

# Health Legislation Amendment Act (No 3) 2018 No 73

[2018-73]



New South Wales

## Status Information

### Currency of version

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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

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## Contents

<b>Long title</b> .....	3
1 Name of Act .....	3
2 Commencement .....	3
<b>Schedule 1 (Repealed)</b> .....	3
<b>Schedule 2 Amendment of Health Administration Act 1982 No 135</b> .....	3
<b>Schedule 3 Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86</b> .....	4
<b>Schedule 4 Amendment of Health Services Act 1997 No 154</b> .....	4
<b>Schedule 5 (Repealed)</b> .....	5
<b>Schedule 6 Amendment of Private Health Facilities Act 2007 No 9</b> .....	5

# Health Legislation Amendment Act (No 3) 2018 No 73



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 (No 3) 2018*.

## 2 Commencement

- (1) This Act commences on the date of assent to this Act except as otherwise provided by this section.
- (2) Schedule 1 commences 1 month after the date of assent to this Act.
- (3) Schedules 2 [1], 3 [1] and [2], 4 [3] and 6 commence on a day or days to be appointed by proclamation.

## Schedule 1 (Repealed)

## Schedule 2 Amendment of [Health Administration Act 1982 No 135](#)

### [1] Section 21S Regulations for purposes of Part

Insert after section 21S (f):

- (g) the notification by relevant health services organisations of incidents to persons or bodies who may be required to exercise functions under this Part or Part 4 of the *Private Health Facilities Act 2007*,
- (h) the exchange of information between a relevant health services organisation and persons or bodies who may be required to exercise functions under this Part or Part 4 of the *Private Health Facilities Act 2007* for the purposes of the exercise of those functions.

### [2]-[5] (Repealed)

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

### **[1] Schedule 1 Modification of Health Practitioner Regulation National Law**

Insert before item [14A]:

#### **[14AC] Section 142A**

Insert after section 142:

#### **142A Employers having dual notification requirements [NSW]**

If an employer is required to report the same conduct under section 142 and under section 117A of the *Health Services Act 1997*, compliance with either section, or with alternative reporting requirements approved by the Secretary, satisfies the requirements of both those sections.

**Note—**

This section is an additional New South Wales provision.

### **[2] Schedule 1 [15]**

Insert after section 151A:

#### **151B Alternative reporting [NSW]**

- (1) The Secretary may approve alternative reporting requirements for the purposes of the giving of a notice or transcript under this Subdivision.
- (2) An alternative reporting requirement may authorise the giving of a notice or transcript in an alternative manner to that otherwise required by this Subdivision for giving the notice or transcript.
- (3) A person or court that gives a notice or transcript in accordance with an alternative reporting requirement approved by the Secretary for the giving of the notice or transcript is taken to have given the notice or transcript in accordance with the requirements of this Subdivision.

## **Schedule 4 Amendment of Health Services Act 1997 No 154**

### **[1], [2] (Repealed)**

### **[3] Section 117A Duty of chief executive to report certain conduct**

Insert after section 117A (2):

- (3) If a chief executive is required to report the same conduct under this section and under section 142 of the *Health Practitioner Regulation National Law (NSW)*, compliance with either section, or with alternative reporting requirements approved by the Health Secretary, satisfies the requirements of both sections.
- (4) A report made because of a requirement under this section is taken to be a complaint both for the purposes of Part 8 of the *Health Practitioner Regulation National Law (NSW)* and for the purposes of the *Health Care Complaints Act 1993* (including sections 96 and 98 of that Act).

**[4] (Repealed)**

**Schedule 5 (Repealed)**

**Schedule 6 Amendment of *Private Health Facilities Act 2007 No 9***

**[1] Part 4**

Omit the Part. Insert instead:

**Part 4 Response to incidents**

**Division 1 Preliminary**

**41 Definitions**

In this Part:

**assessor** means an assessor appointed under Division 2.

**health practitioner** has the same meaning it has in the *Health Practitioner Regulation National Law (NSW)*.

**health service** includes any administrative or other service related to a health service.

**impairment** has the same meaning it has in the *Health Practitioner Regulation National Law (NSW)*.

**incident reviewer**—see section 49B.

**performance or impairment issue**, in relation to a health practitioner, means:

- (a) professional misconduct, unsatisfactory professional conduct or unsatisfactory professional performance by the health practitioner, or

(b) the health practitioner suffering from an impairment.

