



New South Wales

# Gas Legislation Amendment (Medical Gas Systems) Bill 2020

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Gas and Electricity (Consumer Safety) Act 2017* and the *Home Building Act 1989* to provide for a regulatory scheme for persons and other entities involved in medical gas systems in health and medical facilities.

The amendments will require a person who contracts for or carries out certain medical gasfitting work and medical gas technician work to hold a relevant specialist work licence or supervisor or tradesperson certificate under the *Home Building Act 1989* in a manner similar to electricians and plumbers.

## 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.

## Schedule 1      Amendment of Gas and Electricity (Consumer Safety) Act 2017 No 15

**Schedule 1[4]** inserts definitions into section 4(1) of the *Gas and Electricity (Consumer Safety) Act 2017* (the *GECS Act*), including—

*medical facility*

*medical gas*

*medical gas installation*

*medical gas technician work*  
*medical gasfitting work*

**Schedule 1[1]–[3]** make consequential amendments to other definitions.

**Schedule 1[5]** inserts proposed section 5A into the GECS Act to provide that the provisions of Parts 6 (Accident reporting and investigations) and 7 (Enforcement) of that Act extend to medical gasfitting work and medical gas technician work.

**Schedule 1[6]** inserts proposed Part 5A (proposed sections 38A–38F) into the GECS Act.

**Proposed section 38A** makes it an offence for a person to carry out medical gasfitting work or medical gas technician work, or employ any other person to carry out medical gasfitting work or medical gas technician work, unless the person by whom the work is carried out is appropriately certified or does so under appropriate supervision.

The proposed offence carries a maximum penalty of 1,000 penalty units in the case of a corporation and 200 penalty units in the case of an individual.

**Proposed section 38B** makes it an offence for a person to carry out medical gasfitting work or medical gas technician work otherwise than in accordance with the following—

- (a) any standards or requirements prescribed by the regulations under the GECS Act for the purposes of the proposed section,
- (b) any standards or requirements specified by the Secretary of the Ministry of Health by order in writing and published on the website of the Ministry of Health.

The proposed offence carries a maximum penalty of—

- (a) in the case of an individual—
  - (i) 500 penalty units for a first offence, or
  - (ii) 750 penalty units or imprisonment for 2 years, or both, for a second or subsequent offence, or
- (b) in the case of a corporation—
  - (i) 5,000 penalty units for a first offence, or
  - (ii) 7,500 penalty units for a second or subsequent offence.

**Proposed section 38C** provides that a person responsible for a medical gas installation at a place (being the occupier of the place or, if there is no occupier, any owner of the place) must, to the best of the person's ability and knowledge, ensure that any parts of the gas installation that are prescribed by the regulations under the GECS Act are maintained in accordance with the regulations while the installation remains connected to the source of the supply of medical gas.

The proposed offence carries a maximum penalty of 500 penalty units in the case of a corporation and 150 penalty units in the case of an individual.

**Proposed section 38D** provides that a person who carries out any type of work for fee or reward at or near a place where a medical gas installation is located must ensure that the carrying out of the work, and the work, do not interfere with the installation in a way that adversely affects the safety of the installation.

The proposed section also provides that a person who—

- (a) carries out any type of work at or near a place where a medical gas installation is located, and
- (b) carries out the work in a way that adversely affects the safety of the installation, and
- (c) knows, or ought to have known, that the installation has been adversely affected,

must, as soon as is reasonably practicable after becoming aware that the installation has been adversely affected, take reasonable steps to make the installation safe.

The proposed offences carry a maximum penalty of 500 penalty units in the case of a corporation and 200 penalty units in the case of an individual.

**Proposed section 38E** requires the responsible person for medical gasfitting work carried out on land to give written notice of any defective medical gas installation on the land discovered in the course of carrying out the work to the owner of the land and the occupier of the land. If the defective medical gas installation poses an imminent risk to public health or safety the responsible person must also notify the Commissioner for Fair Trading.

