



New South Wales

# Health Legislation (Miscellaneous Amendments) Act 2020 No 32

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New South Wales

## **Health Legislation (Miscellaneous Amendments) Act 2020 No 32**

Act No 32, 2020

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An Act to make miscellaneous amendments to various Acts that relate to health and associated matters. [Assented to 27 October 2020]

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**The Legislature of New South Wales enacts—**

**1 Name of Act**

This Act is the *Health Legislation (Miscellaneous Amendments) Act 2020*.

**2 Commencement**

- (1) This Act commences on the date of assent to this Act, except as otherwise provided by this section.
- (2) Schedule 1[6] commences on the commencement of Schedule 1 to the *Health Legislation Amendment Act 2018*.
- (3) Schedule 8 commences on 1 January 2021.
- (4) Schedule 9.2 commences, or is taken to have commenced, on 1 November 2020.
- (5) Schedule 9.4 commences, or is taken to have commenced, on 1 November 2020.

## Schedule 1 Amendment of Health Care Complaints Act 1993 No 105

### [1] Section 4 Definitions

Omit the definitions of *authorised person* and *disciplinary action*.

Insert in alphabetical order—

*authorised person* means an officer of the Commission who is authorised as referred to in section 31 or 63C, and includes the Commissioner.

*disciplinary action* includes—

- (a) the making of a prohibition order in relation to a health practitioner or a relevant health organisation, and
- (b) the issue of a statement under section 41A in relation to a health practitioner or under section 45C in relation to a relevant health organisation.

*interim prohibition order* means an interim prohibition order made under section 41AA or 45B.

*prohibition order* means a prohibition order made under section 41A or 45C.

*relevant health organisation* means a person that is a health organisation other than the following—

- (a) a public health organisation within the meaning of the *Health Services Act 1997*,
- (b) a public hospital within the meaning of the *Health Services Act 1997*,
- (c) a private health facility licensed under the *Private Health Facilities Act 2007*,
- (d) an organisation or class of organisation prescribed by the regulations for the purposes of this definition.

**Note.** Section 21(1) of the *Interpretation Act 1987* defines person to include an individual, a corporation and a body corporate or politic.

### [2] Sections 7(1)(a), 41AA(6) (definition of “code of conduct for non-registered health practitioners”) and 41A(5) (definition of “code of conduct for non-registered health practitioners”)

Omit “section 100” wherever occurring. Insert instead “section 100(1)(a) or (b)”.

### [3] Section 7 What can a complaint be made about?

Insert after section 7(1)(a)—

- (a1) an alleged breach by a relevant health organisation of Division 1 or 3 of Part 7 of the *Public Health Act 2010* or of a code of conduct prescribed under section 100(1)(c) of that Act, or

### [4] Sections 8(2)(c)(i) and (iii), 18(2)(c) and (e), 23(1)(b)(iii) and (v), 26(2)(c) and 59(c)

Insert “or relevant health organisation” after “health practitioner” wherever occurring.

### [5] Section 9 How is a complaint made?

Omit “section 35” from the note. Insert instead “section 97A”.

### [6] Sections 21A(2), 34A(3) and 63G(2) (as inserted by item [22])

Omit “Division 6B or 6C of Part 2” wherever occurring.

Insert instead “Division 6B of Part 2 or Part 2A”.

**[7] Sections 21A(3), 34A(4) and 99**

Omit “20 penalty units” wherever occurring in the penalty provisions.  
Insert instead “200 penalty units”.

**[8] Section 21A, note**

Insert at the end of the section—

**Note.** Failure of a health practitioner to comply with subsection (3) may constitute unsatisfactory professional conduct under the *Health Practitioner Regulation National Law (NSW)*.

**[9] Section 26 Reference of complaint to another person or body for investigation or other action**

Insert “or the licensee of a private health facility” after “organisation” where firstly occurring in section 26(1)(a) and (3).

**[10] Section 26(1)(a) and (3)**

Insert “or licensee” after “organisation” where secondly occurring in section 26(1)(a) and (3).

**[11] Section 26(1)(b)**

Omit the paragraph. Insert instead—

- (b) to a person or body, other than a public health organisation, the licensee of a private health facility or a professional council, if it appears that—
  - (i) the complaint (or part) raises issues which require investigation by the person or body, or
  - (ii) the person or body is able to take some other appropriate action regarding the complaint (or part).

**[12] Section 26(6)**

Omit the subsection. Insert instead—

- (6) In this section—

*licensee* and *private health facility* have the same meanings as they have in the *Private Health Facilities Act 2007*.

*public health organisation* has the same meaning as in the *Health Services Act 1997*.

**[13] Section 32**

Omit the section. Insert instead—

**32 Consent or search warrant required for residential premises**

An authorised person may not enter a part of premises used solely for residential purposes and exercise a function under section 33 except—

- (a) with the consent of the occupier of the premises, or
- (b) under the authority of a search warrant.

**[14] Section 33 Powers of entry, search and seizure**

Omit “if authorised to do so under a search warrant,” wherever occurring in section 33(1)(c1) and (f1).

**[15] Section 33(1)(f)**

Omit the paragraph.

**[16] Section 33(2)**

Omit “under the authority of a search warrant”.

**[17] Sections 35 and 36**

Omit the sections.

**[18] Section 41AA Interim prohibition orders**

Omit “order (an *interim prohibition order*)” from section 41AA(1).

Insert instead “interim prohibition order”.

