



New South Wales

Gas and Electricity (Consumer Safety) Amendment (Medical Gas Work) Regulation (No 2) 2020

under the

Gas and Electricity (Consumer Safety) Act 2017

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Gas and Electricity (Consumer Safety) Act 2017*.

KEVIN ANDERSON, MP
Minister for Better Regulation and Innovation

Explanatory note

The object of this Regulation is to amend the *Gas and Electricity (Consumer Safety) Regulation 2018* in connection with the enactment of the *Gas Legislation Amendment (Medical Gas Systems) Act 2020*.

This Regulation is made under the *Gas and Electricity (Consumer Safety) Act 2017*, including the definitions of **medical facility** and **medical gas** in section 4(1) and sections 38A(1)(a), 38B(1)(a), 38E(a), 40(1)(b) and (2), 42(c), 54(3), 66 and 75 (the general regulation-making power).

Gas and Electricity (Consumer Safety) Amendment (Medical Gas Work) Regulation (No 2) 2020

under the

Gas and Electricity (Consumer Safety) Act 2017

1 Name of Regulation

This Regulation is the *Gas and Electricity (Consumer Safety) Amendment (Medical Gas Work) Regulation (No 2) 2020*.

2 Commencement

This Regulation commences on 1 November 2020 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Gas and Electricity (Consumer Safety) Regulation 2018

[1] Clause 3 Definitions

Omit the definition of *authority number* from clause 3(1). Insert instead—

authority number, in relation to a person who carries out or supervises the carrying out of the following work, means the licence number or certificate number for a contractor licence or certificate issued under the *Home Building Act 1989* that authorises the person to contract to do or to carry out, or supervise the carrying out of, the work—

- (a) electrical installation work,
- (b) medical gasfitting work,
- (c) medical gas technician work,
- (d) mechanical services and medical gas work.

[2] Clause 3(1), definition of “person responsible”

Omit the definition.

[3] Clause 3(1)

Insert in alphabetical order—

qualified person, for Part 13A, means, in relation to the following work, a person authorised under the *Home Building Act 1989* to do the work without supervision—

- (a) medical gasfitting work,
- (b) medical gas technician work,
- (c) mechanical services and medical gas work.

responsible contractor means, in relation to the carrying out of the following work, the person who supervises the carrying out of the work, under the authority of an appropriately endorsed contractor licence or appropriate supervisor certificate—

- (a) autogas work,
- (b) electrical installation work,
- (c) gasfitting work,
- (d) mechanical services and medical gas work,
- (e) medical gas technician work,
- (f) medical gasfitting work.

[4] Clause 3(1), definition of “safety and compliance test”

Omit the definition. Insert instead—

safety and compliance test means the following—

- (a) in relation to electrical installation work on an electrical installation, or part of an electrical installation—a test referred to in clause 36,
- (b) in relation to work on a medical gas installation, or part of a medical gas installation—a test referred to in clause 69B.

[5] Clause 3A

Omit clause 3A (as inserted by the *Gas and Electricity (Consumer Safety) Amendment (Medical Gas Work) Regulation 2020*).

Insert instead—

3A Definition of “medical gas”

For the purposes of the definition of *medical gas* in section 4(1) of the Act, the following substances are prescribed—

- (a) oxygen,
- (b) nitrous oxide,
- (c) helium,
- (d) nitrogen,
- (e) carbon dioxide,
- (f) medical air,
- (g) surgical tool gas,
- (h) common mixtures of the gases referred to in paragraphs (a)–(g),
- (i) air at a negative pressure,
- (j) waste anaesthetic gas.

[6] Clauses 42 and 44–51

Omit “person responsible” wherever occurring. Insert instead “responsible contractor”.

[7] Part 13A

Insert after Part 13—

Part 13A Medical gas

69A Work to comply with certain standards

For the purposes of sections 38A(1)(a) and 38B(1)(a) of the Act, the following standards, as in force from time to time, are prescribed—

- (a) AS 2896—2011, Medical gas systems—Installation and testing of non-flammable medical gas pipeline systems,
- (b) AS 4774.2:2019, Work in compressed air and hyperbaric facilities—Hyperbaric oxygen facilities.

