



New South Wales

Health Registration Legislation Amendment Bill 2004

Explanatory note

This Bill is cognate with the *Health Legislation Amendment (Complaints) Bill 2004*.

Overview of Bill

The object of this Bill is to amend various Acts which provide for the registration of health professionals:

- (a) to standardise, as far as practicable, the concepts of “professional misconduct” and “unsatisfactory professional conduct” where used in those Acts so that they relate to conduct that demonstrates that the knowledge, skill, judgment or care possessed by the relevant health professional in the practice of their profession is significantly below the standard reasonably expected of such a health professional of an equivalent level of training or experience, and
- (b) to make it clear that when disciplinary proceedings in relation to a complaint are taken under those Acts the complaint may at that stage relate to matters arising out of the investigation of the complaint as originally made, and
- (c) to remove any requirements that complaints under those Acts need to be verified by statutory declaration, and
- (d) as a consequence of the *Health Legislation Amendment (Complaints) Bill 2004*.

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The Bill also amends the *Medical Practice Act 1992* and the *Nurses and Midwives Act 1991* to enable a person to be represented before the relevant Professional Standards Committees by a non-legal adviser and to ensure that members of the New South Wales Medical Board or the Nurses and Midwives Board cannot sit on the relevant Professional Standards Committees.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Acts set out in Schedule 1.

Schedule 1 Amendments to health registration Acts

Amendments to the Chiropractors Act 2001

Schedule 1.1 [1] amends the *Chiropractors Act 2001* to make the amendment referred to above in paragraph (a) of the Overview in relation to the definition of *unsatisfactory professional conduct* in that Act.

Schedule 1.1 [2] amends that Act to make the amendment referred to above in paragraph (b) of the Overview.

Schedule 1.1 [3] amends that Act to make the amendment referred to above in paragraph (c) of the Overview.

Schedule 1.1 [4] and [5] amend that Act as a consequence of the *Health Legislation Amendment (Complaints) Bill 2004*.

Amendments to the Dental Practice Act 2001

Schedule 1.2 [1] and [2] amend the *Dental Practice Act 2001* to make the amendment referred to above in paragraph (a) of the Overview in relation to the definitions of *unsatisfactory professional conduct* in that Act.

Schedule 1.2 [3] amends that Act to make the amendment referred to above in paragraph (b) of the Overview.

Schedule 1.2 [4] amends that Act to make the amendment referred to above in paragraph (c) of the Overview.

Schedule 1.2 [5] and [6] amend that Act as a consequence of the *Health Legislation Amendment (Complaints) Bill 2004*.

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Amendments to the Medical Practice Act 1992

Schedule 1.3 [1] amends the *Medical Practice Act 1992* to make the amendment referred to above in paragraph (a) of the Overview in relation to the definition of *unsatisfactory professional conduct* in that Act. **Schedule 1.3 [9]** makes consequential amendments.

Schedule 1.3 [2] amends that Act to make the amendment referred to above in paragraph (b) of the Overview.

Schedule 1.3 [3]–[6] amend that Act as a consequence of the *Health Legislation Amendment (Complaints) Bill 2004*.

Schedule 1.3 [7] amends that Act to make the amendment referred to above in paragraph (c) of the Overview.

Schedule 1.3 [8] amends that Act to clarify that when the Coroner refers a transcript of evidence in proceedings because it indicates that a complaint could be made under that Act the Coroner is not to be treated as a complainant.

Schedule 1.3 [10] provides that members of the New South Wales Medical Board cannot sit on the Medical Tribunal.

Schedule 1.3 [11] provides that members of the New South Wales Medical Board cannot sit on a Professional Standards Committee.

Schedule 1.3 [12] and [13] enable a person to be represented before a Professional Standards Committee by a non-legal adviser in certain circumstances.

Schedule 1.3 [14] gives protection to medical reports of the treating doctor that are requested by a person being investigated by an Impairment Registrants Panel.

Schedule 1.3 [15] clarifies the provisions relating to the notification to the employer and others by the New South Wales Medical Board of an order made against or conditions imposed on a practitioner and enables the Board to dispense with the giving of such notifications in exceptional circumstances.