**Proposed section 38F** provides that regulations under the GECS Act may make provision for or with respect to the following matters—

- (a) testing, inspection and compliance requirements that must be carried out on completion of medical gasfitting work,
- (b) the use and maintenance of medical gas installations,
- (c) the connection of containers, regulators or appliances to medical gas installations.

**Schedule 1[8]** amends section 40 of the GECS Act to provide that the occupier of the place at which a serious medical gas accident occurs (or any other person that the regulations under that Act may prescribe) must notify the Commissioner for Fair Trading within 24 hours after the accident.

**Schedule 1[9]** substitutes section 44 of the GECS Act to make consequential changes concerning arrangements between public authorities (now including the Secretary of the Ministry of Health) regarding certain investigable incidents. **Schedule 1[7]**, **[10]–[13]** and **[15]–[17]** make other consequential amendments.

**Schedule 1[14]** inserts proposed section 68A into the GECS Act to provide for the operation of continuing offences.

**Schedule 1[18]** provides for a 6-month transitional exemption from the operation of proposed section 38A.

## **Schedule 2      Amendment of Home Building Act 1989 No 147**

**Schedule 2[4]** amends the definition of *specialist work* in Schedule 1 to the *Home Building Act 1989* (the *HB Act*) to include medical gasfitting work or medical gas technician work to give effect to the object of this Bill.

Among other provisions and requirements, Part 2 of the HB Act provides that a person must not do, or contract to do, specialist work unless the person holds the appropriate licence or tradesperson certificate. Those licences and certificates are issued under Part 3 of the HB Act.

**Schedule 2[3]** makes a consequential amendment.

**Schedule 2[1] and [2]** amend section 47 of the HB Act to provide that the holder of an authority (such as a licence or certificate) in the case of a person performing medical gas technician work must immediately produce the authority for inspection on demand by a chief executive officer, or a person nominated in writing by a chief executive officer, of a medical facility.

**Schedule 2[5]** provides for a 6-month transitional exemption from the operation of sections 4, 5, 12 and 16 of the HB Act in relation to specialist work that is medical gasfitting work or medical gas technician work.



New South Wales

# Gas Legislation Amendment (Medical Gas Systems) Bill 2020

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New South Wales

# Gas Legislation Amendment (Medical Gas Systems) Bill 2020

No. , 2020

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## A Bill for

An Act to amend the *Gas and Electricity (Consumer Safety) Act 2017* and *Home Building Act 1989* to provide for a regulatory scheme for persons and other entities involved in medical gas systems in health and medical facilities; and for related purposes.

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

1

**1 Name of Act**

2

This Act is the *Gas Legislation Amendment (Medical Gas Systems) Act 2020*.

3

**2 Commencement**

4

This Act commences on 1 November 2020.