**[19] Section 41A Prohibition orders and public statements**

Omit “an order (a *prohibition order*)” from section 41A(2)(a).

Insert instead “a prohibition order”.

**[20] Section 42 What action is taken at the end of an investigation?**

Insert at the end of section 42(1)(c)—

, or

(d) take action under section 45C.

**[21] Part 2, Division 7A**

Insert after Division 7—

**Division 7A Action against relevant health organisations**

**45A Definition**

In this Division—

*code of conduct for relevant health organisations* means a code of conduct prescribed by the regulations made under section 100(1)(c) of the *Public Health Act 2010*.

**45B Interim prohibition orders**

- (1) The Commission may, during an investigation of a complaint against a relevant health organisation, make an interim prohibition order in relation to the relevant health organisation.
- (2) The Commission may make an interim prohibition order only if—
  - (a) it has a reasonable belief that the relevant health organisation has breached a code of conduct for relevant health organisations, and
  - (b) it is of the opinion that—
    - (i) the relevant health organisation poses a serious risk to the health or safety of members of the public, and
    - (ii) the making of an interim prohibition order is necessary to protect the health or safety of members of the public.
- (3) An interim prohibition order may do one or both of the following—
  - (a) prohibit the relevant health organisation from providing health services or specified health services,

- (b) place conditions the Commission thinks appropriate on the provision of health services or specified health services by the relevant health organisation.
- (4) An interim prohibition order remains in force for a period of 8 weeks or, if a shorter period is specified in the order, the shorter period.
- (5) The Commission must notify the relevant health organisation of its decision to make an interim prohibition order and provide the relevant health organisation with a written statement of the decision that sets out the grounds on which the decision was made as soon as practicable after the decision is made.

#### **45C Prohibition orders and public statements**

- (1) The Commission may take action under this section if—
  - (a) it has complied with Division 7 in relation to an investigation of a complaint against a relevant health organisation, and
  - (b) it finds that the relevant health organisation has breached a code of conduct for relevant health organisations or has been convicted of a relevant offence, and
  - (c) it is of the opinion that the relevant health organisation poses a risk to the health or safety of members of the public.
- (2) The action that the Commission may take under this section is one or both of the following—
  - (a) make a prohibition order that does one or more of the following—
    - (i) prohibits the relevant health organisation from providing health services or specified health services for the period specified in the order or permanently,
    - (ii) places conditions the Commission thinks appropriate on the provision of health services or specified health services by the relevant health organisation for the period specified in the order or permanently,

**Note.** Section 102(3) of the *Public Health Act 2010* provides that it is an offence for a person to provide a health service in contravention of a prohibition order.

  - (b) cause a public statement to be issued in a manner determined by the Commission identifying and giving warnings or information about the relevant health organisation and health services provided by the relevant health organisation.
- (3) The Commission may revoke or revise a statement issued under subsection (2)(b).
- (4) In this section—

**relevant offence** means—

  - (a) an offence under the *Private Health Facilities Act 2007*, or
  - (b) an offence under Part 7 of the *Public Health Act 2010*, or
  - (c) an offence under the *Fair Trading Act 1987* or the *Competition and Consumer Act 2010* of the Commonwealth that relates to the provision of health services.

#### **45D Commission to provide details of decision to make prohibition order**

- (1) If the Commission makes any of the following decisions in relation to a relevant health organisation under section 45C, it must provide the relevant

- health organisation with a written statement of the decision as soon as practicable after the decision is made—
- (a) a decision that the relevant health organisation has breached a code of conduct for relevant health organisations,
  - (b) a decision to make a prohibition order in relation to the relevant health organisation,
  - (c) a decision to issue, revoke or revise a public statement about the relevant health organisation under section 45C.
- (2) The statement of a decision must—
- (a) set out all findings on material questions of fact, and
  - (b) refer to all evidence or other material on which the findings were based, and
  - (c) give the reasons for the decision.
- (3) Subject to subsections (4) and (5), the Commission—
- (a) must provide a statement of the decision to the complainant, if any, and
  - (b) may provide a statement of the decision to a professional body or association that the Commission considers to be relevant to the relevant health organisation or to the area of practice to which the complaint relates, and
  - (c) may make a statement of the decision publicly available.
- (4) The Commission may remove from a statement of a decision that is provided to a person or body, or made publicly available, under subsection (3) material that it considers to be confidential information.
- (5) If confidential material is not included in the statement of a decision the statement should indicate that confidential material has been removed.
- (6) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.
- (7) In this section—
- confidential information** means information that—
- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared, and
  - (b) relates to the personal or business affairs of a person, other than the person to whom the Commission is required to provide the written statement of the decision, and
  - (c) is information—
    - (i) that was supplied in confidence, or
    - (ii) the publication of which would reveal a trade secret, or
    - (iii) that was provided in compliance with a duty imposed by or under an Act, or
    - (iv) the provision of which by the Commission would be in breach of an Act or law.



**45E Administrative review by Civil and Administrative Tribunal**

- (1) A relevant health organisation may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the following decisions under section 45B or 45C—
  - (a) a decision that the relevant health organisation has breached a code of conduct for relevant health organisations,
  - (b) a decision to make an interim prohibition order or a prohibition order in relation to the relevant health organisation,
  - (c) a decision to issue, revoke or revise a public statement about the relevant health organisation.
- (2) An application under this section is to be made within 28 days after the day on which the relevant health organisation is provided with the statement of the decision.

