

# Health Legislation Amendment Act 2015 No 38

[2015-38]



New South Wales

## Status Information

### Currency of version

Historical version for 2 November 2015 to 2 November 2015 (accessed 3 May 2024 at 12:24)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 2 November 2015

# Health Legislation Amendment Act 2015 No 38



New South Wales

## Contents

<b>Long title</b> .....	3
1 Name of Act .....	3
2 Commencement .....	3
<b>Schedule 1 Amendment of Health Care Complaints Act 1993 No 105</b> .....	3
<b>Schedule 2 Amendment of Mental Health Act 2007 No 8</b> .....	4
<b>Schedule 3 Amendment of Private Health Facilities Act 2007 No 9</b> .....	4
<b>Schedule 4 Amendment of Public Health Act 2010 No 127</b> .....	5
<b>Schedule 5 Amendment of Public Health (Tobacco) Act 2008 No 94</b> .....	7

# Health Legislation Amendment Act 2015 No 38



New South Wales

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

## 1 Name of Act

This Act is the *Health Legislation Amendment Act 2015*.

## 2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) The following provisions commence on a day or days to be appointed by proclamation:
  - (a) Schedule 4 [4]-[6],
  - (b) Schedule 5 [3]-[5] and [7].

## Schedule 1 Amendment of *Health Care Complaints Act 1993 No 105*

### [1] Section 41E

Insert after section 41D:

#### **41E Register of orders**

The Commission is to:

- (a) keep a register containing copies of all prohibition orders and interim prohibition orders in force under this Division, and
- (b) cause the contents of the register to be made available for inspection free of charge by the public on the Commission's website.

### [2] Section 94A Warnings about unsafe treatments or services

Omit section 94A (1). Insert instead:

(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.

(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.

**[3] Section 94A (2)**

Omit “under subsection (1)”. Insert instead “under this section”.

**Schedule 2 Amendment of [Mental Health Act 2007 No 8](#)**

**Section 191 Liability of certain persons exercising functions under this Act or the [Mental Health \(Forensic Provisions\) Act 1990](#)**

Insert after section 191 (1):

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

**Schedule 3 Amendment of [Private Health Facilities Act 2007 No 9](#)**

**[1] Section 7 Approval in principle or refusal of application**

Omit section 7 (4) (c). Insert instead:

- (c) having regard to any development guidelines approved by the Secretary and published in the Gazette, the application should be refused, or

**[2] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

any other Act that amends this Act

**Schedule 4 Amendment of Public Health Act 2010 No 127**

**[1] The whole Act (other than section 5)**

Omit “Director-General” and “Director-General’s” wherever occurring.

Insert instead “Secretary” and “Secretary’s” respectively.

**[2] Section 5 Definitions**

Omit “Director-General” from the definition of **approved form** in section 5 (1).

Insert instead “Secretary”.

**[3] Section 5 (1), definitions of “Department” and “Secretary”**

Omit the definitions of **Department** and **Director-General**.

Insert in alphabetical order:

**Department** means the Ministry of Health.

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

**[4] Section 28 Installation of regulated systems**

Insert after section 28 (3):

- (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 **subcontractor**) 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.

Maximum penalty:

- (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.

**[5] Section 29 Operation of regulated systems**

Insert after section 29 (3):

- (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 **subcontractor**) 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.

Maximum penalty:

- (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.

**[6] Section 30 Maintenance of regulated systems**

Insert after section 30 (3):

- (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 employee (a **subcontractor**) 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.

Maximum penalty:

- (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.

**[7] Section 101 Definitions**

Insert “and any corresponding interstate prohibition order” after “that Act” in the definition of **prohibition order** in section 101 (1).

**[8] Section 101 (1), definition of “corresponding interstate prohibition order”**

Insert in alphabetical order:

***corresponding interstate prohibition order*** means an order made under a law of another State or Territory prescribed by the regulations for the purposes of this Division.

**Schedule 5 Amendment of [Public Health \(Tobacco\) Act 2008 No 94](#)**

**[1] The whole Act (other than section 4 and Schedule 1)**

Omit “Director-General” wherever occurring. Insert instead “Secretary”.

**[2] Section 4 Definitions**

Omit the definition of ***Director-General*** from section 4 (1).

Insert in alphabetical order:

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

**[3] Section 6 Certain sales prohibited**

Insert after section 6 (3) before the penalty:

(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:

- (a) it is on premises where tobacco products are being sold, and
- (b) it is not in the package in which it was packed by the manufacturer.

Any such presumption is rebuttable.

**[4] Section 7 Packing and sale of tobacco product without health warning prohibited**

Insert after section 7 (3) before the penalty:

(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:

- (a) it is on premises where tobacco products are being sold, and
- (b) it is not in packaging marked with a health warning.

Any such presumption is rebuttable.

**[5] Section 7A**

Insert after section 7:

**7A Powers of inspector to seize and dispose of tobacco products exceeding prescribed amounts**

- (1) An inspector may seize any tobacco product that the inspector reasonably believes contravenes section 6 (1) or 7 (2) if:
  - (a) it is on premises where tobacco products are being sold, and
  - (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).
- (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.
- (3) If the tobacco product is to be detained in the place, vehicle or vessel where it was found, the inspector may:
  - (a) place it in a room, compartment or cabinet in that place, vehicle, or vessel, and
  - (b) mark, fasten and seal the door or opening providing access to that room, compartment or cabinet.
- (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.

Maximum penalty:

  - (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
  - (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.
- (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.
- (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:



- (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
  - (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.
- (7) An inspector is required to dispose of the tobacco products seized under this section in any manner that the inspector considers appropriate if:
- (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
  - (b) the person from whom the tobacco products were seized does not make an application under subsection (6).

**[6] Section 39 Notification by person engaging in tobacco retailing**

Insert after section 39 (4):

- (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.

**[7] Section 39A**

Insert after section 39:

**39A Restriction on obtaining or selling tobacco by wholesale without tobacco retailer notification number**

- (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).
- (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.

Maximum penalty: 100 penalty units.