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<b>Schedule 1</b>	<b>Amendment of Gas and Electricity (Consumer Safety) Act 2017 No 15</b>	1
		2
<b>[1] Section 4 Definitions</b>		3
	Omit “this Act.” from the definition of <i>gas</i> in section 4(1). Insert instead—	4
	this Act,	5
	but does not include a medical gas.	6
<b>[2] Section 4(1), definition of “gas appliance”</b>		7
	Omit “not include an internal combustion engine that is installed in, or forms part of, a vehicle, vessel or machine.”.	8
	Insert instead—	9
	not include—	10
	(a) an internal combustion engine that is installed in, or forms part of, a vehicle, vessel or machine, or	11
	(b) an appliance used in a medical facility for the supply or removal of a medical gas.	12
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		14
		15
<b>[3] Section 4(1), definition of “gas installation”</b>		16
	Omit “not include an autogas installation.” Insert instead—	17
	not include—	18
	(c) an autogas installation, or	19
	(d) a medical gas installation.	20
<b>[4] Section 4(1)</b>		21
	Insert in alphabetical order—	22
	<i>maintenance</i> includes work or repairs prescribed by the regulations.	23
	<i>medical facility</i> means the following—	24
	(a) a hospital within the meaning of the <i>Public Health Act 2010</i> ,	25
	(b) any other place where medical gas is supplied or removed,	26
	(c) any place prescribed by the regulations for the purposes of this definition,	27
	but does not include a place excluded from this definition by the regulations.	28
	<i>medical gas</i> means a substance used for medical purposes and prescribed by the regulations as a medical gas.	29
	<i>medical gas installation</i> means a reticulated system of pipes, hoses or lines that conveys or controls the supply or removal of medical gas, and—	30
	(a) includes anything prescribed by the regulations for the purposes of this definition, and	31
	(b) does not include anything excluded from this definition by the regulations.	32
	<i>medical gas technician work</i> means the commissioning, maintenance, testing, verification or certification of a medical gas installation.	33
	<i>medical gasfitting work</i> means the construction, installation, replacement, repair, alteration, maintenance or testing of a medical gas installation.	34
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<b>[5] Section 5A</b>	1
Insert after section 5—	2
<b>5A Parts 6 and 7 of Act extend to medical gasfitting work and medical gas technician work</b>	3 4
(1) Parts 6 (Accident reporting and investigations) and 7 (Enforcement) extend, with any necessary modifications, to medical gasfitting work and medical gas technician work and for that purpose a reference in those Parts to—	5 6 7
(a) <i>gas</i> is taken to include a reference to <i>medical gas</i> , and	8
(b) a <i>gas installation</i> is taken to include a reference to a <i>medical gas installation</i> , and	9 10
(c) <i>gasfitting work</i> is taken to include a reference to <i>medical gasfitting work</i> and <i>medical gas technician work</i> , and	11 12
(d) an <i>authorised gasfitter</i> is taken to include a reference to a person who is authorised under this Act to carry out medical gasfitting work or medical gas technician work, and	13 14 15
(e) a <i>serious gas accident</i> is taken to include a reference to a <i>serious medical gas accident</i> .	16 17
(2) In this section—	18
<i>serious medical gas accident</i> means an accident—	19
(a) caused by the use of a medical gas installation or by work carried out on a medical gas installation, and	20 21
(b) as a consequence of which a person dies or suffers permanent disability, is hospitalised, receives treatment from a registered health practitioner or is unable to attend work for any period of time.	22 23 24
<b>[6] Part 5A</b>	25
Insert after section 38—	26
<b>Part 5A Medical gas</b>	27
<b>Division 1 Medical gasfitting work and medical gas technician work</b>	28 29
<b>38A Work to be carried out by qualified persons</b>	30
(1) A person must not carry out medical gasfitting work or medical gas technician work, or employ any other person to carry out medical gasfitting work or medical gas technician work, unless the person by whom the work is carried out does so—	31 32 33 34
(a) under the authority of an appropriate supervisor certificate, or	35
(b) under the authority of an appropriate tradesperson certificate and under the general supervision of the holder of an appropriate supervisor certificate, or	36 37 38
(c) under the immediate supervision of the holder of an appropriate supervisor certificate.	39 40
Maximum penalty—1,000 penalty units in the case of a corporation and 200 penalty units in the case of an individual.	41 42
(2) In this section—	43

*supervisor certificate*, in relation to a particular kind of medical gasfitting work or medical gas technician work, means a supervisor certificate in force under the *Home Building Act 1989* authorising the holder to carry out, and to supervise, that kind of work, and includes a licence endorsed under that Act to show that it is the equivalent of the certificate concerned.

*tradesperson certificate*, in relation to a particular kind of medical gasfitting work or medical gas technician work, means a tradesperson certificate in force under the *Home Building Act 1989* authorising the holder to carry out that kind of work under general supervision.

### **38B Work to comply with regulations**

(1) A person must not carry out medical gasfitting work or medical gas technician work otherwise than in accordance with the following—

(a) any standards or requirements prescribed by the regulations for the purposes of this section,

(b) any standards or requirements specified by the Health Secretary by order in writing and published on the website of the Ministry of Health.