**45F Register of orders**

The Commission is to—

- (a) keep a register containing copies of all prohibition orders and interim prohibition orders in force under this Division, and
- (b) cause the contents of the register to be made available for inspection free of charge by the public on the Commission’s website.

**[22] Part 3A**

Insert after Part 3—

**Part 3A Assessment of compliance with relevant matter**

**63A Definition**

In this Part—

**relevant matter** means—

- (a) an interim prohibition order or a prohibition order, or
- (b) a recommendation made by the Commission in a report under section 42(1)(b), or
- (c) a prohibition order made under section 149C(5) of the *Health Practitioner Regulation National Law (NSW)*, or
- (d) another matter prescribed by the regulations for the purposes of this definition.

**63B Compliance with relevant matter**

The Commission may take action under this Part to assess a person’s compliance with a relevant matter.

**63C Authorisation of persons to assess compliance**

- (1) The Commission may authorise an officer of the Commission, in writing, to exercise the functions under section 63E.
- (2) The Commission must provide an authorised person with a certificate of authority in the form set out in Schedule 1.

- (3) An authorised person exercising in a place a function conferred on the person under section 63E must, if requested by a person apparently in charge of the place, produce the certificate to the person.

**63D Consent or search warrant required for residential premises**

An authorised person may not enter a part of premises used solely for residential purposes and exercise a function under section 63E except—

- (a) with the consent of the occupier of the premises, or
- (b) under the authority of a search warrant.

**63E Powers of entry, search and seizure**

- (1) An authorised person may, for the purpose of assessing a person's compliance with a relevant matter, do one or more of the following—
- (a) at any reasonable time, enter and inspect premises if the authorised person reasonably believes it is necessary to enter the premises for the purpose of ascertaining whether the relevant matter is being complied with or has been contravened,
  - (b) examine, seize, retain or remove equipment that the authorised person reasonably believes is, has been or may be used in connection with a possible contravention,
  - (c) require the production of and inspect stocks of any substance or drugs in or about the premises,
  - (d) seize stocks of any substance or drugs in or about the premises,
  - (e) require a person within the premises to produce records in the possession or under the control of the person relating to a possible contravention,
  - (f) take copies of, or extracts or notes from, the records,
  - (g) remove the records for the purposes of taking copies of, or notes from, the records,
  - (h) require a person at the premises to answer questions or otherwise provide information in relation to a possible contravention,
  - (i) require the owner or occupier of the premises to provide the authorised person with the assistance and facilities reasonably necessary to enable the authorised person to exercise the functions of an authorised person under this section.
- (2) If an authorised person removes records for the purposes of taking copies of, or notes from, the records, the authorised person must return the records to the owner of the records as soon as practicable.

**63F Search warrant**

- (1) An authorised person may apply to an authorised officer for a search warrant if the person has reasonable grounds for believing that entry to premises is necessary for the purpose of assessing a person's compliance with a relevant matter.
- (2) An authorised officer to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised person named in the search warrant to—
- (a) enter the premises specified in the warrant, and

- (b) exercise on the premises the functions of an authorised person under section 63E.
- (3) Part 5, Division 4 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section—  
**authorised officer** has the same meaning as in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**63G Power of Commission to obtain information, records and evidence**

- (1) If the Commission is assessing compliance with a relevant matter and is of the opinion that a person is capable of giving information, producing documents, including medical records, or giving evidence that would assist in the assessment, the Commission may, by written notice given to the person, require the person to do one or more of the following—
  - (a) give to the Commission the information known to the person—
    - (i) in writing signed by the person or, for a corporation, by a competent officer of the corporation, and
    - (ii) within the reasonable time and in the way specified in the notice,
  - (b) produce the documents to the Commission in accordance with the notice,
  - (c) appear before the Commissioner, or a member of staff of the Commission authorised by the Commissioner, at a time and place specified in the notice that is reasonable and give the evidence, either orally or in writing, and produce the documents.
- (2) Information and documents may be given or provided to the Commission in compliance with this section despite another Act or law (other than Division 6B or 6C of Part 2 of the *Health Administration Act 1982*).
- (3) Section 37A applies in relation to information, documents or answers required to be given or produced under this section in the same way as that section applies in relation to a requirement under section 21A or 34A to give or produce information, documents or answers.
- (4) A person who is subject to a requirement under subsection (1) must not, without reasonable excuse, fail to comply with the requirement.

Maximum penalty—200 penalty units.

**Note.** Failure of a health practitioner to comply with subsection (4) may constitute unsatisfactory professional conduct under the *Health Practitioner Regulation National Law (NSW)*.

**[23] Section 80 Functions of Commission**

Insert after the first dot point in section 80(1)(a)—

- complaints relating to a relevant health organisation, including an alleged breach by a relevant health organisation of a code of conduct prescribed by the regulations made under section 100(1)(c) of the *Public Health Act 2010*

**[24] Section 94A, heading**

Omit “or services”. Insert instead “, **health services or health service providers**”.

**[25] Section 94A(1) and (1A)**

Omit “or health service” wherever occurring.

Insert instead “, health service or health service provider”.

**[26] Section 94C Protection from liability for certain publications**

Insert “45C, 45D,” after “41B,” in section 94C(1).

