

Health Legislation Amendment Act 2010 No 52

[2010-52]



New South Wales

Status Information

Currency of version

Repealed version for 31 July 2010 to 1 February 2011 (accessed 28 December 2024 at 19:41)

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**

The Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 2.2.2011.

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 2010 No 52



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 2010*.

2 Commencement

- (1) Except as otherwise provided in this section, this Act commences on a day or days to be appointed by proclamation.
- (2) Schedule 3.2–3.4 commence on the date of assent to this Act.

Schedule 1 (Repealed)

Schedule 2 Amendments relating to root cause analysis teams

2.1 Health Administration Act 1982 No 135

[1] Section 20M Appointment of RCA teams to deal with incidents

Insert after section 20M (1):

- (1A) When an incident involving the provision of health services by a relevant health services organisation (other than a reportable incident) is reported to the chief executive officer of the organisation, the organisation may appoint a root cause analysis team in relation to the incident if the chief executive officer is of the opinion that the incident may be the result of a serious systemic problem that justifies the appointment of such a team.

[2] Sections 20M (2) and (3) and 20O (1), (2) and (3) (a) and (b)

Omit “reportable” wherever occurring.

[3] Section 20N Restrictions on RCA teams

Omit section 20N (3). Insert instead:

- (3) A member of a RCA team is to act in a fair and reasonable manner in the exercise of his or her functions as such a member.

[4] Section 200 Responsibilities of RCA team in relation to incident

Insert after section 200 (2):

- (2A) A notification under subsection (1) or (2) is to disclose the identity of the person to whom the notification relates (regardless of whether the person consents to the disclosure) and specify whether the notification relates to:

- (a) professional misconduct, unsatisfactory professional conduct or unsatisfactory professional performance by the person, or
- (b) the person suffering from an impairment.

- (2B) A RCA team may notify in writing the relevant health services organisation by which it was appointed if the RCA team is of the opinion that the incident that it is considering raises matters that indicate a problem giving rise to a risk of serious and imminent harm to a person.

[5] Sections 200 (3) and 20T (f)

Omit “a reportable incident” wherever occurring. Insert instead “an incident”.

[6] Section 200 (3) (c)

Omit the paragraph. Insert instead:

- (c) if the RCA team has any recommendations as to the need for changes or improvements in relation to a procedure or practice arising out of the incident—those recommendations.

[7] Section 200 (3A)

Insert after section 200 (3):

- (3A) Subject to section 20R, the contents of a report of a RCA team under subsection (3) may be disclosed to any person and used for any purpose.

[8] Section 200 (4)

Insert in alphabetical order:

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

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

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)*.

[9] Section 20P Disclosure of information

Omit “report prepared by a RCA team under section 200 (3)” from section 20P (c).

Insert instead “notification or report under section 200”.

[10] Section 20Q Information not to be given in evidence

Omit section 20Q (1). Insert instead:

- (1) A person is neither competent nor compellable to produce any document or disclose any 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 conduct of an investigation by a RCA team.

[11] Section 20Q (3)

Insert after section 20Q (2):

- (3) Subsection (1) does not apply to a requirement made by a person or body who has been approved by the Director-General to carry out a review or audit of an investigation conducted by a RCA team.

[12] Section 20R

Omit the section. Insert instead:

20R Notifications and reports not to be admitted in evidence

- (1) Evidence as to the contents of a notification or report of a RCA team under section 200 cannot be adduced or admitted in any proceedings.

(2) Subsection (1) does not apply to proceedings in respect of any act or omission by a RCA team or by a member of a RCA team as a member.

[13] Section 20T Regulations concerning RCA teams

Insert after section 20T (f):

(g) the conduct of reviews or audits of investigations conducted by RCA teams.

[14] Section 20U Review of Division

Omit the section.

[15] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 13 (1):

Health Legislation Amendment Act 2010 (but only to the extent that it amends this Act)

[16] Schedule 2, Part 3

Insert after Part 2:

Part 3 Provisions consequent on enactment of [Health Legislation Amendment Act 2010](#)

15 Definition

In this Part:

amending Act means the *Health Legislation Amendment Act 2010*.

16 Appointment of RCA teams

Section 20M (1A), as inserted by the amending Act, does not extend to an incident that was reported to the chief executive officer of a relevant health services organisation before the commencement of that subsection.

17 RCA team not required to make recommendations

Section 20O (3) (c), as substituted by the amending Act, extends to an investigation commenced before that substitution.

18 Information not to be given in evidence

Section 20Q (1), as substituted by the amending Act, extends to:

(a) a document that was prepared or a communication that was made before that

substitution, and

(b) proceedings that are pending on that substitution.

