



Australian Capital Territory

# Health Legislation Amendment Act 2005

A2005-28

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Australian Capital Territory

# Health Legislation Amendment Act 2005

**A2005-28**

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An Act to amend the law relating to health, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

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2004 144B

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

**1 Name of Act**

This Act is the *Health Legislation Amendment Act 2005*.

**2 Commencement**

This Act commences on the day after its notification day.

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

**3 Legislation amended—sch 1**

This Act amends the legislation mentioned in schedule 1.

**4 Legislation repealed**

The *Medical Services (Fees) Act 1984* A1984-7 is repealed.

## **Schedule 1      Amendments**

(see s 3)

### **Part 1.1                      Health Professionals Act 2004**

#### **[1.1]      Section 2 (2)**

*substitute*

- (2) If this Act has not commenced before 9 July 2006, it automatically commences on that day.

#### **[1.2]      Section 15 (2)**

*substitute*

- (2) For the application of this Act 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).
- (3) Also, a health service includes a service provided by a health professional in the professional's capacity as a health professional.

#### **[1.3]      Section 22 (4)**

*omit*

#### **[1.4]      Section 26 (3)**

*substitute*

- (3) If a health profession board 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.

**[1.5] Section 37 (5) (c)**

*substitute*

- (c) when (in addition to the circumstances already prescribed under this Act) a health profession board may apply for—
- (i) the suspension or cancellation of registration; or
  - (ii) a declaration under section 64 (1) (l) (which is about a person who is not registered); and

**[1.6] Section 37 (6)**

*omit*

subsection (2)

*substitute*

subsection (5)

**[1.7] Section 37 (7)**

*Omit*

**[1.8] New section 39A**

*in division 7.1, insert*

**39A Meaning of *presidential member* for pt 7**

In this part:

***presidential member***, of the health professions tribunal, means—

- (a) the president of the tribunal; or
- (b) a deputy president of the tribunal.

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**[1.9] Section 40 (2) (c)**

*substitute*

- (c) to hear applications for review of decisions of health profession boards and professional standards panels;
- (d) to hear applications from health profession boards to suspend or cancel the registration of health professionals.

**[1.10] Section 41**

*substitute*

**40A Members of health professions tribunal**

The health professions tribunal consists of—

- (a) the president; and
- (b) the deputy presidents; and
- (c) members nominated to a health profession tribunal panel under section 43.

**41 Appointment of presidential members**

- (1) The presidential members of the health professions tribunal are appointed by the Executive.
- (2) An appointment must be for a term of not longer than 5 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def ***appoint***).

- (3) An appointment is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

- (4) A person is eligible to be appointed as the health professions tribunal president only if the person is a magistrate.

- (5) A person is eligible to be appointed as a health professions tribunal deputy president only if the person is a magistrate or lawyer of at least 5 years standing.

**41A Terms of appointment of presidential members generally**

- (1) A presidential member of the health professions tribunal may be appointed as a full-time or part-time member.
- (2) A presidential member of the health professions tribunal holds office on the terms not provided by this Act that are decided by the Executive.
- (3) This section does not apply to a presidential member of the health professions tribunal who is a magistrate.

**41B Matters to be included in instrument of appointment of presidential members**

The instrument appointing a presidential member of the health professions tribunal must state—

- (a) whether the member is the president or a deputy president of the tribunal; and
- (b) if the member is not a magistrate—whether the member is appointed as a full-time or part-time member.

**41C Role of president of tribunal**

- (1) The health professions tribunal president is responsible for ensuring the orderly and prompt discharge of the tribunal's business.
- (2) Without limiting subsection (1), the president may give directions about the presidential member who is to be the presidential member of a particular health professions tribunal panel.

**41D Presiding member**

The presidential member must preside at a proceeding.



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**41E Ending of appointment of presidential members**

- (1) The Executive may end the appointment of a presidential member of the health professions tribunal who is not a magistrate—
  - (a) for misbehaviour; or
  - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions; or
  - (c) if the member becomes bankrupt or executes a personal insolvency agreement.
- (2) The Executive must end the appointment of—
  - (a) a presidential member of the health professions tribunal who is a magistrate if the member stops being a magistrate; or
  - (b) a deputy president of the tribunal who is not a magistrate if—
    - (i) the member stops being eligible for appointment; or
    - (ii) the member is convicted, in the ACT, of an offence punishable by imprisonment for at least 1 year; or
    - (iii) the member is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would have been punishable by imprisonment for at least 1 year.