**[27] Sections 97A and 97B**

Insert after section 97—

**97A Offence—obstructing an authorised person or providing false information**

A person is guilty of an offence if the person—

- (a) prevents an authorised person from exercising a function under section 33 or 63E, or
- (b) hinders or obstructs an authorised person in the exercise of a function under section 33 or 63E, or
- (c) without reasonable excuse, refuses or fails to comply with a requirement made by or to answer a question asked by an authorised person under section 33 or 63E, or
- (d) provides information knowing that it is false or misleading in a material particular to an authorised person, the Commissioner or a member of staff of the Commission in connection with the exercise of their functions under this Act in relation to a complaint.

Maximum penalty—200 penalty units.

**97B Offence—impersonating an authorised person**

A person who impersonates or falsely represents that the person is an authorised person is guilty of an offence.

Maximum penalty—200 penalty units.

**[28] Section 98 Offence—intimidation or bribery of complainants**

Omit “50 penalty units” from the penalty provision. Insert instead “200 penalty units”.

**[29] Section 99A Offence—improper disclosure of information**

Insert after section 99A(2)—

- (2A) A professional council, or a person exercising functions on behalf of a professional council, may not be compelled in any legal proceedings to give evidence about, or produce documents containing, information exchanged between a professional council and the Commission under this Act or the *Health Practitioner Regulation National Law (NSW)*.

**[30] Section 99A(3)**

Omit “Subsection (2) does”. Insert instead “Subsections (2) and (2A) do”.

**[31] Section 99A(3)(e)**

Insert after section 99A(3)(d)—

- (e) in relation to subsection (2A)—proceedings under the *Health Practitioner Regulation National Law (NSW)*, but only if—
  - (i) the professional council is a party to the proceedings, and
  - (ii) the information is necessary for the just and equitable resolution of the proceedings.

**[32] Schedule 1**

Omit the Schedule. Insert instead—

**Schedule 1 Certificate of authority**

(sections 31(2) and 63C(2))

(Health Care Complaints Act 1993)

Valid until *[date]*

No. *[number]*

*[photograph of person]*

This is to certify that *[name of person being authorised]*, an example of whose signature appears below,

*[example of signature]*

is authorised under section \*31(2)/63C(2) of the *Health Care Complaints Act 1993* to exercise the functions set out in section \*33/63E of the Act. The terms of section \*33/63E are reproduced on the back of this certificate.

*[signature]*

Commissioner, Health Care Complaints Commission

*[Date]*

\* Delete whichever is inapplicable.

## **Schedule 2      Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86**

### **[1]    Schedule 1 Modification of Health Practitioner Regulation National Law**

Insert after section 41D in Schedule 1[8]—

#### **41DA    Ministerial control [NSW]**

A Council is subject to the control and direction of the Minister, except in relation to—

- (a) the assessment or management of a complaint about a registered health practitioner or a student, including a decision to refer a complaint to a committee or the Tribunal; and
- (b) the assessment or management of a registered health practitioner or student who was or is the subject of a complaint or whose registration is subject to a condition, including a decision to refer a matter concerning the practitioner or student to the Tribunal; and
- (c) the terms of a recommendation by the Council; and
- (d) the contents of a report of the Council.

### **[2]    Schedule 1[8], section 41O**

Omit “Subdivision 2 or 7 of Division 3 of”.

### **[3]    Schedule 1[13], section 139B(1)(e)**

Omit “34A(4)”. Insert instead “21A(3), 34A(4) or 63G(4)”.

### **[4]    Schedule 1[13], section 139I**

Insert at the end of the section—

- (2) A National Board must, within 3 business days of receiving a notice under section 130 from a registered health practitioner or student to whom the following applies, provide the Council for the health profession in which the practitioner or student is registered with a copy of the notice—
  - (a) for a registered health practitioner—
    - (i) the relevant event the subject of the notice, or the matters to which the relevant event relates, occurred in or relates to New South Wales; or
    - (ii) the principal place of practice of the registered health practitioner is in New South Wales;
  - (b) for a student—the relevant event the subject of the notice, or the matters to which the relevant event relates, occurred in or relates to New South Wales.
- (3) In this section—  
*relevant event* has the same meaning as it has in section 130.

### **[5]    Schedule 1[15], section 176BA(8)**

Insert “and section 176BB” after “this section”.

### **[6]    Schedule 1[15], section 176BB**

Insert after section 176BA—

**176BB Council to notify employers and accreditors about suspension or cancellation of registration and possible contravention of conditions [NSW]**

- (1) A Council must, as soon as practicable after one of the following decisions is made in relation to a registered health practitioner, give written notice of the decision to each employer or accreditor of the practitioner concerned—
  - (a) a decision by the Council to suspend the registered health practitioner's registration;
  - (b) in relation to the Council for the health profession in which the practitioner is registered—
    - (i) a decision by the Tribunal to suspend the registered health practitioner's registration; and
    - (ii) a decision by the Tribunal to cancel the registered health practitioner's registration.
- (2) If a Council reasonably believes that a registered health practitioner has contravened a condition imposed on the practitioner's registration, the Council may, if it considers it appropriate, give written notice of the alleged contravention to each employer or accreditor of the practitioner.

**[7] Schedule 1[25], Schedule 5F, clause 15(1A)**

Insert after clause 15(1)—

- (1A) The declaration must be accompanied by the fee prescribed by the NSW regulations.