Amendments to the Nurses and Midwives Act 1991

Schedule 1.4 [1] makes a minor amendment by way of statute law revision.

Schedule 1.4 [2] amends the *Nurses and Midwives Act 1991* to make the amendment referred to above in paragraph (a) of the Overview in relation to the definition of *unsatisfactory professional conduct* in that Act.

Schedule 1.4 [3] amends that Act to make the amendment referred to above in paragraph (b) of the Overview.

Schedule 1.4 [4] amends that Act to make the amendment referred to above in paragraph (c) of the Overview.

Schedule 1.4 [5] provides that members of the Nurses and Midwives Board cannot sit on a Professional Standards Committee.

Schedule 1.4 [6] and [7] enable a person to be represented before a Professional Standards Committee by a non-legal adviser in certain circumstances.

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Amendments to the Optometrists Act 2002

Schedule 1.5 [1] amends the *Optometrists Act 2002* to make the amendment referred to above in paragraph (a) of the Overview in relation to the definition of ***unsatisfactory professional conduct*** in that Act.

Schedule 1.5 [2] amends that Act to make the amendment referred to above in paragraph (b) of the Overview.

Schedule 1.5 [3] amends that Act to make the amendment referred to above in paragraph (c) of the Overview.

Schedule 1.5 [4] and [5] amend that Act as a consequence of the *Health Legislation Amendment (Complaints) Bill 2004*.

Amendments to the Osteopaths Act 2001

Schedule 1.6 [1] amends the *Osteopaths Act 2001* to make the amendment referred to above in paragraph (a) of the Overview in relation to the definition of ***unsatisfactory professional conduct*** in that Act.

Schedule 1.6 [2] amends that Act to make the amendment referred to above in paragraph (b) of the Overview.

Schedule 1.6 [3] amends that Act to make the amendment referred to above in paragraph (c) of the Overview.

Schedule 1.6 [4] and [5] amend that Act as a consequence of the *Health Legislation Amendment (Complaints) Bill 2004*.

Amendments to the Pharmacy Act 1964

Schedule 1.7 [1] amends the *Pharmacy Act 1964* to make the amendment referred to above in paragraph (a) of the Overview in relation to the definition of ***professional misconduct*** in that Act.

Schedule 1.7 [2] amends that Act to make the amendment referred to above in paragraph (b) of the Overview.

Amendments to the Physiotherapists Act 2001

Schedule 1.8 [1] amends the *Physiotherapists Act 2001* to make the amendment referred to above in paragraph (a) of the Overview in relation to the definition of ***unsatisfactory professional conduct*** in that Act.

Schedule 1.8 [2] amends that Act to make the amendment referred to above in paragraph (b) of the Overview.

Schedule 1.8 [3] amends that Act to make the amendment referred to above in paragraph (c) of the Overview.

Schedule 1.8 [4] and [5] amend that Act as a consequence of the *Health Legislation Amendment (Complaints) Bill 2004*.

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Amendments to the Podiatrists Act 1989

Schedule 1.9 [1] amends the *Podiatrists Act 1989* to make the amendment referred to above in paragraph (c) of the Overview.

Schedule 1.9 [2] amends that Act to make the amendment referred to above in paragraph (b) of the Overview.

Amendments to the Podiatrists Act 2003

Schedule 1.10 [1] amends the *Podiatrists Act 2003* to make the amendment referred to above in paragraph (a) of the Overview in relation to the definition of *unsatisfactory professional conduct* in that Act.

Schedule 1.10 [2] amends that Act to make the amendment referred to above in paragraph (b) of the Overview.

Schedule 1.10 [3] amends that Act to make the amendment referred to above in paragraph (c) of the Overview.

Schedule 1.10 [4] and [5] amend that Act as a consequence of the *Health Legislation Amendment (Complaints) Bill 2004*.

