – Section 145 (2) – adds the words another territory law or another law applying in the ACT to make it clear that this provision is subject to the *Human Rights Act 2004* and the *Evidence Act (Commonwealth)* that applies in the ACT.

Item 2.21 – Section 145 (4) – adds the words another territory law or another law applying in the ACT to make it clear that this provision is subject to the *Human Rights Act 2004* and the *Evidence Act (Commonwealth)* that applies in the ACT.

Part 2.7 – Gene Technology Act 2003

Item 2.22 – Section 172(4) (c) – The period for which a warrant is effective has been reduced from 6 months to 28 days to make this provision consistent with other warrant provisions and to avoid incompatibility with the *Human Rights Act 2004*.

Item 2.23 – New section 194(3A) – inserts a new subsection to make it clear that the Minister is taken to have complied with this section if the Minister presents a copy of a Commonwealth independent review report to the Legislative Assembly not later than five years after the commencement of this Act. This is to avoid the unnecessary duplication of the ACT undertaking its own review of this Act.

Item 2.24 – Section 194(4), new definition of Commonwealth independent review report – inserts a new definition for Commonwealth independent review report consequent on the change made to section 194 above.

Part 2.8 – Health Act 1993

Item 2.25 – New section 250 – inserts a transitional provision to make it abundantly clear that anything done during the prescribed period in a medical facility approved under a prescribed notifiable instrument is taken for all purposes to have been done in a medical facility that had been approved under section 30D(1). This is to overcome the mistaken repeal of these notifiable instruments on the 7 July 2005.

Part 2.9 – Health Records (Privacy and Access) Act 1997

Item 2.26 – Schedule 1, Principle 12 – substitutes a new provision to remove an ambiguity on the face of the provision in regards to the procedure for transferring health records between health service providers and health service practices. The redrafted provision now makes it clear that a consumer may ask for their health record to be transferred and the first provider must transfer the record or a copy of the record and can if they choose to also provide a written summary of that record. These changes were necessary to meet objections that have been raised regarding the administration of these provisions in practice.

Part 2.10 – Juries Act 1967

Item 2.27 – Schedule 2, part 2.2, item 5 – redrafts this provision to add midwife consequent on the separation of the midwifery profession from the nursing profession and to make it consistent with language used elsewhere.

Part 2.11 – Legislation Act 2001

Item 2.28 – Dictionary, part 1, new definitions – inserts new definitions for enrolled nurse and midwife to maintain consistency with the way this term is now used throughout the statute book.

Part 2.12 – Optometrist Act 1956

Item 2.29 – Part 4A, heading – omits the current heading for part 4A in the Optometrist Act 1956 to accommodate the relocation of part 4A to the *Health Professionals Act 2004*. This is necessary to prevent these sections being lost on the transfer of the optometrist health profession to the *Health Professionals Act 2004* later this year.

Item 2.30 – Section 45A heading – substitutes new heading for section 45A in the Optometrist Act 1956 to make it consistent with the relocation of part 4A to the *Health Professionals Act 2004*. This is necessary to prevent these sections being lost on the transfer of the optometrist health profession to the *Health Professionals Act 2004* later this year.

Item 2.31 – Section 45A, definition of ACT requirements – substitutes a new cross reference to ACT requirements to make it consistent with the new location of Part 4A of the Optometrist Act 1956 in the *Health Professionals Act 2004*. This is necessary to prevent these sections being lost on the transfer of the optometrist health profession to the *Health Professionals Act 2004* later this year.

Item 2.32 – Section 45A, new definition of Board – substitutes a new of board to make it consistent with the new location of Part 4A of the Optometrist Act 1956 in the *Health Professionals Act 2004*.

Item 2.33 – Sections 45A to 45E (as amended) – relocates Part 4A of the Optometrist Act 1956 to the *Health Professionals Act 2004* and renumbers the sections to fit with the new location. This is necessary to prevent these sections being lost on the transfer of the optometrist health profession to the *Health Professionals Act 2004* later this year.

Part 2.13 – Physiotherapists Act 1977

Item 2.34 – Section 3(1), definition of nurse – omits this definition as it is now contained in the *Legislation Act 2001*.

Item 2.35 – Section 3(2) – includes the terms enrolled nurse and midwife to be consistent with the way these terms are now used throughout the statute book.

Part 2.14 – Prostitution Act 1992

Item 2.36 – Dictionary, definition of sexually transmitted disease – substitutes this definition into the *Prostitution Act 1992* consequent on the repeal of the *Sexually Transmitted Diseases Act 1956*.

Part 2.15 – Public Health Act 1997

Item 2.37 – Section 76(1) (b) and (c)– substitutes a new subsection to make it clear that entry by inspectors in any other place is only authorised with the occupiers consent or with the issue of a warrant under sections 80 and 81. This amendment which removes the power of inspectors to enter a place used for residential purposes at any reasonable time is necessary to avoid incompatibility with the *Human Rights Act 2004*.

Item 2.38 – New section 100(1A) – provides that the minister must not make a determination under subsection (1) unless the Minister believes on reasonable grounds that the determination is necessary to protect public health. This amendment is necessary to avoid incompatibility with the *Human Rights Act 2004*.

Item 2.39 – Section 101(1) – redrafts this subsection to provide that the chief health officer must not make a declaration under subsection (1) unless the Chief Health Officer believes on reasonable grounds that the determination is necessary to protect public health. This amendment is necessary to avoid incompatibility with the *Human Rights Act 2004*.

Item 2.40 – New section 115A – inserts a new section to provide that where the chief health officer issues a public health direction under section 113 (1) (e) requiring a person who has a transmissible notifiable condition, or a contact of the person, to be confined for a stated period then the chief health officer must review that public health direction within 48 hours. This amendment is necessary to avoid incompatibility with the *Human Rights Act 2004*.

Part 2.16 – Public Health Regulation 2000

Item 2.41 – New section 9(2) (ba) and (bb)– inserts two new subsections covering enrolled nurse and midwife to be consistent with the way these terms are now used throughout the statute book.