## **Schedule 3 Amendment of Health Services Act 1997 No 154**

### **[1] Section 99 Duty to report certain criminal and disciplinary matters**

Omit section 99(2). Insert instead—

- (2) A visiting practitioner appointed by a public health organisation who is the subject of one of the following findings must report that fact to the chief executive of the organisation, and provide the chief executive with a copy of the finding, within 7 days of receiving notice of the finding—
  - (a) a finding of unsatisfactory professional conduct or professional misconduct made under the *Health Practitioner Regulation National Law (NSW)*,
  - (b) a finding made under the law of another State or Territory that substantially corresponds to or is substantially the same as a finding referred to in paragraph (a).

### **[2] Section 117 Duty to report certain criminal conduct and disciplinary matters**

Omit section 117(2). Insert instead—

- (2) A member of staff who is the subject of one of the following findings must report that fact to the chief executive of the relevant organisation, and provide the chief executive with a copy of the finding, within 7 days of receiving notice of the finding—
  - (a) a misconduct finding made under the *Health Practitioner Regulation National Law (NSW)*,
  - (b) a finding made under the law of another State or Territory that substantially corresponds to or is substantially the same as a finding referred to in paragraph (a).

### **[3] Section 123 Inquiries by Health Secretary**

Omit “122(c)” from section 123(4). Insert instead “122(1)(c)”.

### **[4] Section 126AA**

Insert after section 126—

#### **126AA Provision or disclosure of information**

- (1) A person who conducts or assists in the conduct of a relevant inquiry cannot be compelled, in relation to a document that was prepared, or a communication that was made, for the dominant purpose of a relevant inquiry, to—
  - (a) produce the document or disclose the communication to a court, tribunal, board, person or body, or
  - (b) disclose information that the person obtained from the document or communication to a court, tribunal, board, person or body.
- (2) A document prepared for the dominant purpose of a relevant inquiry cannot be adduced or admitted in proceedings, other than with the consent of the Health Secretary.
- (3) This section does not prevent the Health Secretary from providing a copy of a final report of a relevant inquiry to a person or body at the Health Secretary’s discretion.
- (4) In this section—



*relevant inquiry* means an inquiry by the Health Secretary under section 122(1)(c) or 123.

**[5] Section 127 Determination of subsidies**

Omit “122(e)” from section 127(3). Insert instead “122(1)(e)”.

**[6] Schedule 6 Provisions relating to members and procedure of Ambulance Service Advisory Board**

Omit the definition of *staff member* from clause 1.

**[7] Schedule 6, clause 5(c1)**

Insert after clause 5(c)—

(c1) is removed from office by the Health Secretary under this clause, or

**[8] Schedule 6, clause 5(g) and (h)**

Omit “or” from the end of clause 5(g) and omit clause 5(h).

**[9] Schedule 6, clause 5(2)**

Insert at the end of the clause—

(2) The Health Secretary may remove an appointed member from office at any time, for any reason or no reason and without notice.

## **Schedule 4 Amendment of Human Tissue Act 1983 No 164**

### **[1] Section 4 Definitions**

Insert after section 4(1)—

- (1A) The regulations may—
- (a) prescribe additional bodily materials or classes or types of bodily materials as tissue for the purposes of this Act, and
  - (b) exclude bodily materials or classes or types of bodily materials from being tissue for the purposes of this Act.

### **[2] Section 25 Consent by coroner**

Omit section 25(1)–(3). Insert instead—

- (1) If a coroner has jurisdiction to hold an inquest under the *Coroners Act 2009* in respect of the death of a person, a designated officer for a hospital, a senior available next of kin or a principal care officer must not authorise the removal of tissue from the person's body unless a coroner has given consent to the removal of the tissue.  
Maximum penalty—40 penalty units or imprisonment for 6 months, or both.
- (2) A consent by a coroner under this section may be given before a person's death if the coroner reasonably believes the coroner will have jurisdiction to hold an inquest under the *Coroners Act 2009* in respect of the person's death.
- (2A) A consent by a coroner under this section may be withdrawn by the coroner at any time.
- (3) If a coroner has jurisdiction to hold an inquest under the *Coroners Act 2009* in respect of the death of a person to whom section 24(1) applies, the removal of tissue from the body of the person is not authorised unless a coroner has given consent to the removal of the tissue.

## Schedule 5 Amendment of Private Health Facilities Act 2007 No 9

### [1] Section 57A

Insert after section 57—

#### 57A Duty to report certain criminal and disciplinary matters

- (1) A registered health practitioner who practises at a private health facility and is charged with having committed, or is convicted of, a serious sex or violence offence must, within 7 days of the charge being laid or the conviction, report that fact in writing to the licensee of the private health facility.
- (2) A registered health practitioner who practises at a private health facility and is the subject of one of the following findings must report that fact to the licensee of the private health facility, and provide the licensee with a copy of the finding, within 7 days of receiving notice of the finding—
  - (a) a finding of unsatisfactory professional conduct or professional misconduct made under the *Health Practitioner Regulation National Law (NSW)*,
  - (b) a finding made under the law of another State or Territory that substantially corresponds to or is substantially the same as a finding referred to in paragraph (a).
- (3) A licensee may nominate the person occupying a specified position at the private health facility as the person to whom reports under this section are to be made and who is authorised to receive reports on behalf of the licensee.
- (4) In this section—

**registered health practitioner** has the same meaning as in the *Health Practitioner Regulation National Law (NSW)*.

**serious sex or violence offence** means an offence involving sexual activity, sexual touching or a sexual act, physical violence or the threat of physical violence that—
  - (a) if committed in New South Wales, is punishable by imprisonment for 12 months or more, or
  - (b) if committed elsewhere than in New South Wales, would have been an offence punishable by imprisonment for 12 months or more if committed in New South Wales,and includes an attempt to commit, or a conspiracy to commit, the offence.