**professional misconduct** and **unsatisfactory professional conduct** have the same meanings as they have in Part 8 of the [Health Practitioner Regulation National Law \(NSW\)](#).

**reportable incident** means an incident of a type prescribed by the regulations or set out in a document adopted by the regulations.

**serious adverse event review** means a root cause analysis or any other type of review prescribed by the regulations.

**serious adverse event review team** means a serious adverse event review team appointed under Division 3.

**unsatisfactory professional performance** means professional performance that is unsatisfactory within the meaning of Division 5 of Part 8 of the [Health Practitioner Regulation National Law \(NSW\)](#).

## Division 2 Preliminary risk assessment

### 42 Appointment of assessors to assess incidents

- (1) When an incident involving the provision of a health service by a private health facility is reported to the licensee of the facility, the licensee must appoint one or more assessors to carry out a preliminary risk assessment of the incident if:
  - (a) the licensee is of the opinion that the incident is (or may be) a reportable incident, or
  - (b) the incident is not a reportable incident but may be the result of a serious systemic problem and the licensee is of the opinion that a preliminary risk assessment of the incident should be carried out.
- (2) Assessors may be appointed in response to a particular incident or otherwise.
- (3) The persons appointed as assessors in respect of an incident must (subject to the regulations) be persons that the licensee reasonably considers can properly carry out a preliminary risk assessment of the incident.

### 43 Functions of assessors in relation to incidents

An assessor is to carry out a preliminary risk assessment of the incident and is to provide advice (in writing or otherwise) to the licensee to assist the licensee in understanding the events comprising the incident and the measures required to appropriately manage the incident and remove or mitigate any risk.

#### **44 Immediate notification if person at risk**

An assessor must immediately advise the licensee and the chair of the medical advisory committee for the private health facility in writing if the assessor is of the opinion that the incident in respect of which the assessor was appointed raises matters that indicate a problem giving rise to a risk of serious or imminent harm to a person.

#### **45 Outcome of assessment of incidents**

- (1) A licensee may only disclose an advice of an assessor or any information obtained from the advice as follows:
  - (a) to provide the advice to the Secretary,
  - (b) to advise a serious adverse event review team appointed to carry out a serious adverse event review of the incident to which the advice relates,
  - (c) to provide relevant information to a patient involved in the incident, a family member or carer of the patient or a person nominated by any such patient, family member or carer,
  - (d) to a law enforcement agency or regulatory body,
  - (e) in any other manner as may be prescribed by the regulations.
- (2) A licensee must take reasonable steps to not disclose information that identifies a person (other than the patient involved in the incident) when it provides information under subsection (1) (c).

### **Division 3 Serious adverse event review**

#### **46 Appointment of team to review incidents**

- (1) Following the preliminary risk assessment of an incident involving the provision of a health service by a private health facility, the licensee 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:
  - (a) the incident is a reportable incident, or
  - (b) the incident is not a reportable incident but may be the result of a serious systemic problem and the licensee is of the opinion that a serious adverse event review of the incident should be carried out.
- (2) The serious adverse event review team must be appointed within 30 days of the incident.
- (3) Despite subsection (1), a licensee may, but is not required to, appoint a serious

adverse event review team to carry out a serious adverse event review of an incident in circumstances prescribed by the regulations.

- (4) The persons appointed as a serious adverse event review team in respect of an incident must (subject to the regulations) be persons that the licensee reasonably considers can properly carry out a serious adverse event review of the incident.
- (5) The licensee is to cause a written record to be kept of the persons appointed as a serious adverse event review team.
- (6) The Secretary may issue directions setting out the type of serious adverse event review, and the manner in which the serious adverse event review is to be carried out, in respect of an incident or a class of incidents.