**[1.11] Section 42 (1)**

*omit*

formed by the health professions tribunal president

*substitute*

made up of a presidential member of the tribunal

**[1.12] Section 43 (2) and (5)**

*omit*

The health professions tribunal president

*substitute*

A presidential member of the health professions tribunal

**[1.13] Section 44**

*omit everything before subsection (1) (a), substitute*

**44 When may presidential member alone constitute health professions tribunal?**

- (1) The health professions tribunal, formed by a presidential member of the tribunal alone, may exercise the tribunal's functions in relation to the following:

**[1.14] Section 44 (1) (d)**

*omit*

the president

*substitute*

the presidential member

**[1.15] Section 45**

*substitute*

**45 Registrar and deputy registrars**

- (1) The registrar of the Magistrates Court is the registrar of the health professions tribunal.
- (2) Each deputy registrar of the Magistrates Court is a deputy registrar of the health professions tribunal.

(3) Subject to any direction of the registrar, a deputy registrar of the health professions tribunal may exercise the powers of the registrar of the tribunal.

(4) The registrar may, in writing, delegate to a public servant the registrar's functions under this Act.

*Note* For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

(5) The registrar and each deputy registrar must exercise the functions of the registrar of the health professions tribunal in consultation with, and under the direction of, the health professions tribunal president.

**[1.16] New section 46A**

*insert*

**46A Application to health professions tribunal by health profession board**

- (1) This section applies to an application—
- (a) for the suspension or cancellation of a health professional's registration; or
  - (b) for a declaration under section 64 (1) (l) (which is about a person who is not registered); or
  - (c) any other application prescribed by regulation.
- (2) A health profession board may make an application to which this section applies.

**[1.17] Section 48**

*substitute*

**48 Parties to proceeding**

- (1) The following are parties to the proceeding on an application relating to a decision about a person (other than an application mentioned in subsection (2)):
  - (a) the person;
  - (b) the health profession board that made the decision or that established the professional standards panel that made the decision;
  - (c) anyone else with the leave of the health professions tribunal.
- (2) The following are parties to the proceeding on an application to suspend or cancel a health professional's registration:
  - (a) the health professional;
  - (b) the health profession board that made the application;
  - (c) anyone else with the leave of the health professions tribunal.
- (3) The following are parties to the proceeding on an application for a declaration that, if a person had been registered, the health professions tribunal would have found that the person had contravened the required standard of practice or did not satisfy the suitability to practise requirements:
  - (a) the person;
  - (b) the health profession board that made the application;
  - (c) anyone else with the leave of the health professions tribunal.
- (4) A regulation may prescribe who is a party to any other application to the health professions tribunal.

**[1.18] New section 49A**

*in division 7.3, insert*

**49A Application to suspend or cancel health professional's registration**

- (1) This section applies to an application to suspend or cancel a health professional's registration.
- (2) 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.

**[1.19] Section 51 (1)**

*omit*

president

*substitute*

registrar

**[1.20] Section 58 (1)**

*omit*

the president

*substitute*

a presidential member of the tribunal

**[1.21] Section 58 (3)**

*substitute*

- (3) If, during a preliminary hearing on an application in relation to a registered health professional, the presidential member is satisfied that the application should be referred to a personal assessment panel or professional standards panel, the tribunal may refer the application to the relevant health profession board for referral to the panel.

