



New South Wales

Health Legislation Amendment (Miscellaneous) Bill 2023

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to various Acts relating to health and associated matters.

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.

Schedule 1 Amendment of Health Administration Act 1982 No 135

Schedule 1 makes minor amendments to section 21G to—

- (a) clarify the power of the Health Secretary to direct a health services organisation to conduct a serious adverse event review of a reportable incident, and
- (b) ensure that a health services organisation may—
 - (i) replace members of a serious adverse event review team who are unable to complete a serious adverse event review, and
 - (ii) appoint additional members to a serious adverse event review team if required to allow for the timely and effective completion of a review.

Schedule 2 Amendment of Health Care Complaints Act 1993 No 105

Schedule 2 makes a minor amendment to the definition of *disciplinary body* to clarify that it includes a Professional Standards Committee as well as a responsible tribunal.

Schedule 3 Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86

Schedule 3[1] inserts proposed section 136A to address an omission in the Health Practitioner Regulation National Law (NSW) (the *National Law*). The National Law, section 136 currently makes it an offence to direct or incite a registered health practitioner to engage in professional misconduct or in unprofessional conduct. “Unprofessional conduct” is not a term used in New South Wales with the relevant term used in New South Wales being “unsatisfactory professional conduct”. The proposed amendment addresses the omission.

Schedule 3[2] inserts proposed section 221A to ensure that the provisions in the National Law concerning prohibition orders extend to prohibition orders made by relevant tribunals in other jurisdictions rather than only orders made in New South Wales.

Schedule 4 Amendment of Human Tissue Act 1983 No 164

Schedule 4 clarifies that information about a deceased organ or tissue donor may be disclosed with the consent of the donor’s next of kin.

Schedule 5 Amendment of Mental Health Act 2007 No 8

Schedule 5 makes a minor amendment to Schedule 3 to clarify the right of a patient appearing before the Mental Health Review Tribunal to have access to grooming items including shaving equipment and make-up.

Schedule 6 Amendment of Poisons and Therapeutic Goods Act 1966 No 31

Schedule 6 inserts proposed sections 45A and 45B to provide the Health Secretary with the power to order that in certain circumstances seized goods are forfeited to the State and that forfeited goods may be disposed of by the Secretary.

Schedule 7 Amendment of Public Health Act 2010 No 127

Schedule 7[1] makes a minor amendment to section 85, definition of *immunisation certificate* to reflect the replacement of the Australian Childhood Immunisation Register with the Australian Immunisation Register.

Schedule 7[2] makes a minor amendment to section 100 to remove certain procedural steps that are required before a code of conduct for non-registered health practitioners can be made. The procedural steps duplicate requirements in the *Subordinate Legislation Act 1989*.

Schedule 8 Amendment of Public Health (Tobacco) Act 2008 No 94

Schedule 8[1]–[3] make minor amendments to provide that an inspector for certain purposes under the Act includes an inspector appointed for another Act administered by the Minister for Health.

Schedule 8[4]–[6] make minor amendments to section 44 to clarify the powers of inspectors to search premises or things on premises.



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New South Wales

Health Legislation Amendment (Miscellaneous) Bill 2023

No. , 2023

A Bill for

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

The Legislature of New South Wales enacts—

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1 Name of Act

2

This Act is the *Health Legislation Amendment (Miscellaneous) Act 2023*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Health Administration Act 1982 No 135	1
		2
[1] Section 21G Appointment of team to review incidents		3
Omit section 21G(1). Insert instead—		4
(1) The relevant health services organisation in respect of an incident must appoint one or more persons as a serious adverse event review team to carry out a serious adverse event review of the incident if—		5
		6
		7
(a) following the preliminary risk assessment, the organisation is satisfied—		8
		9
(i) the incident is a reportable incident, or		10
(ii) the incident is not a reportable incident but may be the result of a serious systemic problem and in the organisation’s opinion a serious adverse event review of the incident should be carried out, or		11
		12
		13
		14
(b) the Health Secretary—		15
(i) considers the incident is a reportable incident, or may be the result of a serious systemic problem, and		16
		17
(ii) directs the organisation to carry out a serious adverse event review of the incident.		18
		19
[2] Section 21G(3A)		20
Insert after section 21G(3)—		21
(3A) The relevant health services organisation may—		22
(a) replace a member of a serious adverse event review team if the member is unable to complete the serious adverse event review, or		23
		24
(b) appoint one or more additional members to a serious adverse event team if satisfied the appointments are necessary to allow the team to complete the serious adverse event review in a timely and effective way.		25
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		27

Schedule 3	Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86	1
		2
[1] Schedule 1 Modification of Health Practitioner Regulation National Law		3
Insert after item [11]—		4
[11A] Section 136A		5
Insert after section 136—		6
136A Directing or inciting unsatisfactory professional conduct [NSW]		7
(1) A person must not direct or incite a registered health practitioner to do anything, in the course of the practitioner's practice of the health profession, that amounts to unsatisfactory professional conduct.		8
Maximum penalty—		9
(a) for an individual—\$60,000, or		10
(b) for a body corporate—\$120,000.		11
(2) Subsection (1) does not apply to a person who is the owner or operator of a public health facility.		12
(3) In this section—		13
<i>unsatisfactory professional conduct</i> has the same meaning as it has in Part 8.		14
Note — This section is an additional New South Wales provision.		15
		16
		17
		18
		19
[2] Schedule 1[16A]		20
Insert after item [16]—		21
[16A] Section 221A		22
Insert before section 222—		23
221A Definitions [NSW]		24
In this division—		25
<i>prohibition order</i> means the following—		26
(a) a prohibition order under section 149C(5),		27
(b) a decision by the responsible tribunal of another participating jurisdiction that makes a decision to prohibit a person, either permanently or for a stated period, from doing 1 or more of the following—		28
(i) providing a health service or a specified health service,		29
(ii) using a title or a specified title,		30
(c) a decision under section 107(4)(b) of the <i>Health Ombudsman Act 2013</i> of Queensland.		31
Note — This section is an additional New South Wales provision.		32
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		34
		35
		36

