

# Health Legislation Amendment Act 2015 No 38

[2015-38]



New South Wales

## Status Information

### Currency of version

Repealed version for 3 November 2015 to 1 February 2016 (accessed 18 July 2024 at 6:21)

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

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

This Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 2.2.2016.

### 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](#).

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# 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].

## Schedules 1-3 (Repealed)

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

### [1]-[3] (Repealed)

### [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], [8] (Repealed)**

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

### **[1], [2] (Repealed)**

### **[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] (Repealed)**

**[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.