



New South Wales

Health Legislation Amendment Bill 2015

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Health Care Complaints Act 1993*:
 - (i) to require the Health Care Complaints Commission (the **Commission**) to keep a public register of prohibition orders and interim prohibition orders in respect of health practitioners, and
 - (ii) to enable the Commission to issue public warnings during investigations into particular treatments or health services,
- (b) to amend the *Mental Health Act 2007* to exclude from personal liability members of staff of the NSW Health Service who assist health care professionals or ambulance officers in the exercise of their functions,
- (c) to amend the *Private Health Facilities Act 2007* to remove the adequacy of current health services in an area as a ground for the refusal of a licence for a private health facility in that area,
- (d) to amend the *Public Health Act 2010*:
 - (i) to make it an offence for a subcontractor of a person who has been engaged to install, operate or maintain a regulated system for the control of legionella to fail to ensure that certain installation, operation or maintenance requirements are complied with, and
 - (ii) to give effect to prescribed interstate prohibition orders within New South Wales,

- (e) to amend the *Public Health (Tobacco) Act 2008*:
 - (i) to enable inspectors to seize and dispose of any tobacco product found on retail premises that exceeds a prescribed quantity and that is not in its original packaging or is in packaging without a health warning, and
 - (ii) to prohibit obtaining or selling tobacco product by wholesale without a tobacco retailer notification number.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act, except proposed **Schedule 4** [4]–[6] and proposed **Schedule 5** [3]–[5] and [7], which commence on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Health Care Complaints Act 1993 No 105

Schedule 1 [1] requires the Commission to keep a public register of prohibition orders and interim prohibition orders made under the *Health Care Complaints Act 1993* that prohibit certain health practitioners from providing health services or specified health services or that place conditions on the provision of health services or specified health services by health practitioners.

Schedule 1 [2] enables the Commission to cause a statement to be issued to warn the public about a particular treatment or health service if, during an investigation, the Commission is of the view that the warning is necessary to protect an individual or public health or safety. **Schedule 1** [3] makes a consequential amendment.

Schedule 2 Amendment of Mental Health Act 2007 No 8

Schedule 2 excludes from personal liability members of staff of the NSW Health Service in the exercise of their functions under the *Mental Health Act 2007* or the *Mental Health (Forensic Provisions) Act 1990* and in their assistance of health care professionals or ambulance officers in the exercise of their functions under those Acts.

Schedule 3 Amendment of Private Health Facilities Act 2007 No 9

Schedule 3 [1] removes a current ground for the refusal of a licence for a private health facility where the approval of the application will result in more than an adequate number of health services becoming available in a particular clinical or geographic area and will undermine the provision of viable, comprehensive and coordinated health services.

Schedule 3 [2] enables savings and transitional regulations to be made as a consequence of the amendments to the *Private Health Facilities Act 2007*.

Schedule 4 Amendment of Public Health Act 2010 No 127

Schedule 4 [1]–[3] make minor amendments that update terminology consequent on the enactment of the *Government Sector Employment Act 2013* and past administrative changes.

Schedule 4 [4]–[6] make it an offence for a subcontractor of a person who is engaged by the occupier of any premises to install, operate or maintain a regulated system for the control of legionella not to ensure that installation, operation or maintenance requirements prescribed by regulations are complied with. The maximum penalty for an offence will be:

- (a) in the case of an individual—100 penalty units for a first offence or 200 penalty units, or imprisonment for 12 months, or both, for a second or subsequent offence, or

- (b) in the case of a corporation—500 penalty units for a first offence or 1,000 penalty units for a second or subsequent offence.

Schedule 4 [7] gives effect to prescribed interstate prohibition orders within New South Wales.

Schedule 4 [8] enables the regulations to prescribe the laws of another State or Territory under which interstate prohibition orders must be made in order to have effect in New South Wales.

Schedule 5 Amendment of Public Health (Tobacco) Act 2008 No 94

Schedule 5 [1] and [2] make minor amendments that update terminology consequent on the enactment of the *Government Sector Employment Act 2013* and past administrative changes.