Amendments to the Psychologists Act 2001

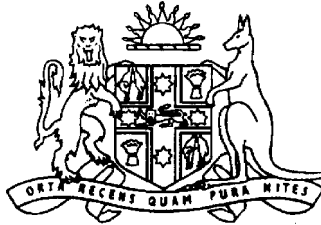
Schedule 1.11 [1] amends the *Psychologists Act 2001* to make the amendment referred to above in paragraph (a) of the Overview in relation to the definition of *unsatisfactory professional conduct* in that Act.

Schedule 1.11 [2] amends that Act to make the amendment referred to above in paragraph (b) of the Overview.

Schedule 1.11 [3] amends that Act to make the amendment referred to above in paragraph (c) of the Overview.

Schedule 1.11 [4] and [5] amend that Act as a consequence of the *Health Legislation Amendment (Complaints) Bill 2004*.

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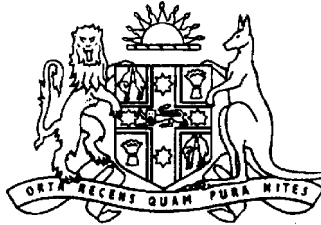
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Health Registration Legislation Amendment Bill 2004

No. , 2004

A Bill for

An Act to amend various Acts relating to the regulation of health professionals in relation to complaints; and for other purposes.

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Clause 1 Health Registration Legislation Amendment Bill 2004

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Health Registration Legislation Amendment Act 2004*.

2 Commencement

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

3 Amendments to health registration Acts

Each Act specified in Schedule 1 is amended as set out in that Schedule.

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Health Registration Legislation Amendment Bill 2004

Amendments to health registration Acts

Schedule 1

Schedule 1 Amendments to health registration Acts

(Section 3)

1.1 Chiropractors Act 2001 No 15

- [1] **Section 25 Meaning of “unsatisfactory professional conduct”** (Special Commission of Inquiry Report, recommendation 1)

Omit section 25 (a). Insert instead:

- (a) any conduct that demonstrates that the knowledge, skill, judgment or care possessed by the chiropractor in the practice of chiropractic is significantly below the standard reasonably expected of a chiropractor of an equivalent level of training or experience,

- [2] **Section 25A**

Insert after section 25:

25A References to “complaint”

In section 36 and Divisions 3, 4 and 5 of this Part and Divisions 1 and 2 of Part 6 (Appeals and review of disciplinary action), a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

- [3] **Section 30 Form of complaint** (Special Commission of Inquiry Report, recommendation 11)

Omit section 30 (2).

- [4] **Section 32 Board to notify person against whom complaint is made**

Omit the section.

- [5] **Section 35 How complaints dealt with**

Omit “for conciliation in accordance with section 13 (2)” from section 35 (1) (b).

Insert instead “to the Commission for conciliation or to be dealt with under Division 9 of Part 2”.

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Schedule 1 Amendments to health registration Acts

1.2 Dental Practice Act 2001 No 64

[1] Section 41 Meaning of “unsatisfactory professional conduct”—dentists
(Special Commission of Inquiry Report, recommendation 1)

Omit section 41 (1) (a). Insert instead:

- (a) any conduct that demonstrates that the knowledge, skill, judgment or care possessed by the dentist in the practice of dentistry is significantly below the standard reasonably expected of a dentist of an equivalent level of training or experience,

[2] Section 42 Meaning of “unsatisfactory professional conduct”—dental auxiliaries

Omit section 42 (a). Insert instead:

- (a) any conduct that demonstrates that the knowledge, skill, judgment or care possessed by the dental auxiliary in the carrying out of dental auxiliary activities is significantly below the standard reasonably expected of a dental auxiliary of an equivalent level of training or experience,

[3] Section 42A

Insert after section 42:

42A References to “complaint”

In section 54, Division 5 of this Part and Divisions 1 and 2 of Part 6 (Appeals and review of disciplinary action), a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

[4] Section 48 Form of complaint (Special Commission of Inquiry Report, recommendation 11)

Omit section 48 (2).

[5] Section 50 Board to notify person against whom complaint is made

Omit the section.

[6] Section 53 How complaints dealt with

Omit “for conciliation in accordance with section 13 (2)” from section 53 (1) (b).