### [2] Section 63 Proceedings for offences

Omit “with summarily before the Local Court.” from section 63(1). Insert instead—

with—

- (a) summarily before the Local Court, or
- (b) summarily before the Supreme Court in its summary jurisdiction.

### [3] Section 63(1A)

Insert after section 63(1)—

- (1A) If proceedings are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 200 penalty units, despite a higher maximum monetary penalty being provided for the offence.

## Schedule 6 Amendment of Public Health Act 2010 No 127

**[1] Section 5 Definitions**

Insert in alphabetical order in section 5(1)—

*relevant health organisation* has the same meaning as it has in the *Health Care Complaints Act 1993*.

**[2] Section 61, heading**

Insert “or testing” after “examination”.

**[3] Section 61(1)**

Omit the subsection. Insert instead—

(1) This section applies if the Secretary—

- (a) knows, or suspects on reasonable grounds, that a person has a Category 4 or 5 condition, and
- (b) considers that the person may, on that account, be a risk to public health, and
- (c) considers that the nature of the condition warrants medical examination or testing relating to the condition.

**[4] Section 61(2)**

Omit “and associated tests”.

Insert instead “or test relating to the Category 4 or 5 condition”.

**[5] Section 61(3)**

Omit “and associated tests”. Insert instead “or test”.

**[6] Section 61(6)**

Omit “must, as soon as practicable, provide the Secretary with a report of the examination, including the results of any associated tests”.

Insert instead “or test must, as soon as practicable, provide the Secretary with a report of the examination or the results of the test”.

**[7] Part 7, Division 2, heading**

Omit “for which no registration is required”.

Insert instead “by non-registered health practitioners and relevant health organisations”.

**[8] Section 100, heading**

Insert “and relevant health organisations” after “practitioners”.

**[9] Section 100(1)(c)**

Insert at the end of section 100(1)(b)—

, and

- (c) relevant health organisations.

**[10] Section 100, note**

Omit the note. Insert instead—

**Note.** Sections 41A and 45C of the *Health Care Complaints Act 1993* permit the Health Care Complaints Commission to make a prohibition order in relation to a health practitioner or a relevant health organisation if the Commission finds that the health practitioner or the relevant health organisation has breached a code of conduct and poses a risk to the health of members of the public. The Commission is also able to cause a public statement to be issued in those circumstances identifying and giving warnings about the health practitioner or relevant health organisation.

**[11] Part 7, Division 3, heading**

Omit “health practitioners”. Insert instead “persons”.

**[12] Section 101 Definitions**

Insert “or 45C” after “41A” in the definition of *prohibition order* in section 101(1).

**[13] Section 101(1), definition of “prohibition order”**

Insert “or 45B” after “41AA”.

**[14] Section 101(3)**

Insert “or relevant health organisation” after “health practitioner” wherever occurring.

**[15] Section 102 Provision of health services by persons who are de-registered or subject to prohibition orders**

Insert after section 102(2)—

(2A) Before providing a health service, a relevant health organisation subject to a prohibition order must ensure the following persons are notified, in accordance with the regulations, that the relevant health organisation is subject to the order—

- (a) the person to whom the relevant health organisation intends to provide the health service,
- (b) if the person is under 16 years of age or under guardianship—a parent or guardian of the person.

Maximum penalty—

- (a) for an individual—100 penalty units, or imprisonment for 6 months, or both, or
- (b) for a corporation—500 penalty units.

(2B) A relevant health organisation subject to a prohibition order must—

- (a) ensure that the employees of the relevant health organisation are notified of the prohibition order and its terms, and
- (b) take all reasonable steps to ensure that the employees of the relevant health organisation comply with the prohibition order.

Maximum penalty—

- (a) for an individual—100 penalty units, or imprisonment for 6 months, or both, or
- (b) for a corporation—500 penalty units.

**[16] Section 102(3)**

Omit the penalty provision. Insert instead—

Maximum penalty—

- (a) for an individual—550 penalty units, or imprisonment for 3 years, or both, or

(b) for a corporation—1,100 penalty units.

**[17] Section 103 Advertising of health services if person is de-registered or subject to a prohibition order**

Omit “who is subject to a prohibition order unless the advertisement specifies that the health practitioner” from section 103(2).

Insert instead “or relevant health organisation subject to a prohibition order unless the advertisement specifies that the health practitioner or relevant health organisation”.

**[18] Section 103(3)**

Omit the subsection. Insert instead—

(3) A person is not guilty of an offence under this section if the person did not know, and could not reasonably have known, that—

- (a) the health practitioner had been de-registered or was subject to a prohibition order, or
- (b) the relevant health organisation was subject to a prohibition order.

**[19] Section 117 Proceedings for offences**

Omit “Proceedings” from section 117(1).

Insert instead “Subject to this section, proceedings”.

**[20] Section 117(3A) and (3B)**

Insert after section 117(3)—

- (3A) An offence under section 102(3) may be prosecuted on indictment.
- (3B) Chapter 5 of the *Criminal Procedure Act 1986*, which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment, applies to an offence under section 102(3).