#### **47 Serious adverse event review of incident**

- (1) A serious adverse event review team is to carry out a serious adverse event review of the incident in respect of which it was appointed.
- (2) A serious adverse event review team must, on completion of the serious adverse event review of an incident, prepare a written report that sets out a description of the incident and details of the following findings identified by the team:
  - (a) how the incident occurred,
  - (b) any factors that caused or contributed to the incident.
- (3) The report must also include the serious adverse event review team's recommendations (if any) about changes or improvements in relation to a procedure, practice or system (including clinical redesign) arising out of the incident unless the licensee determines that those recommendations are instead to be developed and included in a second report.
- (4) If the licensee determines that the recommendations are to be developed and included in a second report, the licensee may appoint additional persons to the serious adverse event review team for the purpose of developing the recommendations and preparing the second report.
- (5) The serious adverse event review team must provide any report prepared under this section to the licensee and provide a copy of the report to the chair of the medical advisory committee for the private health facility.
- (6) The licensee must, within 30 days after being provided with a report under this section, forward a copy of the report to the Secretary.

Maximum penalty: 50 penalty units.



- (7) Subject to section 49E, the contents of a report under this section may be disclosed to any person and used for any purpose.

#### **48 Immediate notification if person at risk**

A serious adverse event review team must immediately advise the licensee and the chair of the medical advisory committee for the private health facility in writing if it is of the opinion that the incident in respect of which it was appointed raises matters that indicate a problem giving rise to a risk of serious or imminent harm to a person.

#### **49 Notification about performance or impairment of health practitioner**

- (1) A serious adverse event review team must advise the licensee and the chair of the medical advisory committee for the private health facility in writing as soon as practicable once it is of the opinion that the incident in respect of which it was appointed raises matters that may involve a performance or impairment issue (other than unsatisfactory professional performance) in relation to a health practitioner.
- (2) A serious adverse event review team may advise the licensee and the chair of the medical advisory committee for the private health facility in writing if it is of the opinion that the incident raises matters that may involve unsatisfactory professional performance by a health practitioner.
- (3) A written advice under this section must disclose the identity of the health practitioner to whom the notification relates (regardless of whether the health practitioner consents to the disclosure) and the nature of the concern, and specify whether the notification relates to:
- (a) professional misconduct, unsatisfactory professional conduct or unsatisfactory professional performance by the health practitioner, or
  - (b) the health practitioner suffering from an impairment.

#### **49A Discontinuing serious adverse event review**

- (1) The licensee may authorise a serious adverse event review team to discontinue taking any further steps in relation to a serious adverse event review of an incident:
- (a) if advice has been provided to the licensee and the chair of the medical advisory committee for the private health facility under section 49 and the licensee and chair are both of the opinion that the incident was substantially caused by a performance or impairment issue in relation to a health practitioner and the team is not likely to identify any other root causes, contributory factors or system improvements, or

- (b) in circumstances prescribed by the regulations.
- (2) A serious adverse event review team that is authorised under this section may, if it considers it to be appropriate, determine to take no further steps in relation to the serious adverse event review and in such a case may discontinue the review.

## **Division 4 Incident reviewers**

### **49B Meaning of “incident reviewer”**

In this Part:

***incident reviewer*** means a member of a serious adverse event review team or an assessor.

### **49C Restrictions on incident reviewers**

- (1) An incident reviewer does not have authority to carry out an investigation relating to the competence of an individual in providing services.
- (2) Except as otherwise provided by or under this Part, an advice or report furnished by a serious adverse event review team must not disclose:
  - (a) the name or address of an individual who is a provider or recipient of services unless the individual has consented in writing to that disclosure, or
  - (b) as far as is practicable, any other material that identifies, or may lead to the identification of, such an individual.
- (3) An incident reviewer is to act in a fair and reasonable manner in the exercise of his or her functions as an incident reviewer.

### **49D Disclosure of information**

A person who is or was an incident reviewer must not make a record of, or divulge or communicate to any person, any information acquired by the person as such a reviewer, except:

- (a) for the purpose of exercising the functions of an incident reviewer, or
- (b) for the purpose of any advice provided as an incident reviewer, or
- (c) for the purpose of any advice or report under this Part, or
- (d) in accordance with the regulations.

Maximum penalty: 50 penalty units.

