



New South Wales

# Health Legislation (Miscellaneous) Amendment Bill (No 2) 2022

## Explanatory note

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

## Overview of Bill

This Bill makes miscellaneous amendments to the following Acts relating to health and associated matters—

- (a) *Health Care Complaints Act 1993*,
- (b) *Health Practitioner Regulation (Adoption of National Law) Act 2009*,
- (c) *Human Tissue Act 1983*,
- (d) *Mental Health Act 2007*,
- (e) *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*,
- (f) *Public Health Act 2010*,
- (g) *Statutory and Other Offices Remuneration Act 1975*.

## 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 Health Care Complaints Act 1993 No 105**

**Schedule 1[1]** redefines *disciplinary body* in the *Health Care Complaints Act 1993* to have the same meaning as *responsible tribunal* has in the *Health Practitioner Regulation National Law (NSW)*.

**Schedule 1[2]** corrects a cross-reference as a result of the relocation of provisions by the *Health Legislation (Miscellaneous Amendments) Act 2020*.

**Schedule 1[3]** provides for—

- (a) the remuneration of the Commissioner of the Health Care Complaints Commission to be determined in accordance with the *Statutory and Other Offices Remuneration Act 1975*, rather than by a contract of employment, and
- (b) the Commissioner's entitlement to allowances to be determined by the Minister.

**Schedule 1[5]** provides that the Commissioner's existing contract of employment continues in force until the Commissioner's remuneration is determined in accordance with the *Statutory and Other Offices Remuneration Act 1975*. **Schedule 1[4]** makes a consequential amendment.

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

**Schedule 2[1]** provides that the period for making certain appeals against decisions under the *Health Practitioner Regulation National Law (NSW)* commences when written notice of the decision is given to the person making the appeal. **Schedule 2[2]** provides that the amendment made by Schedule 2[1] does not apply to a decision of which notice was given before the commencement of the amendment.

**Schedule 2[3]** provides for a Professional Standards Committee or the Civil and Administrative Tribunal to receive and admit on production, as evidence in proceedings, a thing seized under the authority of a search warrant if, in the Committee or Tribunal's opinion, the thing seized is relevant to the proceedings. **Schedule 2[4]** makes a consequential amendment.

## **Schedule 3      Amendment of Human Tissue Act 1983 No 164**

**Schedule 3[1]** provides that, for the *Human Tissue Act 1983*, the *principal care officer* for a child in the care of the State is the Secretary of the Department of Communities and Justice, rather than the principal officer of a designated agency that has supervisory responsibility for the child under the *Children and Young Persons (Care and Protection) Act 1998*. **Schedule 3[3]** and **[4]** make consequential amendments.

**Schedule 3[2]** provides that the Secretary may delegate to another person the Secretary's functions as principal care officer.

**Schedule 3[5]** provides that the amendment made by Schedule 3[1] does not affect an existing consent or authority, given by a principal care officer, to remove tissue from a deceased child's body.

## **Schedule 4      Amendment of Mental Health Act 2007 No 8**

**Schedule 4[2]** inserts a note into the *Mental Health Act 2007*, section 18 to emphasise the connection between that section, which sets out when a person may be detained in a mental health facility, and section 81, which lists who may take the person to the facility. **Schedule 4[1]** makes a consequential amendment.

**Schedule 4[3]** removes the requirement for the Mental Health Review Tribunal, when ordering a person to be detained in a mental health facility, to specify the facility in which the person is to be detained.

## **Schedule 5      Amendment of Mental Health and Cognitive Impairment Forensic Provisions Act 2020 No 12**

**Schedule 5[1]** provides that the objects of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, Part 5, which relates to forensic patients and correctional patients, extend to provisions of the Act authorising the extension of the status of a person as a forensic patient.

**Schedule 5[2]** provides that, if a person was found unfit to be tried for an offence and is later found fit to be tried for the offence, the person ceases to be a forensic patient only if the Director of Public Prosecutions advises the court whether the Director will take further proceedings in relation to the offence.

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

**Schedule 6[3]** provides that every authorised officer who is not a police officer is to be provided with an identification card. **Schedule 6[1], [2] and [4]** make consequential amendments.

## **Schedule 7      Amendment of Statutory and Other Offices Remuneration Act 1975 (1976 No 4)**

**Schedule 7** amends the *Statutory and Other Offices Remuneration Act 1975* consequent on the amendment made by Schedule 1[3] to provide for the determination of the salary and allowances of the Commissioner of the Health Care Complaints Commission in accordance with the Act.



