



New South Wales

Health Legislation (Miscellaneous) Amendment Act (No 2) 2022 No 41

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New South Wales

Health Legislation (Miscellaneous) Amendment Act (No 2) 2022 No 41

Act No 41, 2022

An Act to make miscellaneous amendments to various Acts relating to health and associated matters. [Assented to 4 October 2022]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Health Legislation (Miscellaneous) Amendment Act (No 2) 2022*.

2 Commencement

This Act commences on the following days—

- (a) for Schedule 5—a day or days to be appointed by proclamation,
- (b) otherwise—the date of assent to this Act.

Schedule 1 Amendment of Health Care Complaints Act 1993 No 105

[1] Section 4 Definitions

Omit the definition of *disciplinary body*. Insert instead—

disciplinary body has the same meaning as *responsible tribunal* has in the *Health Practitioner Regulation National Law (NSW)*.

[2] Section 37A Protection from incrimination

Insert “or under section 97A or 97B” after “this Part” in section 37A(2).

[3] Schedule 1A Provisions relating to Commissioner

Omit clause 3. Insert instead—

3 Employment and remuneration

The Commissioner is entitled to be paid—

- (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
- (b) the travelling and subsistence allowances the Minister decides from time to time.

[4] Schedule 1A, clause 6

Omit “(except as provided by clause 3)”.

[5] Schedule 4 Savings, transitional and other provisions

Insert at the end of the Schedule with appropriate Part and clause numbering—

Part Provision consequent on enactment of Health Legislation (Miscellaneous) Amendment Act (No 2) 2022

Commissioner—remuneration

- (1) The contract of employment in force between the Commissioner and the Minister immediately before the commencement day continues in force until a determination of the Commissioner’s remuneration comes into force under the *Statutory and Other Offices Remuneration Act 1975*.
- (2) In this clause—
commencement day means the day on which the amendments made to this Act, Schedule 1A by the *Health Legislation (Miscellaneous) Amendment Act (No 2) 2022* commence.

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

Omit “notice of” from Schedule 1[15], section 161(a).

Insert instead “written notice of the reasons for”.

[2] Schedule 1[25], Schedule 5A

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Provision consequent on enactment of Health Legislation (Miscellaneous) Amendment Act (No 2) 2022

Notice of appeal

The amendment made to this Law, section 161(a) by the *Health Legislation (Miscellaneous) Amendment Act (No 2) 2022* does not apply to a decision of which notice other than written notice of the reasons for the decision was given before the commencement of the amendment.

[3] Schedule 1[25], Schedule 5D

Insert after clause 5(1)—

- (1A) A Committee or the Tribunal may receive and admit on production, as evidence in any proceedings, a thing seized under the authority of a search warrant where the Committee or Tribunal is of the opinion that the thing seized is relevant to the proceedings.

[4] Schedule 1[25], Schedule 5D, clause 5(2)

Omit “so admitted”. Insert instead “admitted under subclause (1) or (1A)”.

Schedule 3 Amendment of Home Building Act 1989 No 147

Schedule 1 Definitions and other interpretative provisions

Omit “register,” and “duct,” from clause 1(1), definition of *mechanical services and medical gas work*, paragraph (a)(i).

Schedule 4 Amendment of Home Building Act 1989 No 147

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

Insert after section 33E(1A)—

(1B) However, if the Secretary is satisfied of either of the following in relation to an applicant for an authority referred to in subsection (1) or (1A), the Secretary may issue the authority subject to a condition that the holder must not do medical gasfitting work—

- (a) the applicant has not successfully completed—
 - (i) for a tradesperson certificate—the units of competency referred to in subsection (1)(b), or
 - (ii) for a supervisor certificate or endorsed contractor licence—the units of competency referred to in subsection (1A)(b),
- (b) the applicant has less than 2 years of experience in medical gasfitting work.

Note— The authority conferred by a supervisor or tradesperson certificate or an endorsed contractor licence is subject to the conditions applicable to the authority. See sections 27 and 28.

(1C) The holder of an authority subject to a condition under subsection (1B) must comply with the condition.

Maximum penalty—

- (a) for a corporation—1,000 penalty units, or
- (b) otherwise—200 penalty units.

(1D) Subsection (1C) does not affect section 36.