Note. Section 38A(1)(a) of the Act makes it an offence for a person to carry out medical gasfitting work, medical gas technician work or mechanical services and medical gas work that is not in accordance with Australian standards prescribed by the regulations. This clause sets out those standards.

Section 38A(1)(c) of the Act also makes it an offence for a person to carry out medical gasfitting work, medical gas technician work or mechanical services and medical gas work that is not in accordance with the standards or requirements, if any, specified by the Health Secretary by order in writing and published on the website of the Ministry of Health.

Section 38B(1)(a) of the Act makes it an offence for an occupier or owner of a place to not maintain a medical gas installation at the place, to the best of the person’s ability and knowledge, in accordance with Australian standards prescribed by the regulations.

69B Conduct of safety and compliance tests

- (1) This clause applies to medical gasfitting work and mechanical services and medical gas work on a medical gas installation or part of a medical gas installation.
- (2) A safety and compliance test on the work to which this clause applies must be carried out by a qualified person in accordance with the requirements of—
 - (a) AS 2896—2011, *Medical gas systems—Installation and testing of non-flammable medical gas pipeline systems* after the completion of the work, and
 - (b) AS 4774.2:2019, *Work in compressed air and hyperbaric facilities—Hyperbaric oxygen facilities*.

69C Notification of results of safety and compliance tests

(1) **Notices relating to medical gas installations**

As soon as is reasonably practicable, but no later than 7 days, after the completion of a safety and compliance test, the results of the test are to be notified by the person who conducted the test (the *tester*), as follows—

- (a) to the person for whom the work is carried out,
- (b) to the Secretary.

Note. It is an offence to provide false or misleading information or documents in purported compliance with subclause (1). See sections 307B (False or misleading information) and 307C (False or misleading documents) of the *Crimes Act 1900*.

(2) **Notice must be given to owner or owner's agent**

If the person for whom the work is carried out is not the owner of the medical gas installation or the owner's agent, that person must as soon as is reasonably practicable, but no later than 7 days, after receiving the results of a test in accordance with subclause (1) notify the owner by giving a copy of the results to the owner of the medical gas installation or the owner's agent.

(3) **Content of notice**

The notice must—

- (a) be in the form approved by the Secretary, and
- (b) describe the work done and identify the medical gas installation concerned, and
- (c) specify—
 - (i) the name and authority number of each person who carried out, or supervised the carrying out of, the work concerned, and
 - (ii) if applicable, the name and authority number of any person engaged by the owner or occupier of the medical gas installation (whether or not for fee or reward) to provide, or arrange for the provision of, the work concerned (the *work provider*), and
- (d) specify the name and authority number of the tester and the date on which the test was carried out, and
- (e) be signed by the tester and the work provider (if any).

(4) **Offence—failure to give notice**

If the results of the test are not notified in accordance with this clause, the person required by subclause (1) or (2) to give notice of the results of the test is guilty of an offence.

Maximum penalty—40 penalty units (for a corporation) and 20 penalty units (for an individual).

(5) **Offences—failure to retain notices or produce copies**

The tester—

- (a) must keep a copy of the notice for at least 5 years from when the notice was given, and
- (b) must produce a copy of the notice to any of the following persons on written demand made by the person at any time during that 5-year period—
 - (i) the Secretary,
 - (ii) an authorised officer.

Maximum penalty—40 penalty units (for a corporation) and 20 penalty units (for an individual).

69D Unqualified persons not to carry out safety and compliance tests

- (1) A person must not carry out a safety and compliance test on medical gasfitting work, medical gas technician work or mechanical services and medical gas work on a medical gas installation, or part of a medical gas installation, if the person is not a qualified person.

Maximum penalty—200 penalty units.

- (2) A work provider, within the meaning of clause 69C(3)(c)(ii), must not cause or permit an employee, agent or contractor of the provider to carry out a safety and compliance test on the work concerned unless the employee, agent or contractor is a qualified person.

Maximum penalty—500 penalty units (for a corporation) and 200 penalty units (for an individual).

69E Same person not to carry out medical gasfitting and medical gas technician work

A person must not carry out medical gas technician work in relation to a medical gas installation, or part of a medical gas installation, if the person has carried out medical gasfitting work on the medical gas installation or the part of the medical gas installation.

