



New South Wales

Health Legislation Amendment Act 2010 No 52

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New South Wales

Health Legislation Amendment Act 2010 No 52

Act No 52, 2010

An Act to make miscellaneous amendments to various Acts that relate to health and associated matters. [Assented to 28 June 2010]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Health Legislation Amendment Act 2010*.

2 Commencement

- (1) Except as otherwise provided in this section, this Act commences on a day or days to be appointed by proclamation.
- (2) Schedule 3.2–3.4 commence on the date of assent to this Act.

Schedule 1 Amendments relating to ambulance officers

1.1 Health Services Act 1997 No 154

[1] Section 67J

Insert after section 67I:

67J Obstruction of and violence against ambulance officers

- (1) A person must not intentionally obstruct or hinder an ambulance officer when the ambulance officer is providing or attempting to provide ambulance services to another person or persons.
Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.
- (2) A person must not, by an act of violence against an ambulance officer, intentionally obstruct or hinder the ambulance officer when the ambulance officer is providing or attempting to provide ambulance services to another person or persons.
Maximum penalty: Imprisonment for 5 years.
- (3) If on the trial of a person charged with an offence against subsection (2) the trier of fact is not satisfied that the offence is proven but is satisfied that the person has committed an offence against subsection (1), the trier of fact may acquit the person of the offence charged and find the person guilty of an offence against subsection (1). The person is liable to punishment accordingly.
- (4) In this section:
ambulance officer means a member of staff of the Ambulance Service of NSW.
ambulance services means the work of rendering first aid to, or transporting, sick and injured persons.

[2] Section 137 Proceedings for offences

Insert “(other than an offence under section 67J (2))” after “this Act”.

1.2 Criminal Procedure Act 1986 No 209

Schedule 1 Indictable offences triable summarily

Omit Parts 10 and 11 of Table 2.

Insert at the end of Table 2 with appropriate Part and clause numbering:

Part Offences under certain other Acts

Child Protection (Offenders Registration) Act 2000

An offence under section 17 or 18 of the *Child Protection (Offenders Registration) Act 2000*.

Health Services Act 1997

An offence under section 67J (2) of the *Health Services Act 1997*.

Surveillance Devices Act 2007

An offence under Part 2 or 5 (other than section 40 (2)) of the *Surveillance Devices Act 2007*.

Schedule 2 Amendments relating to root cause analysis teams

2.1 Health Administration Act 1982 No 135

[1] Section 20M Appointment of RCA teams to deal with incidents

Insert after section 20M (1):

- (1A) When an incident involving the provision of health services by a relevant health services organisation (other than a reportable incident) is reported to the chief executive officer of the organisation, the organisation may appoint a root cause analysis team in relation to the incident if the chief executive officer is of the opinion that the incident may be the result of a serious systemic problem that justifies the appointment of such a team.

[2] Sections 20M (2) and (3) and 20O (1), (2) and (3) (a) and (b)

Omit “reportable” wherever occurring.

[3] Section 20N Restrictions on RCA teams

Omit section 20N (3). Insert instead:

- (3) A member of a RCA team is to act in a fair and reasonable manner in the exercise of his or her functions as such a member.

[4] Section 20O Responsibilities of RCA team in relation to incident

Insert after section 20O (2):

- (2A) A notification under subsection (1) or (2) is to disclose the identity of the person to whom the notification relates (regardless of whether the person consents to the disclosure) and specify whether the notification relates to:
- (a) professional misconduct, unsatisfactory professional conduct or unsatisfactory professional performance by the person, or
 - (b) the person suffering from an impairment.
- (2B) A RCA team may notify in writing the relevant health services organisation by which it was appointed if the RCA team is of the opinion that the incident that it is considering raises matters that indicate a problem giving rise to a risk of serious and imminent harm to a person.

[5] Sections 20O (3) and 20T (f)

Omit “a reportable incident” wherever occurring. Insert instead “an incident”.

[6] Section 20O (3) (c)

Omit the paragraph. Insert instead:

- (c) if the RCA team has any recommendations as to the need for changes or improvements in relation to a procedure or practice arising out of the incident—those recommendations.

[7] Section 20O (3A)

Insert after section 20O (3):

- (3A) Subject to section 20R, the contents of a report of a RCA team under subsection (3) may be disclosed to any person and used for any purpose.

[8] Section 20O (4)

Insert in alphabetical order:

impairment has the same meaning it has in the *Health Practitioner Regulation National Law (NSW)*.

professional misconduct and *unsatisfactory professional conduct* have the same meanings that they have in Part 8 of the *Health Practitioner Regulation National Law (NSW)*.

unsatisfactory professional performance means professional performance that is unsatisfactory within the meaning of Division 5 of Part 8 of the *Health Practitioner Regulation National Law (NSW)*.

[9] Section 20P Disclosure of information

Omit “report prepared by a RCA team under section 20O (3)” from section 20P (c).

Insert instead “notification or report under section 20O”.

[10] Section 20Q Information not to be given in evidence

Omit section 20Q (1). Insert instead:

- (1) A person is neither competent nor compellable to produce any document or disclose any communication to a court, tribunal, board, person or body if the document was prepared, or the communication was made, for the dominant purpose of the conduct of an investigation by a RCA team.