[2] Section 33H

Insert after section 33G—

33H Approved foreign qualifications

(1) A provision of section 33E, 33F or 33G requiring that an authority referred to in the provision must not be issued or endorsed unless the applicant has successfully completed a specified VET qualification does not apply to an applicant who has successfully completed—

- (a) a qualification issued outside Australia that the Secretary considers is substantially equivalent, or based on similar competencies, to the specified VET qualification, and
- (b) a competency assessment conducted by the Secretary, or by a person or body approved by the Secretary, for the purposes of this subsection.

(2) The regulations may make further provision for or in relation to competency assessments for the purposes of this section.

(3) In this section—

specified VET qualification means—

- (a) for section 33E(1)—a qualification referred to in section 33E(1)(a), or
- (b) for section 33E(1A)—a qualification referred to in section 33E(1A)(a), or
- (c) for section 33F(1)—a qualification referred to in section 33F(1)(a), or

- (d) for section 33F(1A)—a qualification referred to in section 33F(1A)(a), or
- (e) for section 33G(1)—a qualification referred to in section 33G(1)(a), or
- (f) for section 33G(1A)—a qualification referred to in section 33G(1A)(a).

[3] Schedule 4 Savings and transitional provisions

Omit clause 158(2)(b). Insert instead—

- (b) in relation to mechanical services and medical gas work that is medical gasfitting work—at the end of 30 September 2022, and
- (c) in relation to mechanical services and medical gas work that is not medical gas fitting work—28 February 2023.

[4] Schedule 4, clauses 158A and 158B

Insert after clause 158—

158A Issue of authorities for mechanical services and medical gas work to existing authority holders

- (1) Despite section 33E(1), a tradesperson certificate authorising the holder to do mechanical services and medical gas work may be issued to a person who—
 - (a) immediately before 1 March 2023, holds a tradesperson certificate authorising the holder to do plumbing and drainage work, and
 - (b) meets the requirements set out in section 33E(1)(b) and (c), and
 - (c) otherwise meets the requirements for the issue of the certificate.
- (2) Despite section 33E(1A), an endorsed contractor licence or a supervisor certificate authorising the holder to do and supervise mechanical services and medical gas work may be issued to a person who—
 - (a) immediately before 1 March 2023, holds an endorsed contractor licence or a supervisor certificate authorising the holder to do and supervise plumbing and drainage work, and
 - (b) meets the requirements set out in section 33E(1A)(b) and (c), and
 - (c) otherwise meets the requirements for the issue of the licence or certificate.
- (3) An authority does not authorise the holder to do, or to do and supervise, plumbing and drainage work for the purposes of subclause (1)(a) or (2)(a) if the authority authorises the holder to do, or to do and supervise, only draining work and no other specialist work.
- (4) To avoid doubt, section 33E(1B)–(1D), as inserted by the *Health Legislation (Miscellaneous) Amendment Act (No 2) 2022*, extend to an authority to which subclause (1) or (2) applies.
- (5) In this clause—
draining work has the meaning given by the *Home Building Regulation 2014*, Schedule 4 as in force immediately before the commencement of this clause.

158B Issue of authorities for medical gasfitting work and medical gas technician work to existing authority holders

- (1) Despite sections 33F(1) and 33G(1), a tradesperson certificate authorising the holder to do medical gasfitting work or medical gas technician work may be issued to a person who—

- (a) immediately before 1 October 2022, holds a tradesperson certificate authorising the holder to do gasfitting work or plumbing and drainage work, and
 - (b) meets the following requirements—
 - (i) for medical gasfitting work—the requirements set out in section 33F(1)(b) and (c),
 - (ii) for medical gas technician work—the requirements set out in section 33G(1)(b) and (c), and
 - (c) otherwise meets the requirements for the issue of the certificate.
- (2) Despite sections 33F(1A) and 33G(1A), an endorsed contractor licence or a supervisor certificate authorising the holder to do and supervise medical gasfitting work or medical gas technician work may be issued to a person who—
- (a) immediately before 1 October 2022, holds an endorsed contractor licence or a supervisor certificate authorising the holder to do and supervise gasfitting work or plumbing and drainage work, and
 - (b) meets the following requirements—
 - (i) for medical gasfitting work—the requirements set out in section 33F(1A)(b) and (c),
 - (ii) for medical gas technician work—the requirements set out in section 33G(1A)(b) and (c), and
 - (c) otherwise meets the requirements for the issue of the licence or certificate.
- (3) An authority does not authorise the holder to do, or to do and supervise, plumbing and drainage work for the purposes of subclause (1)(a) or (2)(a) if the authority authorises the holder to do, or to do and supervise, only draining work and no other specialist work.
- (4) In this clause—
draining work has the meaning given by the *Home Building Regulation 2014*, Schedule 4 as in force immediately before the commencement of this clause.