**[1.22] Section 59 (1)**

*omit*

The health professions tribunal president, or a person authorised in writing by the president,

*substitute*

A presidential member of the tribunal, or a person authorised in writing by a presidential member,

**[1.23] Section 59 (2) (b)**

*omit*

health professions tribunal president

*substitute*

presidential member of the tribunal

**[1.24] Section 59 (3)**

*omit*

president

*substitute*

presidential member

**[1.25] Section 59 (4)**

*omit*

health professions tribunal president

*substitute*

presidential member

**[1.26] Section 59 (5) (a)**

*omit*

health professions tribunal president

*substitute*

presidential member

**[1.27] Section 59 (5) (b)**

*omit*

president

*substitute*

presidential member

**[1.28] Section 62 (1) (a)**

*omit*

health professional

*substitute*

registered health professional

**[1.29] Section 63**

*substitute*

**63 Deciding questions**

- (1) This section applies if the health professions tribunal is formed by a health professions tribunal panel.
- (2) The presidential member is to decide a question of law arising in a proceeding.
- (3) Any other question in which a majority of the health professions tribunal panel members agree is the decision of the tribunal.
- (4) If a majority of the members of the health professions tribunal panel cannot agree about a question other than a question of law, the decision of the presidential member is the decision of the tribunal.

**[1.30] Section 66 (1)**

*substitute*

- (1) The presidential member of the health professions tribunal may refer a question of law relating to a proceeding on an application to the Supreme Court for direction on its own initiative or on application by a party to the proceeding.

**[1.31] Section 84 (2) (e) and (3)**

*omit*

period

*substitute*

maximum period



**[1.32] Section 86 (3) (a)**

*omit*

health professional

*substitute*

registered health professional

**[1.33] Section 86 (3) (b)**

*substitute*

(b) apply to the tribunal for—

(i) the suspension or cancellation of the registration of the health professional to whom the matter relates; or

(ii) if the health professional is not registered—a declaration under section 64 (1) (l) in relation to the health professional;

**[1.34] New section 94A**

*insert*

**94A Lawyer assisting personal assessment panel**

The health profession board that established a personal assessment panel may appoint a lawyer to assist the panel for an inquiry.

**[1.35] New section 119A**

*insert*

**119A Lawyer assisting professional standards panel**

The health profession board that established a professional standards panel may appoint a lawyer to assist the panel for a standards inquiry (including the inquiry hearing).

**[1.36] Section 122 (2) (i)**

*substitute*

- (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 professions tribunal for the suspension or cancellation of the health professional's registration; and
  - (ii) the standards inquiry report on which the recommendation is based;
- (ia) refer the report or complaint to the health profession board with—
  - (i) a recommendation that an application be made to the health professions tribunal for a declaration under section 64 (1) (l) in relation to the health professional; and
  - (ii) the standards inquiry report on which the recommendation is based;

**[1.37] Section 122 (2)**

*renumber paragraphs when Act next republished under Legislation Act*

**[1.38] Section 122 (3)**

*substitute*

- (3) If the professional standards panel acts under subsection (2) (other than under paragraph (i) or (ia)), the act is an act of the health profession board.

**[1.39] Section 125 (f)**

*substitute*

- (f) a member of the staff (including the registrar and each deputy registrar) of the health professions tribunal; or

**[1.40] Section 136 (1) (l)**

*substitute*

- (l) *Psychologists Act 1994* A 1994-87  
(m) *Veterinary Surgeons Act 1965* A1965-3.

**[1.41] Section 136 (2)**

*omit*

or (l)

*substitute*

, (l) or (m)

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

*substitute*

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

**[1.43] New section 137 (3)**

*insert*

- (3) To remove any doubt, midwifery is a health profession that was regulated under the *Nurses Act 1988*.

**[1.44] 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.

**[1.45] New sections 150A to 150D**

*insert*

**150A People previously registered under repealed Act—s 77**

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 repealed Act—Act generally**

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 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.

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**150D 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.

**[1.46] Dictionary, new definition of *presidential member***

*insert*

*presidential member*, of the health professions tribunal, for part 7 (Health professions tribunal)—see section 39A.

**[1.47] Dictionary, new definition of *public***

*insert*

*public*, in relation to health services provided by veterinary surgeons, includes animals.

**[1.48] Dictionary, definition of *registered health professional***

*substitute*

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

## Part 1.2 Health Professionals Legislation Amendment Act 2004

**[1.49] Section 2 (1), table 2, new item 11**

*insert*

11	sch 11A (Veterinary surgeons)	s 136 (m)
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**[1.50] Section 2 (1), note, paragraph (l)**

*substitute*

- (l) *Psychologists Act 1994* A1994-87
- (m) *Veterinary Surgeons Act 1965* A1965-3.