[11] Section 20Q (3)

Insert after section 20Q (2):

- (3) Subsection (1) does not apply to a requirement made by a person or body who has been approved by the Director-General to carry out a review or audit of an investigation conducted by a RCA team.

[12] Section 20R

Omit the section. Insert instead:

20R Notifications and reports not to be admitted in evidence

- (1) Evidence as to the contents of a notification or report of a RCA team under section 20O cannot be adduced or admitted in any proceedings.
- (2) Subsection (1) does not apply to proceedings in respect of any act or omission by a RCA team or by a member of a RCA team as a member.

[13] Section 20T Regulations concerning RCA teams

Insert after section 20T (f):

- (g) the conduct of reviews or audits of investigations conducted by RCA teams.

[14] Section 20U Review of Division

Omit the section.

[15] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 13 (1):

Health Legislation Amendment Act 2010 (but only to the extent that it amends this Act)

[16] Schedule 2, Part 3

Insert after Part 2:

Part 3 Provisions consequent on enactment of Health Legislation Amendment Act 2010

15 Definition

In this Part:

amending Act means the *Health Legislation Amendment Act 2010*.

16 Appointment of RCA teams

Section 20M (1A), as inserted by the amending Act, does not extend to an incident that was reported to the chief executive officer of a relevant health services organisation before the commencement of that subsection.

17 RCA team not required to make recommendations

Section 20O (3) (c), as substituted by the amending Act, extends to an investigation commenced before that substitution.

18 Information not to be given in evidence

Section 20Q (1), as substituted by the amending Act, extends to:

- (a) a document that was prepared or a communication that was made before that substitution, and
- (b) proceedings that are pending on that substitution.

19 Notifications and reports not to be admitted in evidence

Section 20R, as substituted by the amending Act, extends to:

- (a) a notification that was given or a report that was prepared before that substitution, and
- (b) proceedings that are pending on that substitution.

2.2 Private Health Facilities Act 2007 No 9

[1] Section 42 Appointment of root cause analysis teams to deal with incidents

Insert after section 42 (1):

- (1A) When an incident involving the provision of health services by a private health facility (other than a reportable incident) is

reported to the licensee of the facility, the licensee may appoint a root cause analysis team in relation to the incident if the licensee is of the opinion that the incident may be the result of a serious systemic problem that justifies the appointment of such a team.

[2] Sections 42 (2) and (3) and 44 (1), (2) and (3) (a) and (b)

Omit “reportable” wherever occurring.

[3] Section 43 Restrictions on root cause analysis teams

Omit section 43 (3). Insert instead:

- (3) A member of a root cause analysis team is to act in a fair and reasonable manner in the exercise of his or her functions as such a member.

[4] Section 44 Responsibilities of root cause analysis team in relation to incident

Insert after section 44 (2):

- (2A) A notification under subsection (1) or (2) is to disclose the identity of the person to whom the notification relates (regardless of whether the person consents to the disclosure) and specify whether the notification relates to:
 - (a) professional misconduct, unsatisfactory professional conduct or unsatisfactory professional performance by the person, or
 - (b) the person suffering from an impairment.
- (2B) A root cause analysis team may notify in writing the licensee and the chair of the medical advisory committee for the relevant facility if the team is of the opinion that the incident that it is considering raises matters that indicate a problem giving rise to a risk of serious and imminent harm to a person.

[5] Section 44 (3)

Omit “a reportable incident”. Insert instead “an incident”.

[6] Section 44 (3) (c)

Omit the paragraph. Insert instead:

- (c) if the team has any recommendations as to the need for changes or improvements in relation to a procedure or practice arising out of the incident—those recommendations.

[7] Section 44 (3A)

Insert after section 44 (3):

- (3A) Subject to section 47, the contents of a report of a root cause analysis team under subsection (3) may be disclosed to any person and used for any purpose.

[8] Section 44 (6)

Insert after section 44 (5):

- (6) In this section:

impairment has the same meaning it has in the *Health Practitioner Regulation National Law (NSW)*.

professional misconduct and *unsatisfactory professional conduct* have the same meanings that they have in Part 8 of the *Health Practitioner Regulation National Law (NSW)*.

unsatisfactory professional performance means professional performance that is unsatisfactory within the meaning of Division 5 of Part 8 of the *Health Practitioner Regulation National Law (NSW)*.

[9] Section 45 Disclosure of information

Omit “report prepared by a team under section 44 (3)” from section 45 (c).

Insert instead “notification or report under section 44”.

[10] Section 46 Information not to be given in evidence

Omit section 46 (1). Insert instead:

- (1) A person is neither competent nor compellable to produce any document or disclose any communication to a court, tribunal, board, person or body if the document was prepared, or the communication was made, for the dominant purpose of the conduct of an investigation by a root cause analysis team.

[11] Section 46 (3)

Insert after section 46 (2):

- (3) Subsection (1) does not apply to a requirement made by a person or body who has been approved by the Director-General to carry out a review or audit of an investigation conducted by a root cause analysis team.