Maximum penalty—

(a) in the case of an individual—

(i) 500 penalty units for a first offence, or

(ii) 750 penalty units or imprisonment for 2 years, or both, for a second or subsequent offence, or

(b) in the case of a corporation—

(i) 5,000 penalty units for a first offence, or

(ii) 7,500 penalty units for a second or subsequent offence.

**Note.** An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 63.

(2) To avoid doubt, a standard or requirement under subsection (1) may—

(a) apply generally or be limited in its application by reference to specified exceptions or factors, or

(b) apply differently according to different factors of a specified kind, or both.

(3) In this section—

*Health Secretary* means the Secretary of the Ministry of Health.

## **Division 2 Medical gas installations**

### **38C Responsibilities of persons concerning the safety of medical gas installations**

(1) A person responsible for a medical gas installation at a place must, to the best of the person's ability and knowledge, ensure that any parts of the medical gas installation that are prescribed by the regulations for the purposes of this section are maintained in accordance with the regulations while the installation remains connected to the source of the supply of medical gas.

Maximum penalty—500 penalty units in the case of a corporation and 150 penalty units in the case of an individual.

(2) In this section—

*person responsible* for a medical gas installation at a place means—

(a) the occupier of the place, or

(b)	if there is no occupier, any owner of the place.	1
<b>38D</b>	<b>Offence of interfering with medical gas installations</b>	2
(1)	A person who carries out any type of work for fee or reward at or near a place where a medical gas installation is located must ensure that the carrying out of the work, and the work, do not interfere with the installation in a way that adversely affects the safety of the installation.	3 4 5 6
	Maximum penalty—500 penalty units in the case of a corporation and 200 penalty units in the case of an individual.	7 8
(2)	A person who—	9
(a)	carries out any type of work at or near a place where a medical gas installation is located, and	10 11
(b)	carries out the work in a way that adversely affects the safety of the installation, and	12 13
(c)	knows, or ought to have known, that the installation has been adversely affected,	14 15
	must, as soon as is reasonably practicable after becoming aware that the installation has been adversely affected, take reasonable steps to make the installation safe.	16 17 18
	Maximum penalty—500 penalty units in the case of a corporation and 200 penalty units in the case of an individual.	19 20
<b>38E</b>	<b>Notice of defective medical gas installation</b>	21
(1)	The responsible person for medical gasfitting work carried out on land must, within the period prescribed by the regulations, give the following persons written notice of any defective medical gas installation on the land discovered in the course of carrying out the medical gasfitting work—	22 23 24 25
(a)	the owner of the land,	26
(b)	the occupier of the land (if the owner does not occupy the land).	27
	Maximum penalty—100 penalty units.	28
(2)	The responsible person for medical gasfitting work carried out on land must, within the period prescribed by the regulations, give the Secretary written notice of any defective medical gas installation on the land discovered in the course of carrying out the medical gasfitting work that poses an imminent threat to public health or safety.	29 30 31 32 33
	Maximum penalty—100 penalty units.	34
(3)	A defective medical gas installation is discovered if the responsible person, or a person carrying out the medical gasfitting work under the responsible person's supervision, becomes aware that the installation concerned is defective.	35 36 37 38
(4)	In this section—	39
	<b>responsible person</b> for medical gasfitting work means—	40
(a)	in the case of work carried out or proposed to be carried out by the holder of an endorsed contractor licence or a supervisor certificate under the <i>Home Building Act 1989</i> authorising the holder to do the work, the holder of that licence or certificate, or	41 42 43 44
(b)	in the case of work carried out or proposed to be carried out under the immediate or general supervision of the holder of an endorsed contractor licence or a supervisor certificate under the <i>Home Building</i>	45 46 47