## **Schedule 7      Amendment of Public Health (Tobacco) Act 2008 No 94**

**[1] Section 4 Definitions**

Insert before paragraph (a) of the definition of *e-cigarette* in section 4(1)—

- (a1) e-cigarette liquid, or

**[2] Section 4(1), definition of “e-cigarette accessory”**

Omit “a liquid, aerosol, gas, vapour or other substance for use in an e-cigarette” from paragraph (a).

Insert instead “e-cigarette liquid”.

**[3] Section 4(1)**

Insert in alphabetical order—

*e-cigarette liquid* means a liquid, aerosol, gas, vapour or other substance which, if inserted or otherwise placed in a device, generates or is released as an aerosol or vapour for inhalation by a user of the device in a manner that replicates, or produces an experience similar to, the inhalation of smoke from an ignited tobacco product or ignited non-tobacco smoking product.

**[4] Sections 6(4) and 7(4)**

Insert “that exceeds the amount” after “tobacco product” wherever occurring.

**[5] Section 21 Smokeless tobacco, confectionery and toys**

Insert after section 21(1)—

- (1A) For the purposes of subsection (1), a quantity of tobacco product that exceeds the amount prescribed by the regulations is presumed to be for the purposes of sale if—
- (a) it is on premises where tobacco products are being sold, and
- (b) it is a tobacco product designed for consumption otherwise than by smoking.
- (1B) The presumption referred to in subsection (1A) is rebuttable.

**[6] Section 21A**

Insert after section 21—

**21A Powers of inspector to seize and dispose of smokeless tobacco products**

- (1) An inspector may seize a tobacco product that the inspector reasonably believes is for sale in contravention of section 21(1) if—
- (a) it is on premises where tobacco products are being sold, and
- (b) the quantity of tobacco product exceeds the amount prescribed by the regulations for the purposes of section 21(1A).
- (2) A tobacco product seized under this section may, at the option of the inspector who made the seizure or of an inspector acting in place of that inspector, be detained in the place, vehicle or vessel where it was found or be removed to another place and detained there.
- (3) If the tobacco product is to be detained in the place, vehicle or vessel where it was found, the inspector may—

- (a) place it in a room, compartment or cabinet in that place, vehicle or vessel, and
  - (b) mark, fasten and seal the door or opening providing access to that room, compartment or cabinet.
- (4) A person must not retake or attempt to retake a tobacco product seized under this section or resist or attempt to prevent a seizure.  
Maximum penalty—
  - (a) for an individual, 500 penalty units for a first offence or 1,000 penalty units for a second or subsequent offence, or
  - (b) for a corporation, 1,000 penalty units for a first offence or 2,000 penalty units for a second or subsequent offence.
- (5) The seizure of tobacco products under this section does not subject the State, the Minister, the Secretary, an inspector or another person to any action, liability, claim or demand.
- (6) Tobacco products seized under this section must be returned to the person from whom they were seized, or to another person who appears to the inspector to be entitled to them, if—
  - (a) the person from whom they were seized makes an application to the Secretary within 28 days after seizure to have the tobacco products returned, and
  - (b) the Secretary is satisfied that the tobacco products were, at the time they were seized, for personal use and not in the person's possession, custody or control for the purposes of sale.
- (7) An inspector is required to dispose of tobacco products seized under this section in a manner that the inspector considers appropriate if—
  - (a) the person from whom they were seized makes an application to the Secretary within 28 days after seizure to have the tobacco products returned and the Secretary is satisfied that the tobacco products were, at the time they were seized, not for personal use but in the person's possession, custody or control for the purposes of sale, or
  - (b) the person from whom the tobacco products were seized does not make an application under subsection (6).



## **Schedule 8      Amendment of Saint Vincent's Hospital Act 1912 No 5**

### **[1] Section 2**

Omit the section. Insert instead—

#### **2 Trustees**

- (1) For the purposes of this Act the persons referred to in subsection (2) are the trustees of all land belonging to or used in connection with St Vincent's Hospital, Darlinghurst or acquired to be used in connection with the hospital.
- (2) The trustees are as follows—
  - (a) the chair of St. Vincent's Hospital Sydney Limited (ACN 054 038 872),
  - (b) the chief executive officer of St Vincent's Health Australia Ltd (ACN 073 503 536),
  - (c) the company secretary of St Vincent's Health Australia Ltd (ACN 073 503 536),
  - (d) if an office referred to in paragraphs (a)–(c) ceases to exist—the holder of an office prescribed by the regulations.
- (3) The trustees may delegate the exercise or performance of a power, authority or duty imposed or conferred on them under this Act, other than this power of delegation, to—
  - (a) a member of staff of the hospital, or
  - (b) a person or body, or a class of persons or bodies, prescribed by the regulations.

### **[2] Section 6 Power to lease land**

Omit “trustees:” from section 6(1).

Insert instead “trustees for a term not exceeding 40 years.”

### **[3] Section 6(1)(a) and (b)**

Omit the paragraphs.

### **[4] Section 6(4)**

Omit the subsection. Insert instead—

- (4) The trustees are not required to obtain a fair market rental for a lease under subsection (1) to—
  - (a) a public or local authority constituted by or under an Act, or
  - (b) a university established or recognised under an Act of this State or another State or Territory or the Commonwealth, or
  - (c) a registered entity within the meaning of the *Australian Charities and Not-for-profits Commission Act 2012* of the Commonwealth.

## **Schedule 9 Amendment of other legislation**

### **9.1 Criminal Procedure Act 1986 No 209**

#### **Schedule 1 Indictable offences triable summarily**

Insert after clause 23C of Table 1—

#### **23CA Public Health Act 2010**

An offence under section 102(3) of the *Public Health Act 2010*.