19 Notifications and reports not to be admitted in evidence

Section 20R, as substituted by the amending Act, extends to:

(a) a notification that was given or a report that was prepared before that substitution, and

(b) proceedings that are pending on that substitution.

2.2 Private Health Facilities Act 2007 No 9

[1] Section 42 Appointment of root cause analysis teams to deal with incidents

Insert after section 42 (1):

(1A) When an incident involving the provision of health services by a private health facility (other than a reportable incident) is reported to the licensee of the facility, the licensee may appoint a root cause analysis team in relation to the incident if the licensee is of the opinion that the incident may be the result of a serious systemic problem that justifies the appointment of such a team.

[2] Sections 42 (2) and (3) and 44 (1), (2) and (3) (a) and (b)

Omit "reportable" wherever occurring.

[3] Section 43 Restrictions on root cause analysis teams

Omit section 43 (3). Insert instead:

(3) A member of a root cause analysis team is to act in a fair and reasonable manner in the exercise of his or her functions as such a member.

[4] Section 44 Responsibilities of root cause analysis team in relation to incident

Insert after section 44 (2):

(2A) A notification under subsection (1) or (2) is to disclose the identity of the person to whom the notification relates (regardless of whether the person consents to the disclosure) and specify whether the notification relates to:

(a) professional misconduct, unsatisfactory professional conduct or unsatisfactory professional performance by the person, or

(b) the person suffering from an impairment.

(2B) A root cause analysis team may notify in writing the licensee and the chair of the medical advisory committee for the relevant facility if the team is of the opinion that the incident that it is considering raises matters that indicate a problem giving rise to a risk of serious and imminent harm to a person.

[5] Section 44 (3)

Omit “a reportable incident”. Insert instead “an incident”.

[6] Section 44 (3) (c)

Omit the paragraph. Insert instead:

(c) if the team has any recommendations as to the need for changes or improvements in relation to a procedure or practice arising out of the incident—those recommendations.

[7] Section 44 (3A)

Insert after section 44 (3):

(3A) Subject to section 47, the contents of a report of a root cause analysis team under subsection (3) may be disclosed to any person and used for any purpose.

[8] Section 44 (6)

Insert after section 44 (5):

(6) In this section:

impairment has the same meaning it has in the [Health Practitioner Regulation National Law \(NSW\)](#).

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

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 \(NSW\)](#).

[9] Section 45 Disclosure of information

Omit “report prepared by a team under section 44 (3)” from section 45 (c).

Insert instead “notification or report under section 44”.

[10] Section 46 Information not to be given in evidence

Omit section 46 (1). Insert instead:

- (1) A person is neither competent nor compellable to produce any document or disclose any 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 conduct of an investigation by a root cause analysis team.

[11] Section 46 (3)

Insert after section 46 (2):

- (3) Subsection (1) does not apply to a requirement made by a person or body who has been approved by the Director-General to carry out a review or audit of an investigation conducted by a root cause analysis team.

[12] Section 47

Omit the section. Insert instead:

47 Notifications and reports not to be admitted in evidence

- (1) Evidence as to the contents of a notification or report of a root cause analysis team under section 44 cannot be adduced or admitted in any proceedings.
- (2) Subsection (1) does not apply to proceedings in respect of any act or omission by a root cause analysis team or by a member of a root cause analysis team as a member.

[13] Section 49 Regulations concerning root cause analysis teams

Insert after section 49 (e):

- (f) the conduct of reviews or audits of investigations conducted by root cause analysis teams.

[14] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Health Legislation Amendment Act 2010 (but only to the extent that it amends this Act)

[15] Schedule 4, Part 3

Insert after Part 2:

Part 3 Provisions consequent on enactment of [Health Legislation Amendment Act 2010](#)

21 Definition

In this Part:

amending Act means the [Health Legislation Amendment Act 2010](#).

22 Appointment of root cause analysis teams

Section 42 (1A), as inserted by the amending Act, does not extend to an incident that was reported to the licensee of a private health facility before the commencement of that subsection.

23 Root cause analysis team not required to make recommendations

Section 44 (3) (c), as substituted by the amending Act, extends to an investigation commenced before that substitution.

24 Information not to be given in evidence

Section 46 (1), as substituted by the amending Act, extends to:

- (a) a document that was prepared or a communication that was made before that substitution, and
- (b) proceedings that are pending on that substitution.

25 Notifications and reports not to be admitted in evidence

Section 47, as substituted by the amending Act, extends to:

- (a) a notification that was given or a report that was prepared before that substitution, and
- (b) proceedings that are pending on that substitution.

Schedule 3 (Repealed)