#### **49E Information not to be given in evidence**

- (1) A person is neither competent nor compellable to produce any document or disclose any communication (or to disclose any information that the person obtained from any such document or communication) to a court, tribunal, board, person or body if the document was prepared, or the communication was made, for the dominant purpose of the exercise of a function under this Part by an incident reviewer.
- (2) This section does not apply to a requirement made:
  - (a) in proceedings in respect of any act or omission by an incident reviewer, or
  - (b) by a person or body who has been approved by the Secretary to carry out a review or audit of an assessment or review by an incident reviewer.

#### **49F Advice and reports not to be admitted in evidence**

- (1) Evidence as to the contents of an advice or report of an incident reviewer cannot be adduced or admitted in any proceedings.
- (2) Subsection (1) does not apply to proceedings in respect of any act or omission by an incident reviewer.

#### **49G Personal liability of incident reviewers**

- (1) Anything done by an incident reviewer or any person acting under the direction of an incident reviewer, in good faith for the purposes of the exercise of the incident reviewer's functions, does not subject the incident reviewer or person personally to any action, liability, claim or demand.
- (2) Without limiting subsection (1), an incident reviewer has qualified privilege in proceedings for defamation in respect of:
  - (a) any statement made orally or in writing in the exercise of the functions of an incident reviewer, or
  - (b) the contents of any advice or report or other information published by an incident reviewer.
- (3) An incident reviewer is, and is entitled to be, indemnified in respect of any costs incurred in defending proceedings in respect of a liability against which the reviewer is protected by this section by the licensee in respect of the incident for which the incident reviewer was appointed.

## Division 5 Miscellaneous

### 49H Regulations for purposes of Part

The regulations may make provision for or with respect to the following:

- (a) the appointment of persons as members of a serious adverse event review team or as assessors,
- (b) the functions of incident reviewers and the manner in which they are to exercise those functions,
- (c) the procedures of a preliminary risk assessment or a serious adverse event review,
- (d) permitting or requiring incident reviewers or a licensee to make specified information (including personal information and health information) available to the public,
- (e) permitting or requiring incident reviewers to furnish reports concerning their activities to the Minister, the Secretary or licensees,
- (f) the carrying out of reviews or audits of any preliminary risk assessment or serious adverse event review,
- (g) the notification by a licensee of incidents to persons or bodies who may be required to exercise functions under this Part or Part 2A of the *Health Administration Act 1982*,
- (h) the exchange of information between a licensee and persons or bodies who may be required to exercise functions under this Part or Part 2A of the *Health Administration Act 1982* for the purposes of the exercise of those functions.

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

Insert after Part 3:

## Part 4 Provisions consequent on enactment of **Health Legislation Amendment Act (No 3) 2018**

### 26 Definitions

In this Part:

**amending Act** means the *Health Legislation Amendment Act (No 3) 2018*.

**RCA team** means a root cause analysis team.

## **27 Existing incidents**

Part 4 of this Act, as substituted by the amending Act, extends to an incident that occurred before the commencement of that Part.

## **28 Existing root cause analysis teams**

Despite clause 27, Part 4 of this Act, as substituted by the amending Act, does not extend to an incident if an RCA team has been appointed in relation to the incident before the commencement of that Part and, in such a case, Part 4, as in force immediately before its substitution by the amending Act, continues to apply to and in respect of the RCA team.

## **29 Disclosure of information**

Section 49D extends to a person who was a member of an RCA team before the commencement of that section in the same way as it applies to an incident reviewer but only in respect of information that the person was not able to make a record of, or divulge or communicate to any person under section 45 immediately before the substitution of that section.

## **30 Information not to be given in evidence**

Section 49E extends to:

- (a) a document that was prepared, or a communication that was made, before the commencement of that section for the dominant purpose of the conduct of an investigation by an RCA team, and
- (b) proceedings that are pending on that commencement.

## **31 Notifications and reports of former RCA teams not to be admitted in evidence**

Section 49F extends to:

- (a) a notification that was given, or a report that was prepared, before the commencement of that section by an RCA team, and
- (b) proceedings that are pending on that commencement.

## **32 Personal liability of members of former RCA teams**

Section 49G extends to a person who was a member of an RCA team before the commencement of that section, or to a person acting under the direction of any such person, in the same way as that section applies to an incident reviewer or any person acting under the direction of an incident reviewer.