### **9.2 Gas and Electricity (Consumer Safety) Act 2017 No 15**

#### **[1] Section 4 Definitions**

Omit paragraph (c) from the definition of *medical facility* in section 4(1).

#### **[2] Section 4(1), definition of “medical gas installation”**

Insert “in a medical facility” after “lines”.

### **9.3 Government Information (Public Access) Act 2009 No 52**

#### **Schedule 2 Excluded information of particular agencies**

Insert at the end of clause 4—

The Ministry of Health—functions relating to an inquiry under section 122(1)(c) or 123 of the *Health Services Act 1997*. However, the excluded information of the Ministry of Health does not include a final report of an inquiry.

### **9.4 Home Building Act 1989 No 147**

#### **[1] Section 15A Unqualified mechanical services and medical gas work**

Insert after section 15A(6)—

- (6A) This section does not apply to a person who is a registered medical practitioner or a registered nurse who is commissioning, testing, verifying or witnessing a medical gas installation in the course of carrying out the person’s functions as a registered medical practitioner or a registered nurse.

#### **[2] Section 15B Unqualified medical gasfitting work**

Insert after section 15B(6)—

- (6A) This section does not apply to a person who is a registered medical practitioner or a registered nurse who is commissioning, testing, verifying or witnessing a medical gas installation in the course of carrying out the person’s functions as a registered medical practitioner or a registered nurse.

#### **[3] Section 15C Unqualified medical gas technician work**

Insert after section 15C(5)—

- (5A) This section does not apply to a person who is a registered medical practitioner or a registered nurse who is commissioning, testing, verifying or witnessing a medical gas installation in the course of carrying out the person’s functions as a registered medical practitioner or a registered nurse.

**[4] Section 33E Additional requirements for obtaining endorsed contractor licenses and supervisor and tradesperson certificates relating to mechanical services and medical gas work**

Omit “A supervisor or tradesperson certificate must not be issued, and a contractor licence must not be endorsed to show that it is the equivalent to a supervisor certificate,” from section 33E(1).

Insert instead “A tradesperson certificate must not be issued”.

**[5] Section 33E(1A)**

Insert after section 33E(1)—

- (1A) A supervisor certificate must not be issued, and a contractor licence must not be endorsed to show that it is the equivalent to a supervisor certificate, that authorises its holder to do (and to supervise) mechanical services and medical gas work unless the Secretary is satisfied that the applicant—
- (a) has successfully completed the VET qualification Certificate IV in Plumbing, and
  - (b) has successfully completed the following units of competency in the Construction, Plumbing and Services Training Package—
    - (i) Install medical gas pipeline systems,
    - (ii) Carry out WHS requirements, and
  - (c) has not less than 2 years of experience in mechanical services and medical gas work after the completion of that qualification.

**[6] Section 33F Additional requirements for obtaining endorsed contractor licenses and supervisor and tradesperson certificates relating to medical gasfitting work**

Omit “A supervisor or tradesperson certificate must not be issued, and a contractor licence must not be endorsed to show that it is the equivalent to a supervisor certificate,” from section 33F(1).

Insert instead “A tradesperson certificate must not be issued”.

**[7] Section 33F(1A)**

Insert after section 33F(1)—

- (1A) A supervisor certificate must not be issued, and a contractor licence must not be endorsed to show that it is the equivalent to a supervisor certificate, that authorises its holder to do (and to supervise) medical gasfitting work unless the Secretary is satisfied that the applicant—
- (a) has successfully completed one of the following VET qualifications—
    - (i) Certificate IV in Plumbing,
    - (ii) Certificate IV in Gas Fitting, and
  - (b) has successfully completed the following units of competency in the Construction, Plumbing and Services Training Package—
    - (i) Install medical gas pipeline systems,
    - (ii) Carry out WHS requirements, and
  - (c) has not less than 2 years of experience in medical gasfitting work after the completion of that qualification.

**[8] Section 33G Additional requirements for obtaining endorsed contractor licenses and supervisor and tradesperson certificates relating to medical gas technician work**

Omit “A supervisor or tradesperson certificate must not be issued, and a contractor licence must not be endorsed to show that it is the equivalent to a supervisor certificate,” from section 33G(1).

Insert instead “A tradesperson certificate must not be issued”.

**[9] Section 33G(1A)**

Insert after section 33G(1)—

- (1A) A supervisor certificate must not be issued, and a contractor licence must not be endorsed to show that it is the equivalent to a supervisor certificate, that authorises its holder to do (and to supervise) medical gas technician work unless the Secretary is satisfied that the applicant—
- (a) has successfully completed one of the following VET qualifications—
    - (i) Certificate IV in Plumbing,
    - (ii) Certificate IV in Gas Fitting,
    - (iii) Certificate IV in Engineering, and
  - (b) has successfully completed the following units of competency in the Construction, Plumbing and Services Training Package—
    - (i) Install medical gas pipeline systems,
    - (ii) Carry out WHS requirements, and
  - (c) has not less than 2 years of experience in medical gas technician work after the completion of that qualification.

## **9.5 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

### **Schedule 2 Search warrants under other Acts**

Omit “section 34” from the matter relating to the *Health Care Complaints Act 1993*.

Insert instead “sections 34 and 63F”.

[Second reading speech made in—

Legislative Assembly on 23 September 2020

Legislative Council on 20 October 2020]