Schedule 5 Amendment of Human Tissue Act 1983 No 164

[1] Section 4 Definitions

Omit section 4(8). Insert instead—

- (8) For this Act, the *principal care officer*, in relation to a child in the care of the State, means the Secretary under the *Children and Young Persons (Care and Protection) Act 1998*.

[2] Section 5B

Insert after section 5A—

5B Delegation of functions of principal care officer

The Secretary under the *Children and Young Persons (Care and Protection) Act 1998* may delegate to a person the Secretary's functions as principal care officer under this Act.

[3] Section 24B Consent and authorisation of principal care officer

Omit "A principal care officer" from section 24B(1).

Insert instead "The principal care officer".

[4] Section 25 Consent by coroner

Omit "a principal care officer" from section 25(1).

Insert instead "the principal care officer".

[5] Schedule 1 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Provision consequent on enactment of Health Legislation (Miscellaneous) Amendment Act (No 2) 2022

Consent of principal care officer

- (1) A consent or authority to remove tissue from a deceased child's body given by a principal care officer under this Act and in force immediately before the commencement day is not affected by the amendment made to section 4 by the amending Act and is sufficient authority for a medical practitioner to remove the tissue for the purposes of the consent.
- (2) In this clause—
amending Act means the *Health Legislation (Miscellaneous) Amendment Act (No 2) 2022*.
commencement day means the day on which the amendment made to section 4 by the amending Act commences.

Schedule 6 Amendment of Mental Health Act 2007 No 8

[1] Section 18 When a person may be detained in mental health facility

Omit “Note—” from the note. Insert instead “Note 1—”.

[2] Section 18

Insert at the end of the section—

Note 2— A person authorised to be taken to and detained in a mental health facility under this Division may be taken to the facility by a person listed in section 81.

[3] Section 35 Purpose and findings of mental health inquiries

Omit “specified” from section 35(5)(c).

Schedule 7 Amendment of Mental Health and Cognitive Impairment Forensic Provisions Act 2020 No 12

[1] Section 69 Objects

Insert at the end of the section—

- (2) The objects of this Part extend to the provisions of Part 6.

[2] Section 101 Termination of status as a forensic patient

Omit section 101(g). Insert instead—

- (g) the person was found unfit to be tried for an offence and is later found fit to be tried for the offence, and the Director of Public Prosecutions has provided advice to the court under section 53(2),

Schedule 8 Amendment of Public Health Act 2010 No 127

[1] Section 108 Powers of authorised officers to enter premises

Omit “a certificate of authority” and “or certificate of authority” wherever occurring in section 108(2).

Insert instead “an identification card” and “or identification card”, respectively.

[2] Section 108(3)

Omit the subsection.

[3] Section 127A

Insert after section 127—

127A Identification

- (1) Every authorised officer who is not a police officer must be provided with an identification card as an authorised officer by the person who appoints the officer.
- (2) The identification card must—
 - (a) be in the approved form, and
 - (b) contain a recent photograph of the person.

[4] Schedule 5 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Provision consequent on enactment of Health Legislation (Miscellaneous) Amendment Act (No 2) 2022

Identification of authorised officers

A certificate of authority issued to an authorised officer under section 108 and in force immediately before the amendment of that section by the *Health Legislation (Miscellaneous) Amendment Act (No 2) 2022* is taken to be an identification card issued under section 127A until whichever of the following occurs first—

- (a) the certificate of authority expires,
- (b) the authorised officer is issued with an identification card under section 127A.

Schedule 9 Amendment of Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

Schedule 1 Public offices

Insert at the end of the Schedule—

Commissioner of the Health Care Complaints Commission

[Second reading speech made in—
Legislative Assembly on 10 August 2022
Legislative Council on 21 September 2022]