	<i>Act 1989</i> authorising the holder to supervise the work, the holder of the endorsed contractor licence or supervisor certificate.	1 2
<b>38F</b>	<b>Regulation of installations</b>	3
	The regulations may make provision for or with respect to the following matters—	4 5
	(a) testing, inspection and compliance requirements that must be carried out on completion of medical gasfitting work,	6 7
	(b) the use and maintenance of medical gas installations,	8
	(c) the connection of containers, regulators or appliances to medical gas installations.	9 10
<b>[7]</b>	<b>Section 39 Meanings of “serious electrical accident” and “serious gas accident”</b>	11
	Insert after the definition of <i>serious gas accident</i> —	12
	<b>Note.</b> For the purposes of Parts 6 and 7, <i>serious gas accident</i> is taken to include <i>serious medical gas accident</i> . See section 5A.	13 14
<b>[8]</b>	<b>Section 40 Notification of serious electrical and gas accidents</b>	15
	Omit section 40(1)(a). Insert instead—	16
	(a) in relation to a serious medical gas accident—within 24 hours after the accident, and	17 18
	(a1) in any other case—within 7 days after the accident, and	19
<b>[9]</b>	<b>Section 44</b>	20
	Omit the section. Insert instead—	21
<b>44</b>	<b>Arrangements with other public authorities regarding certain investigable incidents</b>	22 23
(1)	The Secretary, SafeWork NSW, the Energy Secretary and the Health Secretary may enter into arrangements regarding any one or more of the following—	24 25 26
(a)	the referral of investigable incidents—	27
(i)	to SafeWork NSW for investigation or other action under the <i>Work Health and Safety Act 2011</i> , or	28 29
(ii)	to the Secretary for investigation or other action under this Act, or	30
(iii)	to the Energy Secretary for investigation or other action under the <i>Electricity Supply Act 1995</i> or the <i>Gas Supply Act 1996</i> , or	31 32
(iv)	to the Health Secretary for investigation or other action under any legislation administered by the Health Minister,	33 34
(b)	matters concerning an investigable incident that is the subject of investigation or other action by more than one of those persons at the same time,	35 36 37
(c)	the co-operative exercise of the respective functions of those persons in respect of investigable incidents,	38 39
(d)	the sharing of information relevant to, and for the purposes of, enabling or assisting any of them to carry out their functions under this Part.	40 41
(2)	The Secretary, SafeWork NSW, the Energy Secretary and the Health Secretary are jointly to cause notice of any arrangements entered into under this section to be published in the Gazette as soon as is practicable after they	42 43 44

	are entered into. However, a failure to publish any such arrangements does not affect their validity.	1 2
(3)	A party to an arrangement entered into under this section—	3
	(a) may decline, discontinue or defer an investigation or other action in relation to an investigable incident to give effect to the arrangement, and	4 5
	(b) may disclose any information concerning a matter involving an investigable incident that was duly obtained by that party to another party to the arrangement to which the matter is referred so as to give effect to the arrangement.	6 7 8 9
(4)	A party to which a matter is referred under an arrangement entered into under this section may investigate or deal with information obtained in respect of the matter referred in order to give effect to the arrangement.	10 11 12
(5)	In this section—	13
	<i>Energy Secretary</i> means the Secretary of the Department of Planning, Industry and Environment.	14 15
	<i>Health Minister</i> means the minister administering the <i>Public Health Act 2010</i> .	16
	<i>Health Secretary</i> means the Secretary of the Ministry of Health.	17
	<i>investigable incident</i> means an accident or other incident—	18
	(a) in which electricity, gas or medical gas is involved, and	19
	(b) as a consequence of which a person dies or suffers permanent disability, is hospitalised, receives treatment from a registered health practitioner or is unable to attend work for any period of time.	20 21 22
	<i>SafeWork NSW</i> means SafeWork NSW as referred to in clause 1 of Schedule 2 to the <i>Work Health and Safety Act 2011</i> .	23 24
<b>[10]</b>	<b>Section 53 Investigation of serious electrical or gas accidents</b>	25
	Insert after section 53(b)—	26
	(b1) seize, detain or remove, for the purpose of examination or testing, any part of a medical gas installation,	27 28
<b>[11]</b>	<b>Section 53(c)</b>	29
	Insert “or other recordings” after “photographs” in section 53(c).	30
<b>[12]</b>	<b>Section 53(2)</b>	31
	Insert at the end of the section—	32
	(2) An authorised officer who is investigating an accident under Part 6 may be accompanied by a police officer or another person who the authorised officer believes will assist in the investigation, or both.	33 34 35
<b>[13]</b>	<b>Section 63 Liability of directors etc for offences by corporation—offences attracting executive liability</b>	36 37
	Insert after section 63(1)(e)—	38
	(e1) section 38B,	39
<b>[14]</b>	<b>Section 68A</b>	40
	Insert after section 68—	41