[12] Section 47

Omit the section. Insert instead:

47 Notifications and reports not to be admitted in evidence

- (1) Evidence as to the contents of a notification or report of a root cause analysis team under section 44 cannot be adduced or admitted in any proceedings.
- (2) Subsection (1) does not apply to proceedings in respect of any act or omission by a root cause analysis team or by a member of a root cause analysis team as a member.

[13] Section 49 Regulations concerning root cause analysis teams

Insert after section 49 (e):

- (f) the conduct of reviews or audits of investigations conducted by root cause analysis teams.

[14] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Health Legislation Amendment Act 2010 (but only to the extent that it amends this Act)

[15] Schedule 4, Part 3

Insert after Part 2:

Part 3 Provisions consequent on enactment of Health Legislation Amendment Act 2010

21 Definition

In this Part:

amending Act means the *Health Legislation Amendment Act 2010*.

22 Appointment of root cause analysis teams

Section 42 (1A), as inserted by the amending Act, does not extend to an incident that was reported to the licensee of a private health facility before the commencement of that subsection.

23 Root cause analysis team not required to make recommendations

Section 44 (3) (c), as substituted by the amending Act, extends to an investigation commenced before that substitution.

24 Information not to be given in evidence

Section 46 (1), as substituted by the amending Act, extends to:

- (a) a document that was prepared or a communication that was made before that substitution, and
- (b) proceedings that are pending on that substitution.

25 Notifications and reports not to be admitted in evidence

Section 47, as substituted by the amending Act, extends to:

- (a) a notification that was given or a report that was prepared before that substitution, and
- (b) proceedings that are pending on that substitution.

Schedule 3 Other amendments

3.1 Assisted Reproductive Technology Act 2007 No 69

[1] Schedule 1 Savings, transitional and other provisions

Insert after clause 4 (3):

- (3A) The Director-General may, on receipt of an application under this clause, direct an ART provider in writing to provide such information as the Director-General may require to enable the Director-General to identify:
 - (a) in the case of an application by a donor of a gamete—any offspring of the donor born as a result of ART treatment using the donated gamete, and
 - (b) in the case of an application by a person who was born as a result of ART treatment using a donated gamete—the donor of the gamete.
- (3B) An ART provider must comply with any such direction of the Director-General.

[2] Schedule 1, clause 4 (4)

Insert “or (3A)” after “subclause (2)”.

[3] Schedule 1, clause 4 (5)

Insert after clause 4 (4):

- (5) The Director-General must not disclose information provided under subclause (3A) that identifies a person unless the person:
 - (a) is an adult, and
 - (b) has made an application under this clause or has provided written consent to the disclosure.

3.2 Guardianship Act 1987 No 257

Section 34 Application of Part

Insert “or the *Mental Health (Forensic Provisions) Act 1990*” after “*Mental Health Act 2007*” wherever occurring in section 34 (2).

3.3 Health Administration Act 1982 No 135

Section 4 Definitions

Insert “or the Director-General” after “Minister” in section 4 (1A).

3.4 Health Services Act 1997 No 154

[1] Section 40 Delegations by area health service

Omit section 40 (1) including the note. Insert instead:

- (1) An area health service may delegate any of its functions (other than a function set out in subsection (1A)) to:
 - (a) any member of the NSW Health Service, or
 - (b) a visiting practitioner, council or committee appointed by the area health service, or
 - (c) a body appointed by the Minister or Director-General under this or any other Act, or
 - (d) a person or body of a class prescribed by the regulations.

Note. Section 49 of the *Interpretation Act 1987* contains general provisions relating to the delegation of functions.

- (1A) An area health service cannot delegate:
 - (a) its power of delegation under this section, or
 - (b) its functions under section 31 (2), or
 - (c) the power to make by-laws.

[2] Section 53A

Insert before section 53:

53A Combined management or assistance in management of public hospitals, health institutions, health services or health support services

- (1) Any two or more statutory health corporations may, by agreement, jointly control and manage any public hospital, health institution, health service or health support service.
- (2) A statutory health corporation may, by agreement, manage any public hospital, health institution, health service or health support service under the control of another statutory health corporation, or assist in that management, for and on behalf of that other statutory health corporation.
- (3) A statutory health corporation must not enter into an agreement under this section without the approval of the Minister.
- (4) A public hospital, health institution, health service or health support service is not, for the purposes of this or any other Act, to be regarded as being under the control of a statutory health corporation because the statutory health corporation manages, or assists in the management of, the public hospital, health

institution, health service or health support service for and on behalf of another statutory health corporation.

[3] Schedule 7 Savings and transitional provisions

Insert at the end of clause 1 (1):

Health Legislation Amendment Act 2010 (but only to the extent that it amends this Act)

3.5 Public Health (Tobacco) Act 2008 No 94

Section 39 Notification by person engaging in tobacco retailing

Omit “within 7 days” from section 39 (4). Insert instead “within 28 days”.

[Agreement in principle speech made in Legislative Assembly on 2 June 2010
Second reading speech made in Legislative Council on 22 June 2010]

BY AUTHORITY