Schedule 5 [3] enables the regulations to prescribe a quantity of tobacco product to be presumed for sale if it is not in the package in which it was packed by the manufacturer.

Schedule 5 [4] enables the regulations to prescribe a quantity of tobacco product to be presumed for sale if it is not in packaging marked with a health warning.

Schedule 5 [5] enables inspectors to seize and dispose of any tobacco product found on retail premises that exceeds the quantity prescribed by the regulations and that is not in its original packaging or is in packaging without a health warning.

Schedule 5 [6] requires the Secretary of the Ministry of Health to issue a person who intends to engage in tobacco retailing with a tobacco retailer notification number.

Schedule 5 [7] makes it an offence for:

- (a) a tobacco retailer to obtain tobacco product from a tobacco wholesaler without providing a tobacco retailer notification number to the wholesaler, and
- (b) a tobacco wholesaler to sell tobacco product to a tobacco retailer without obtaining a tobacco retailer notification number from the retailer.



New South Wales

Health Legislation Amendment Bill 2015

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Health Care Complaints Act 1993 No 105	3
Schedule 2 Amendment of Mental Health Act 2007 No 8	4
Schedule 3 Amendment of Private Health Facilities Act 2007 No 9	5
Schedule 4 Amendment of Public Health Act 2010 No 127	6
Schedule 5 Amendment of Public Health (Tobacco) Act 2008 No 94	8



New South Wales

Health Legislation Amendment Bill 2015

No. , 2015

A Bill for

An Act to make miscellaneous amendments to various Acts that relate to health and associated matters.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Health Legislation Amendment Act 2015</i> .	3
2 Commencement	4
(1) This Act commences on the date of assent to this Act, except as provided by subsection (2).	5 6
(2) The following provisions commence on a day or days to be appointed by proclamation:	7 8
(a) Schedule 4 [4]–[6],	9
(b) Schedule 5 [3]–[5] and [7].	10

Schedule 1	Amendment of Health Care Complaints Act 1993	1
	No 105	2
[1] Section 41E		3
Insert after section 41D:		4
41E Register of orders		5
The Commission is to:		6
(a) keep a register containing copies of all prohibition orders and interim prohibition orders in force under this Division, and		7
(b) cause the contents of the register to be made available for inspection free of charge by the public on the Commission’s website.		8
		9
		10
[2] Section 94A Warnings about unsafe treatments or services		11
Omit section 94A (1). Insert instead:		12
(1) If, during an investigation, the Commission is of the view that issuing a public statement about a particular treatment or health service is necessary to protect public health or safety and that any further delay in issuing the statement poses a risk to an individual or to public health or safety, the Commission may cause a public statement to be issued in a manner determined by the Commission identifying and giving warnings or information about the treatment or health service.		13
		14
		15
		16
		17
		18
		19
(1A) If, following an investigation, the Commission is of the view that a particular treatment or health service poses a risk to public health or safety, the Commission may cause a public statement to be issued in a manner determined by the Commission identifying and giving warnings or information about the treatment or health service.		20
		21
		22
		23
		24
[3] Section 94A (2)		25
Omit “under subsection (1)”. Insert instead “under this section”.		26

Schedule 2 Amendment of Mental Health Act 2007 No 8 1

**Section 191 Liability of certain persons exercising functions under this Act or the
Mental Health (Forensic Provisions) Act 1990** 2
3

Insert after section 191 (1): 4

(1A) Without limiting subsection (1), any person who is a member of staff of the
NSW Health Service who, in good faith: 5
6

(a) exercises a function that is conferred or imposed on the person by or
under this Act or the *Mental Health (Forensic Provisions) Act 1990*, or 7
8

(b) assists a health care professional or ambulance officer who is exercising
a function that is conferred or imposed on the health care professional
or ambulance officer by or under this Act or the *Mental Health
(Forensic Provisions) Act 1990*, 9
10
11
12

is not personally liable for any injury or damage caused in exercising, or in
assisting the health care professional or ambulance officer in exercising, any
such function. 13
14
15