Insert instead “to the Commission for conciliation or to be dealt with under Division 9 of Part 2”.

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Amendments to health registration Acts

Schedule 1

1.3 Medical Practice Act 1992 No 94

- [1] **Section 36 Meaning of “unsatisfactory professional conduct”** (Special Commission of Inquiry Report, recommendation 1)

Omit section 36 (1) (a). Insert instead:

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

Any conduct that demonstrates that the knowledge, skill, judgment or care possessed by the practitioner in the practice of medicine is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

- [2] **Section 38A**

Insert after section 38:

38A References to “complaint”

In Divisions 3 and 4 of this Part and in Divisions 1 and 2 of Part 6 (Appeals and review) a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

- [3] **Section 47 Board to notify person against whom complaint is made of complaint**

Omit the section.

- [4] **Section 50 Courses of action available to Board on a complaint**

Omit section 50 (1) (d). Insert instead:

- (d) the Board 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*,

- [5] **Section 51 Courses of action available to the Commission on a complaint**

Omit “(but may not refer it to an Impaired Registrants Panel or refer the professional performance of the practitioner concerned for assessment under Part 5A)” from section 51 (1) (a).

- [6] **Section 51 (1) (b)**

Omit the paragraph. Insert instead:

- (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*,

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- [7] **Section 53 Complaint cannot be referred without statutory declaration by complainant** (Special Commission of Inquiry Report, recommendation 11)
Omit the section.
- [8] **Section 71 Referral of matters by courts** (Special Commission of Inquiry Report, recommendation 3)
Insert after section 71 (3):
- (4) The Coroner is not the complainant in relation to a complaint that is taken to have been made under subsection (3) and sections 43 (1), 44 and 45 do not apply to such a complaint.
- [9] **Section 86D, 86J (2) (b), 86M (1) (b) and 86N (3) (b)**
Omit “of a significant nature” wherever occurring.
- [10] **Section 147 Tribunal to be constituted to deal with complaints etc**
Omit section 147 (4). Insert instead:
- (4) A person is not to be appointed to sit on the Tribunal if the person is a member of the Board.
- [11] **Section 169 Membership of Committee**
Omit section 169 (3). Insert instead:
- (3) A person who is a member of the Board may not be appointed to sit on a Committee.
- [12] **Section 177 Representation at inquiry**
Insert “, except as provided by subsection (2)” after “other adviser” in section 177 (1).
- [13] **Section 177 (2)**
Omit the subsection. Insert instead:
- (2) An adviser (other than a barrister or solicitor) of a practitioner may address the Committee on behalf of the practitioner.
- [14] **Section 190A Medical reports**
Insert at the end of section 190A (1) (b):
- , or
- (c) a request made by the person to his or her treating practitioner in connection with a matter being dealt with by an Impaired Registrants Panel.

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Schedule 1

[15] Section 191B Notification of orders to practitioner's employer and others

Insert after section 191B (3):

- (4) A reference in this section to the employer of a practitioner:
 - (a) is a reference to the employer at the time of the relevant conduct of the practitioner concerned that gave rise to the order made or conditions imposed by the Board, and
 - (b) includes a reference to any subsequent employer of the practitioner that the Board considers appropriate.
- (5) A reference in this section to a body in respect of which a practitioner is accredited:
 - (a) is a reference to the body in respect of which the practitioner concerned was accredited at the time of the relevant conduct of the practitioner that gave rise to the order made or conditions imposed by the Board, and
 - (b) includes a reference to any body in respect of which the practitioner is subsequently accredited that the Board considers appropriate.
- (6) The Board may, in a particular case, dispense with the giving of notice under this section if the Board considers that the exceptional circumstances of the case warrant that decision.
- (7) In this section, *employer* of a practitioner includes any person who engages the practitioner to perform work (whether or not under a contract of employment).

1.4 Nurses and Midwives Act 1991 No 9

[1] Section 3 Definitions

Omit "person" from the definition of *nurse practitioner* in section 3 (1).

Insert instead "nurse".