<b>68A Continuing offences</b>	1
(1) A person who is guilty of an offence because the person contravenes a requirement made by or under this Act or the regulations (whether the requirement is imposed by a notice or in another way) to do or cease to do something (whether or not within a specified period or before a particular time)—	2 3 4 5 6
(a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and	7 8 9
(b) is guilty of a continuing offence for each day the contravention continues.	10 11
(2) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.	12 13
(3) This section does not apply to the extent that a requirement of a notice is revoked.	14 15
<b>[15] Section 70 Disclosure of information</b>	16
Insert “, medical gas installations” after “gas installations” in section 70(3).	17
<b>[16] Section 75 Regulations</b>	18
Insert “, medical gas installations” after “gas installations” in section 75(2)(m).	19
<b>[17] Section 75(2)(n)</b>	20
Insert “, medical gasfitting work, medical gas technician work” after “gasfitting work”.	21
<b>[18] Schedule 1 Savings, transitional and other provisions</b>	22
Insert at the end of the Schedule—	23
<b>Part 3 Provisions consequent on enactment of Gas Legislation Amendment (Medical Gas Systems) Act 2020</b>	24 25 26
<b>24 Transitional exemption from offence requiring medical gas related work to be carried out by qualified persons</b>	27 28
(1) Section 38A does not have effect during the transitional period.	29
(2) In this clause, <i>transitional period</i> means the period beginning on 1 November 2020 and ending at the end of 30 April 2021.	30 31

<b>Schedule 2</b>	<b>Amendment of Home Building Act 1989 No 147</b>	1
<b>[1] Section 47</b>	<b>Production of authority</b>	2
	Insert after section 47(d)—	3
	(d1) in the case of a person performing medical gas technician work—a chief executive officer, or a person nominated in writing by a chief executive officer, of a medical facility, or	4 5 6
<b>[2] Section 47(2)</b>		7
	Insert at the end of the section—	8
	(2) For the purposes of this section—	9
	<i>chief executive officer</i> of a medical facility means the person responsible for the day to day administration of the affairs of the medical facility.	10 11
	<i>medical facility</i> has the same meaning as in the <i>Gas and Electricity (Consumer Safety) Act 2017</i> .	12 13
<b>[3] Schedule 1</b>	<b>Definitions and other interpretative provisions</b>	14
	Insert in alphabetical order in clause 1(1)—	15
	<i>medical gas technician work</i> has the same meaning as in the <i>Gas and Electricity (Consumer Safety) Act 2017</i> .	16 17
	<i>medical gasfitting work</i> has the same meaning as in the <i>Gas and Electricity (Consumer Safety) Act 2017</i> .	18 19
<b>[4] Schedule 1, clause 1(1), definition of “specialist work”</b>		20
	Insert after paragraph (b)—	21
	(b1) medical gasfitting work,	22
	(b2) medical gas technician work,	23
<b>[5] Schedule 4</b>	<b>Savings and transitional provisions</b>	24
	Insert at the end of the Schedule—	25
<b>Part 26</b>	<b>Provisions consequent on enactment of Gas Legislation Amendment (Medical Gas Systems) Act 2020</b>	26 27 28
<b>158</b>	<b>Transitional exemption from certain offences relating to medical gas related work</b>	29 30
	(1) Sections 4, 5, 12 and 16 do not have effect during the transitional period in relation to specialist work that is medical gasfitting work or medical gas technician work.	31 32 33
	(2) In this clause, <i>transitional period</i> means the period beginning on 1 November 2020 and ending at the end of 30 April 2021.	34 35