Schedule 4 Amendment of Human Tissue Act 1983 No 164

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Section 37 Disclosure of information

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Insert after section 37(3)(a)—

3

- (a1) for information about a deceased person—with the consent of the
person’s next of kin,

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Schedule 5	Amendment of Mental Health Act 2007 No 8	1
	Schedule 3 Statement of rights for persons detained in mental health facility	2
	Insert at the end of the schedule—	3
	Will I be assisted to present well before the Tribunal?	4
	Yes, the facility staff must, as far as reasonably practicable, ensure that before you attend the Tribunal you are provided with appropriate street clothes and grooming items, including suitable shaving equipment and make-up.	5 6 7

Schedule 6	Amendment of Poisons and Therapeutic Goods Act 1966 No 31	1
		2
Sections 45A and 45B		3
Insert after section 45—		4
45A Forfeiture of regulated goods		5
(1)	Regulated goods seized under this division are forfeited to the State if the Secretary makes a written order (a <i>forfeiture order</i>) under this section declaring the goods to be forfeited.	6 7 8
(2)	A forfeiture order may be made—	9
(a)	if the Secretary is satisfied—	10
(i)	a person has been convicted of an offence in connection with the seized goods, or	11 12
(ii)	the owner of the seized goods cannot be found despite inquiries being made that are reasonable in the circumstances, or	13 14
(iii)	the seized goods cannot be returned to the owner for other reasons despite efforts being made that are reasonable in the circumstances, or	15 16 17
(iv)	the return of the seized goods would pose an unacceptable risk to the health or safety of a human or animal, whether or not the human or animal is identifiable, or	18 19 20
(v)	the seized goods cannot be lawfully used or supplied by the owner of the goods, or	21 22
(b)	in circumstances prescribed by the regulations.	23
(3)	Before making a forfeiture order, the Secretary must make reasonable efforts to give the apparent owner of the seized goods written notice of the following—	24 25 26
(a)	the Secretary's intention to make a forfeiture order,	27
(b)	the period, not less than 21 days, during which the apparent owner may make a submission to the Secretary about why the Secretary should not make the proposed forfeiture order before the order is made,	28 29 30
(c)	the way in which a submission may be made.	31
(4)	The Secretary must consider a submission made in accordance with subsection (3)(b) and decide to make, or not make, the forfeiture order.	32 33
45B Disposal of seized goods		34
(1)	Regulated goods forfeited under section 45A may be disposed of in a way directed by the Secretary, whether—	35 36
(a)	generally, or	37
(b)	in a particular circumstance or class of circumstances.	38
(2)	Regulated goods seized under this division may be disposed of with the written consent of the apparent owner of the goods.	39 40
(3)	No compensation is payable to a person if goods are disposed of in accordance with this section.	41 42
(4)	This section does not limit the functions of a police officer under the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> or another law.	43 44

Schedule 7	Amendment of Public Health Act 2010 No 127	1
[1]	Section 85 Definitions	2
	Omit “Childhood” from section 85(1), definition of <i>immunisation certificate</i> , paragraph (a).	3 4
[2]	Section 100 Codes of conduct for non-registered health practitioners and relevant health organisations	5 6
	Omit section 100(2).	7

Schedule 8	Amendment of Public Health (Tobacco) Act 2008	1
	No 94	2
[1]	Section 7A Powers of inspector to seize and dispose of tobacco products exceeding prescribed amounts	3
	Insert after section 7A(7)—	4
	(8) A person who is not an inspector may exercise the functions of an inspector under this section if the person—	5
	(a) is appointed as an inspector under another Act administered by the Minister, and	6
	(b) is on the premises in accordance with that other Act.	7
[2]	Section 21A Powers of inspector to seize and dispose of smokeless tobacco products	8
	Insert after section 21A(7)—	9
	(8) A person who is not an inspector may exercise the functions of an inspector under this section if the person—	10
	(a) is appointed as an inspector under another Act administered by the Minister, and	11
	(b) is on the premises in accordance with that other Act.	12
[3]	Section 40 Seizure of tobacco products for contravention of retailing prohibition	13
	Insert after section 40(5)—	14
	(6) A person who is not an inspector may exercise the functions of an inspector under this section if the person—	15
	(a) is appointed as an inspector under another Act administered by the Minister, and	16
	(b) is on the premises in accordance with that other Act.	17
[4]	Section 44 Powers of inspectors to enter premises	18
	Insert after section 44(1)(a)—	19
	(a1) open and search a relevant place or receptacle if the inspector reasonably believes the relevant place or receptacle may be used to store a regulated product in accordance with section 9,	20
[5]	Section 44(1A)	21
	Insert after section 44(1)—	22
	(1A) For this Act, an inspector may, at any reasonable time, direct a person, apparently in control of the premises, to open and give the inspector access to a relevant place or receptacle at the premises to allow the relevant place or receptacle to be inspected.	23
[6]	Section 44(4)	24
	Insert after section 44(3)—	25
	(4) In this section—	26
	<i>regulated products</i> means the following—	27
	(a) tobacco products,	28

- (b) smoking accessories, 1
 - (c) e-cigarettes, 2
 - (d) e-cigarette accessories. 3
- relevant place or receptacle* means the following— 4
- (a) a room or other area, 5
 - (b) a cupboard, drawer, container or other receptacle. 6