New South Wales

# Health Legislation (Miscellaneous) Amendment Bill (No 2) 2022

## Contents

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		Page
	1 Name of Act	2
	2 Commencement	2
<b>Schedule 1</b>	<b>Amendment of Health Care Complaints Act 1993 No 105</b>	<b>3</b>
<b>Schedule 2</b>	<b>Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86</b>	<b>4</b>
<b>Schedule 3</b>	<b>Amendment of Human Tissue Act 1983 No 164</b>	<b>5</b>
<b>Schedule 4</b>	<b>Amendment of Mental Health Act 2007 No 8</b>	<b>6</b>
<b>Schedule 5</b>	<b>Amendment of Mental Health and Cognitive Impairment Forensic Provisions Act 2020 No 12</b>	<b>7</b>
<b>Schedule 6</b>	<b>Amendment of Public Health Act 2010 No 127</b>	<b>8</b>
<b>Schedule 7</b>	<b>Amendment of Statutory and Other Offices Remuneration Act 1975 (1976 No 4)</b>	<b>9</b>



New South Wales

# Health Legislation (Miscellaneous) Amendment Bill (No 2) 2022

No           , 2022

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## **A Bill for**

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

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

1

**1 Name of Act**

2

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

3

**2 Commencement**

4

This Act commences on the following days—

5

- (a) for Schedule 3—a day or days to be appointed by proclamation,
- (b) otherwise—the date of assent to this Act.

6

7

<b>Schedule 1</b>	<b>Amendment of Health Care Complaints Act 1993</b>	1
	<b>No 105</b>	2
<b>[1]</b>	<b>Section 4 Definitions</b>	3
	Omit the definition of <i>disciplinary body</i> . Insert instead—	4
	<i>disciplinary body</i> has the same meaning as <i>responsible tribunal</i> has in the	5
	<i>Health Practitioner Regulation National Law (NSW)</i> .	6
<b>[2]</b>	<b>Section 37A Protection from incrimination</b>	7
	Insert “or under section 97A or 97B” after “this Part” in section 37A(2).	8
<b>[3]</b>	<b>Schedule 1A Provisions relating to Commissioner</b>	9
	Omit clause 3. Insert instead—	10
	<b>3 Employment and remuneration</b>	11
	The Commissioner is entitled to be paid—	12
	(a) remuneration in accordance with the <i>Statutory and Other Offices</i>	13
	<i>Remuneration Act 1975</i> , and	14
	(b) the travelling and subsistence allowances the Minister decides from	15
	time to time.	16
<b>[4]</b>	<b>Schedule 1A, clause 6</b>	17
	Omit “(except as provided by clause 3)”.	18
<b>[5]</b>	<b>Schedule 4 Savings, transitional and other provisions</b>	19
	Insert at the end of the Schedule with appropriate Part and clause numbering—	20
<b>Part</b>	<b>Provision consequent on enactment of Health</b>	21
	<b>Legislation (Miscellaneous) Amendment Act (No 2)</b>	22
	<b>2022</b>	23
	<b>Commissioner—remuneration</b>	24
	(1) The contract of employment in force between the Commissioner and the	25
	Minister immediately before the commencement day continues in force until	26
	a determination of the Commissioner’s remuneration comes into force under	27
	the <i>Statutory and Other Offices Remuneration Act 1975</i> .	28
	(2) In this clause—	29
	<i>commencement day</i> means the day on which the amendments made to this	30
	Act, Schedule 1A by the <i>Health Legislation (Miscellaneous) Amendment Act</i>	31
	<i>(No 2) 2022</i> commence.	32

<b>Schedule 2</b>	<b>Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86</b>	1
		2
<b>[1]</b>	<b>Schedule 1 Modification of Health Practitioner Regulation National Law</b>	3
	Insert “written” after “given” in Schedule 1[15], section 161(a).	4
<b>[2]</b>	<b>Schedule 1[25], Schedule 5A</b>	5
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	6
<b>Part</b>	<b>Provision consequent on enactment of Health Legislation (Miscellaneous) Amendment Act (No 2) 2022</b>	7
		8
		9
	<b>Notice of appeal</b>	10
	The amendment made to this Law, section 161(a) by the <i>Health Legislation (Miscellaneous) Amendment Act (No 2) 2022</i> does not apply to a decision of which notice other than written notice was given before the commencement of the amendment.	11
		12
		13
		14
<b>[3]</b>	<b>Schedule 1[25], Schedule 5D</b>	15
	Insert after clause 5(1)—	16
	(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.	17
		18
		19
		20
<b>[4]</b>	<b>Schedule 1[25], Schedule 5D, clause 5(2)</b>	21
	Omit “so admitted”. Insert instead “admitted under subclause (1) or (1A)”.	22