**[1.51] Schedule 1, amendment 1.18, new section 3, definition of election, note**

*substitute*

*Note* The *Health Professionals Act 2004*, s 136 repeals the Acts mentioned in this definition.

**[1.52] Schedule 1, amendment 1.19, new section 3, definition of prescribed Act, note**

*substitute*

*Note* The *Health Professionals Act 2004*, s 136 repeals the Acts mentioned in this definition.

**[1.53] Schedule 1, amendment 1.20, new section 3, definition of register, note**

*substitute*

*Note* The *Health Professionals Act 2004*, s 136 repeals the Acts mentioned in this definition.

**[1.54] Schedule 1, amendment 1.21, new section 3, definition of registered practitioner, note**

*substitute*

*Note* The *Health Professionals Act 2004*, s 136 repeals the Acts mentioned in this definition.

**[1.55] Schedule 1, amendment 1.23, new section 8 (3), note**

*substitute*

*Note* The *Health Professionals Act 2004*, s 136 repeals the Acts mentioned in pars (a) – (h).

**[1.56] Schedule 1, amendment 1.25, new section 3, definition of board, note**

*substitute*

*Note* The *Health Professionals Act 2004*, s 136 repeals the Acts mentioned in this definition.

**[1.57] Schedule 1, amendment 1.26, new section 3, definition of *proceeding*, note**

*substitute*

*Note* The *Health Professionals Act 2004*, s 136 repeals the Acts mentioned in this definition.

**[1.58] Schedule 1, amendment 1.27, new section 11 (4), note**

*substitute*

*Note* The *Health Professionals Act 2004*, s 136 repeals the Acts mentioned in this definition.

**[1.59] Schedule 1, amendment 1.33, new modification 15, definition of *Health Professionals Act*, paragraph (b) (ix)**

*substitute*

(ix) *Psychologists Act 1994*;

(x) *Veterinary Surgeons Act 1965*.

**[1.60] Schedule 5, part 5.11**

*omit*

**[1.61] New schedule 11A**

*insert*

## Schedule 11A Veterinary surgeons

(see s 3)



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## Part 11A.1            Legislation Act 2001

### [11A.1]    Dictionary, part 1, definition of *veterinary surgeon*

*substitute*

*veterinary surgeon*—

- (a) means a person unconditionally registered as a veterinary surgeon under the *Health Professionals Act 2004*; and
- (b) for an activity, includes a person conditionally registered as a veterinary surgeon under the *Health Professionals Act 2004* to the extent that the person is allowed to do the activity under the person's conditional registration.

## Part 11A.2            Drugs of Dependence Act 1989

### [11A.2]    Section 3 (1), definition of *veterinary surgeon*

*omit*

## Part 11A.3            Pharmacy Act 1931

### [11A.3]    Section 2 (1), definition of *veterinary surgeon*

*omit*

## Part 11A.4            Repeal of legislation consequential on repeal of Veterinary Surgeons Act 1965

- *Veterinary Surgeons Determination of Fees 2003 (No1)*  
DI2003-113

### [1.62]    Schedule 12, part 12.1

*omit*

## Part 1.3 Health Professionals Regulation 2004

### [1.63] Section 2 (3)

*omit*

8 July 2005

*substitute*

9 July 2006

### [1.64] Section 158

*omit*

### [1.65] Schedule 15

*omit*

## Part 1.4 Medical Practitioners Act 1930

### [1.66] Section 55A heading

*omit*

pt 4B

*substitute*

pt 5A

### [1.67] Section 55B heading

*omit*

medical practitioner

*substitute*

doctor

**[1.68] Section 55B**

*omit*

registered medical practitioner

*substitute*

doctor

**[1.69] Section 55C**

*omit*

section 55D (1)

*substitute*

section 30D (1)

**[1.70] Part 4B (as amended)**

*relocate to Health Act 1993 as part 5A (section 30A to section 30E)*

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**Endnotes**

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 7 April 2005.

**2 Notification**

Notified under the Legislation Act on 6 July 2005.

**3 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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I certify that the above is a true copy of the Health Legislation Amendment Bill 2005, which was passed by the Legislative Assembly on 23 June 2005.

Acting Clerk of the Legislative Assembly

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