[2] Section 4 Meaning of "professional misconduct" and "unsatisfactory professional conduct" (Special Commission of Inquiry Report, recommendations 1 and 2)

Omit section 4 (2) (a). Insert instead:

- (a) any conduct that demonstrates that the knowledge, skill, judgment or care possessed by the nurse or midwife in the practice of nursing or midwifery is significantly below the standard reasonably expected of a nurse or midwife of an equivalent level of training or experience,

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Schedule 1 Amendments to health registration Acts

[3] Section 4C

Insert after section 4B:

4C References to “complaint”

In Part 5 (except section 44), a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

[4] Section 44 Complaints (Special Commission of Inquiry Report, recommendation 11)

Omit section 44 (3) (c).

[5] Section 51 Constitution of Committees

Omit section 51 (3). Insert instead:

- (3) A person who is a member of the Board may not be appointed to sit on a Committee.

[6] Section 53 Representation before a Committee

Insert “(1A) or” after “subsection” in section 53 (1).

[7] Section 53 (1A)

Insert after section 53 (1):

- (1A) An adviser (other than a barrister or solicitor) of a nurse or midwife may address the Committee on behalf of the nurse or midwife.

1.5 Optometrists Act 2002 No 30

[1] Section 29 Meaning of “unsatisfactory professional conduct” (Special Commission of Inquiry Report, recommendation 1)

Omit section 29 (1) (a). Insert instead:

- (a) any conduct that demonstrates that the knowledge, skill, judgment or care possessed by the optometrist in the practice of optometry is significantly below the standard reasonably expected of an optometrist of an equivalent level of training or experience,

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Amendments to health registration Acts

Schedule 1

[2] Section 29A

Insert after section 29:

29A References to “complaint”

In section 40 and Divisions 3 and 5 of this Part and Divisions 1 and 2 of Part 6 (Appeals and review of disciplinary action), a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

[3] Section 34 Form of complaint (Special Commission of Inquiry Report, recommendation 11)

Omit section 34 (2).

[4] Section 36 Board to notify person against whom complaint is made

Omit the section.

[5] Section 39 How complaints dealt with

Omit “for conciliation in accordance with section 13 (2)” from section 39 (1) (b).

Insert instead “to the Commission for conciliation or to be dealt with under Division 9 of Part 2”.

1.6 Osteopaths Act 2001 No 16

[1] Section 25 Meaning of “unsatisfactory professional conduct” (Special Commission of Inquiry Report, recommendation 1)

Omit section 25 (a). Insert instead:

- (a) any conduct that demonstrates that the knowledge, skill, judgment or care possessed by the osteopath in the practice of osteopathy is significantly below the standard reasonably expected of an osteopath of an equivalent level of training or experience,

[2] Section 25A

Insert after section 25:

25A References to “complaint”

In section 36 and Divisions 3 and 5 of this Part and Divisions 1 and 2 of Part 6 (Appeals and review of disciplinary action), a reference to a complaint includes a reference to a matter arising

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Schedule 1 Amendments to health registration Acts

out of the investigation of a complaint in accordance with this or any other Act.

- [3] **Section 30 Form of complaint** (Special Commission of Inquiry Report, recommendation 11)
Omit section 30 (2).
- [4] **Section 32 Board to notify person against whom complaint is made**
Omit the section.
- [5] **Section 35 How complaints dealt with**
Omit “for conciliation in accordance with section 13 (2)” from section 35 (1) (b).
Insert instead “to the Commission for conciliation or to be dealt with under Division 9 of Part 2”.