<b>Schedule 3</b>	<b>Amendment of Human Tissue Act 1983 No 164</b>	1
<b>[1] Section 4 Definitions</b>		2
	Omit section 4(8). Insert instead—	3
	(8) For this Act, the <i>principal care officer</i> , in relation to a child in the care of the State, means the Secretary under the <i>Children and Young Persons (Care and Protection) Act 1998</i> .	4 5 6
<b>[2] Section 5B</b>		7
	Insert after section 5A—	8
	<b>5B Delegation of functions of principal care officer</b>	9
	The Secretary under the <i>Children and Young Persons (Care and Protection) Act 1998</i> may delegate to a person the Secretary’s functions as principal care officer under this Act.	10 11 12
<b>[3] Section 24B Consent and authorisation of principal care officer</b>		13
	Omit “A principal care officer” from section 24B(1).	14
	Insert instead “The principal care officer”.	15
<b>[4] Section 25 Consent by coroner</b>		16
	Omit “a principal care officer” from section 25(1).	17
	Insert instead “the principal care officer”.	18
<b>[5] Schedule 1 Savings, transitional and other provisions</b>		19
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	20
<b>Part</b>	<b>Provision consequent on enactment of Health Legislation (Miscellaneous) Amendment Act (No 2) 2022</b>	21 22 23
	<b>Consent of principal care officer</b>	24
	(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.	25 26 27 28 29
	(2) In this clause—	30
	<i>amending Act</i> means the <i>Health Legislation (Miscellaneous) Amendment Act (No 2) 2022</i> .	31 32
	<i>commencement day</i> means the day on which the amendment made to section 4 by the amending Act commences.	33 34

<b>Schedule 4</b>	<b>Amendment of Mental Health Act 2007 No 8</b>	1
<b>[1]</b>	<b>Section 18 When a person may be detained in mental health facility</b>	2
	Omit “Note—” from the note. Insert instead “Note 1—”.	3
<b>[2]</b>	<b>Section 18</b>	4
	Insert at the end of the section—	5
	<b>Note 2—</b> 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.	6
		7
<b>[3]</b>	<b>Section 35 Purpose and findings of mental health inquiries</b>	8
	Omit “specified” from section 35(5)(c).	9

<b>Schedule 5</b>	<b>Amendment of Mental Health and Cognitive Impairment Forensic Provisions Act 2020 No 12</b>	1
		2
<b>[1] Section 69 Objects</b>		3
Insert at the end of the section—		4
(2) The objects of this Part extend to the provisions of Part 6.		5
<b>[2] Section 101 Termination of status as a forensic patient</b>		6
Omit section 101(g). Insert instead—		7
(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),		8
		9
		10

<b>Schedule 6</b>	<b>Amendment of Public Health Act 2010 No 127</b>	1
<b>[1]</b>	<b>Section 108 Powers of authorised officers to enter premises</b>	2
	Omit “a certificate of authority” and “or certificate of authority” wherever occurring in section 108(2).	3
	Insert instead “an identification card” and “or identification card”, respectively.	4
<b>[2]</b>	<b>Section 108(3)</b>	5
	Omit the subsection.	6
<b>[3]</b>	<b>Section 127A</b>	7
	Insert after section 127—	8
<b>127A</b>	<b>Identification</b>	9
(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.	10
(2)	The identification card must—	11
(a)	be in the approved form, and	12
(b)	contain a recent photograph of the person.	13
<b>[4]</b>	<b>Schedule 5 Savings, transitional and other provisions</b>	14
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	15
<b>Part</b>	<b>Provision consequent on enactment of Health Legislation (Miscellaneous) Amendment Act (No 2) 2022</b>	16
	<b>Identification of authorised officers</b>	17
	A certificate of authority issued to an authorised officer under section 108 and in force immediately before the amendment of that section by the <i>Health Legislation (Miscellaneous) Amendment Act (No 2) 2022</i> is taken to be an identification card issued under section 127A until whichever of the following occurs first—	18
(a)	the certificate of authority expires,	19
(b)	the authorised officer is issued with an identification card under section 127A.	20

<b>Schedule 7</b>	<b>Amendment of Statutory and Other Offices Remuneration Act 1975 (1976 No 4)</b>	1
		2
<b>Schedule 1 Public offices</b>		3
Insert at the end of the Schedule—		4
	Commissioner of the Health Care Complaints Commission	5