Maximum penalty—200 penalty units.

69F Transitional commencement

Clauses 69B–69D do not have effect until 1 May 2021.

[8] Clause 70, heading

Omit “or gas accident”. Insert instead “, gas accident or medical gas accident”.

[9] Clause 70(1)(a1)

Insert after clause 70(1)(a)—

- (a1) for a serious medical gas accident—the person apparently in charge of the medical facility concerned,

[10] Clause 70(1), note

Insert at the end of the note—

Section 5A(2) of the Act defines *serious medical gas accident*.

[11] Clause 70(2)–(3)

Insert “or a serious medical gas accident” after “serious gas accident” wherever occurring.

[12] Clause 71, heading

Omit “or gas accident”. Insert instead “**accident, gas accident or medical gas accident**”.

[13] Clause 71

Insert “or a serious medical gas accident” after “serious gas accident”.

[14] Clause 72A

Insert after clause 72—

72A Rectification of defective electrical, gas or medical gas installation work

- (1) This clause applies to the following work that is found to be non-compliant with this Act or the regulations (*non-compliant work*)—
 - (a) electrical installation work,
 - (b) gasfitting work,
 - (c) mechanical services and medical gas work, to the extent the work relates to medical gas,
 - (d) medical gasfitting work.
- (2) For the purposes of section 54(3) of the Act, an authorised officer may, by written notice given to the responsible contractor for the non-compliant work, direct the responsible contractor to rectify the work.
- (3) Without limiting subclause (2), the direction may require the responsible contractor to—
 - (a) repair, as specified by the authorised officer, work done otherwise than in a proper and skilful manner, or
 - (b) make compliant work that is not compliant with the relevant standards set out in clause 34, 39 or 69A, or
 - (c) repair, as specified by the authorised officer, a defective fitting used in the work done, or
 - (d) replace an electrical article or a gas component that is not authorised with an authorised article or component, or
 - (e) disconnect the supply of electricity, gas or medical gas, as applicable, to premises, or part of premises, if the authorised officer considers, on reasonable grounds, that there is a risk to public health, or
 - (f) disconnect an installation installed by the responsible contractor that is connected to another installation that has previously been installed in contravention of the Act or these regulations, or
 - (g) give a notice or other document required to be given under clause 37, 42, 45, 49 or 69C, in accordance with the requirements of the relevant clause, if the responsible contractor has failed to do so.
- (4) A responsible contractor to whom a direction is given must comply with the direction within the period specified, unless the responsible contractor has a reasonable excuse.
Maximum penalty—100 penalty units and, for a continuing offence, a further penalty of 50 penalty units for each day the offence continues.

- (5) If a direction is given to a responsible contractor, the responsible contractor must comply with the direction before continuing with the work.
Maximum penalty—100 penalty units.
- (6) A direction ceases to have effect if work the subject of the direction is the subject of an order made by the Civil and Administrative Tribunal under the *Home Building Act 1989*.
- (7) A direction may require remedial work to be approved by an authorised officer.
- (8) To avoid doubt—
 - (a) a single written notice may contain more than one direction, and
 - (b) a direction may be subject to conditions, and
 - (c) a direction may be varied by giving a further written notice containing the variation to the responsible contractor.
- (9) A direction is of no effect if it is issued more than 2 years after the work to which it relates has been completed.
- (10) For the purposes of subclause (9), work is completed by a responsible contractor when the responsible contractor completes, in accordance with the Act, the whole of the work that the person was engaged to carry out, and any notice or other document required to be given under clause 37, 45 or 49 has been provided.
- (11) This clause does not have effect until 1 May 2021.

[15] Schedule 3 Penalty notice offences

Insert in appropriate order—

Section 38D(1) or (2)	\$1,100 (for a corporation) or \$550 (for an individual)
Clause 69C(4) or (5)	\$1,100 (for a corporation) or \$550 (for an individual)
Clause 69D(1)	\$550
Clause 69D(2)	\$1,100 (for a corporation) or \$550 (for an individual)
Clause 69E	\$550
Clause 72A(4)	\$2,200 and, for a continuing offence, an additional \$1,100 for each additional day for which the offence continues
Clause 72A(5)	\$2,200