1.7 Pharmacy Act 1964 No 48

- [1] **Section 19A Definitions** (Special Commission of Inquiry Report, recommendation 1)
Omit paragraph (a) of the definition of *professional misconduct* in section 19A.
Insert instead:
- (a) any conduct that demonstrates that the knowledge, skill, judgment or care possessed by the pharmacist in the practice of pharmacy is significantly below the standard reasonably expected of a pharmacist of an equivalent level of training or experience,
- [2] **Section 20 Consequences of misconduct etc**
Insert after section 20 (4):
- (5) In this section, a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

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Amendments to health registration Acts

Schedule 1

1.8 Physiotherapists Act 2001 No 67

- [1] **Section 26 Meaning of “unsatisfactory professional conduct”** (Special Commission of Inquiry Report, recommendation 1)

Omit section 26 (a). Insert instead:

- (a) any conduct that demonstrates that the knowledge, skill, judgment or care possessed by the physiotherapist in the practice of physiotherapy is significantly below the standard reasonably expected of a physiotherapist of an equivalent level of training or experience,

- [2] **Section 26A**

Insert after section 26:

26A References to “complaint”

In section 37 and Divisions 3 and 5 of this Part and Divisions 1 and 2 of Part 6 (Appeals and review of disciplinary action), a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

- [3] **Section 31 Form of complaint** (Special Commission of Inquiry Report, recommendation 11)

Omit section 31 (2).

- [4] **Section 33 Board to notify person against whom complaint is made**

Omit the section.

- [5] **Section 36 How complaints dealt with**

Omit “for conciliation in accordance with section 13 (2)” from section 36 (1) (b).

Insert instead “to the Commission for conciliation or to be dealt with under Division 9 of Part 2”.

1.9 Podiatrists Act 1989 No 23

- [1] **Section 14 Complaints** (Special Commission of Inquiry Report, recommendation 11)

Omit section 14 (2) (c).

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Health Registration Legislation Amendment Bill 2004

Schedule 1 Amendments to health registration Acts

[2] Section 16 Consequence of misconduct or other wrongdoing

Insert after section 16 (3):

- (4) In this section, *complaint* includes a matter arising out of the investigation of a complaint in accordance with this or any other Act.

1.10 Podiatrists Act 2003 No 69

[1] Section 25 Meaning of “unsatisfactory professional conduct” (Special Commission of Inquiry Report, recommendation 1)

Omit section 25 (a). Insert instead:

- (a) any conduct that demonstrates that the knowledge, skill, judgment or care possessed by the podiatrist in the practice of podiatry is significantly below the standard reasonably expected of a podiatrist of an equivalent level of training or experience,

[2] Section 25A

Insert after section 25:

25A References to “complaint”

In section 36 and Divisions 3 and 5 of this Part and Divisions 1 and 2 of Part 6 (Appeals and review of disciplinary action), a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

[3] Section 30 Form of complaint (Special Commission of Inquiry Report, recommendation 11)

Omit section 30 (2).

[4] Section 32 Board to notify person against whom complaint is made

Omit the section.

[5] Section 35 How complaints dealt with

Omit “for conciliation in accordance with section 13 (2)” from section 35 (1) (b).

Insert instead “to the Commission for conciliation or to be dealt with under Division 9 of Part 2”.

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Health Registration Legislation Amendment Bill 2004

Amendments to health registration Acts

Schedule 1

1.11 Psychologists Act 2001 No 69

- [1] **Section 25 Meaning of “unsatisfactory professional conduct”** (Special Commission of Inquiry Report, recommendation 1)

Omit section 25 (a). Insert instead:

- (a) any conduct that demonstrates that the knowledge, skill, judgment or care possessed by the psychologist in the practice of psychology is significantly below the standard reasonably expected of a psychologist of an equivalent level of training or experience,

- [2] **Section 26A**

Insert after section 26:

26A References to “complaint”

In section 36 and Divisions 3 and 5 of this Part and Divisions 1 and 2 of Part 6 (Appeals and review of disciplinary action), a reference to a complaint includes a reference to a matter arising out of the investigation of a complaint in accordance with this or any other Act.

- [3] **Section 30 Form of complaint** (Special Commission of Inquiry Report, recommendation 11)

Omit section 30 (2).

- [4] **Section 32 Board to notify person against whom complaint is made**

Omit the section.

- [5] **Section 35 How complaints dealt with**

Omit “for conciliation in accordance with section 13 (2)” from section 35 (1) (b).

Insert instead “to the Commission for conciliation or to be dealt with under Division 9 of Part 2”.