Schedule 3	Amendment of Private Health Facilities Act 2007	1
	No 9	2
[1]	Section 7 Approval in principle or refusal of application	3
	Omit section 7 (4) (c). Insert instead:	4
	(c) having regard to any development guidelines approved by the Secretary	5
	and published in the Gazette, the application should be refused, or	6
[2]	Schedule 4 Savings, transitional and other provisions	7
	Insert at the end of clause 1 (1):	8
	any other Act that amends this Act	9

Schedule 4	Amendment of Public Health Act 2010 No 127	1
[1] The whole Act (other than section 5)		2
	Omit “Director-General” and “Director-General’s” wherever occurring.	3
	Insert instead “Secretary” and “Secretary’s” respectively.	4
[2] Section 5 Definitions		5
	Omit “Director-General” from the definition of <i>approved form</i> in section 5 (1).	6
	Insert instead “Secretary”.	7
[3] Section 5 (1), definitions of “Department” and “Secretary”		8
	Omit the definitions of <i>Department</i> and <i>Director-General</i> .	9
	Insert in alphabetical order:	10
	<i>Department</i> means the Ministry of Health.	11
	<i>Secretary</i> means the Secretary of the Ministry of Health.	12
[4] Section 28 Installation of regulated systems		13
	Insert after section 28 (3):	14
	(4) If a duly qualified person who is engaged by the occupier of any premises to install a regulated system on the premises engages a person other than an employee (a <i>subcontractor</i>) to install the system, the subcontractor is guilty of an offence if the subcontractor fails to ensure that the prescribed installation requirements are complied with.	15
	Maximum penalty:	16
	(a) in the case of an individual—100 penalty units for a first offence or 200 penalty units, or imprisonment for 12 months, or both, for a second or subsequent offence, or	17
	(b) in the case of a corporation—500 penalty units for a first offence or 1,000 penalty units for a second or subsequent offence.	18
		19
		20
		21
		22
		23
		24
		25
[5] Section 29 Operation of regulated systems		26
	Insert after section 29 (3):	27
	(4) If a duly qualified person who is engaged by the occupier of any premises to operate a regulated system on the premises engages a person other than an employee (a <i>subcontractor</i>) to operate the system, the subcontractor is guilty of an offence if the subcontractor fails to ensure that the prescribed operating requirements are complied with.	28
	Maximum penalty:	29
	(a) in the case of an individual—100 penalty units for a first offence or 200 penalty units, or imprisonment for 12 months, or both, for a second or subsequent offence, or	30
	(b) in the case of a corporation—500 penalty units for a first offence or 1,000 penalty units for a second or subsequent offence.	31
		32
		33
		34
		35
		36
		37
		38
[6] Section 30 Maintenance of regulated systems		39
	Insert after section 30 (3):	40
	(4) If a duly qualified person who is engaged by the occupier of any premises to maintain a regulated system on the premises engages a person other than an	41
		42

employee (a <i>subcontractor</i>) to maintain the system, the subcontractor is guilty of an offence if the subcontractor fails to ensure that the prescribed maintenance requirements are complied with.	1 2 3
Maximum penalty:	4
(a) in the case of an individual—100 penalty units for a first offence or 200 penalty units, or imprisonment for 12 months, or both, for a second or subsequent offence, or	5 6 7
(b) in the case of a corporation—500 penalty units for a first offence or 1,000 penalty units for a second or subsequent offence.	8 9
[7] Section 101 Definitions	10
Insert “and any corresponding interstate prohibition order” after “that Act” in the definition of <i>prohibition order</i> in section 101 (1).	11 12
[8] Section 101 (1), definition of “corresponding interstate prohibition order”	13
Insert in alphabetical order:	14
<i>corresponding interstate prohibition order</i> means an order made under a law of another State or Territory prescribed by the regulations for the purposes of this Division.	15 16 17

Schedule 5	Amendment of Public Health (Tobacco) Act 2008	1
	No 94	2
[1]	The whole Act (other than section 4 and Schedule 1)	3
	Omit “Director-General” wherever occurring. Insert instead “Secretary”.	4
[2]	Section 4 Definitions	5
	Omit the definition of <i>Director-General</i> from section 4 (1).	6
	Insert in alphabetical order:	7
	<i>Secretary</i> means the Secretary of the Ministry of Health.	8
[3]	Section 6 Certain sales prohibited	9
	Insert after section 6 (3) before the penalty:	10
	(4) For the purposes of subsection (1), a quantity of tobacco product prescribed by the regulations is presumed to be for the purposes of sale if:	11
	(a) it is on premises where tobacco products are being sold, and	12
	(b) it is not in the package in which it was packed by the manufacturer.	13
	Any such presumption is rebuttable.	14
[4]	Section 7 Packing and sale of tobacco product without health warning prohibited	15
	Insert after section 7 (3) before the penalty:	16
	(4) For the purposes of subsection (2), a quantity of tobacco product prescribed by the regulations is presumed to be for the purposes of sale if:	17
	(a) it is on premises where tobacco products are being sold, and	18
	(b) it is not in packaging marked with a health warning.	19
	Any such presumption is rebuttable.	20
[5]	Section 7A	21
	Insert after section 7:	22
	7A Powers of inspector to seize and dispose of tobacco products exceeding prescribed amounts	23
	(1) An inspector may seize any tobacco product that the inspector reasonably believes contravenes section 6 (1) or 7 (2) if:	24
	(a) it is on premises where tobacco products are being sold, and	25
	(b) the quantity of tobacco product exceeds the amount prescribed by the regulations for the purposes of section 6 (4) or 7 (4) (as the case requires).	26
	(2) Any tobacco product seized under this section may, at the option of the inspector who made the seizure or of any inspector acting in his or her place, be detained in the place, vehicle or vessel where it was found or be removed to another place and detained there.	27
		28
		29
		30
		31
		32
		33
		34
		35
		36

(3)	If the tobacco product is to be detained in the place, vehicle or vessel where it was found, the inspector may:	1
		2
(a)	place it in a room, compartment or cabinet in that place, vehicle, or vessel, and	3
		4
(b)	mark, fasten and seal the door or opening providing access to that room, compartment or cabinet.	5
		6
(4)	A person must not retake or attempt to retake any tobacco product seized under this section or resist or attempt to prevent such a seizure.	7
	Maximum penalty:	8
		9
(a)	in the case of an individual, 500 penalty units for a first offence or 1,000 penalty units for a second or subsequent offence, or	10
		11
(b)	in the case of a corporation, 1,000 penalty units for a first offence or 2,000 penalty units for a second or subsequent offence.	12
		13
(5)	The seizure of tobacco products under this section does not subject the State, the Minister, the Secretary, an inspector or any other person to any action, liability, claim or demand.	14
		15
		16
(6)	Any tobacco products seized under this section must be returned to the person from whom they were seized (or to such other person as appears to the inspector to be entitled to them) if:	17
		18
		19
(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	20
		21
		22
(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.	23
		24
		25
(7)	An inspector is required to dispose of the tobacco products seized under this section in any manner that the inspector considers appropriate if:	26
		27
(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	28
		29
		30
		31
		32
(b)	the person from whom the tobacco products were seized does not make an application under subsection (6).	33
		34
[6]	Section 39 Notification by person engaging in tobacco retailing	35
	Insert after section 39 (4):	36
(5)	The Secretary is required, as soon as practicable after a person notifies the Secretary under subsection (1) that the person intends to engage in tobacco retailing, to issue the person with a tobacco retailer notification number.	37
		38
		39
[7]	Section 39A	40
	Insert after section 39:	41
39A	Restriction on obtaining or selling tobacco by wholesale without tobacco retailer notification number	42
		43
(1)	A person must not obtain a tobacco product by wholesale unless the person provides the wholesaler with the tobacco retailer notification number issued to the person under section 39 (5).	44
		45
		46

- (2) A person (the *wholesaler*) must not sell a tobacco product by wholesale to another person unless the tobacco retailer notification number issued to that other person under section 39 (5) is provided to the wholesaler. 1
2
3
Maximum penalty: 100 penalty units. 4