



New South Wales

# Health Legislation Amendment Bill 2015

## Explanatory note

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

## Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Health Care Complaints Act 1993*:
  - (i) to require the Health Care Complaints Commission (the **Commission**) to keep a public register of prohibition orders and interim prohibition orders in respect of health practitioners, and
  - (ii) to enable the Commission to issue public warnings during investigations into particular treatments or health services,
- (b) to amend the *Mental Health Act 2007* to exclude from personal liability members of staff of the NSW Health Service who assist health care professionals or ambulance officers in the exercise of their functions,
- (c) to amend the *Private Health Facilities Act 2007* to remove the adequacy of current health services in an area as a ground for the refusal of a licence for a private health facility in that area,
- (d) to amend the *Public Health Act 2010*:
  - (i) to make it an offence for a subcontractor of a person who has been engaged to install, operate or maintain a regulated system for the control of legionella to fail to ensure that certain installation, operation or maintenance requirements are complied with, and
  - (ii) to give effect to prescribed interstate prohibition orders within New South Wales,

- (e) to amend the *Public Health (Tobacco) Act 2008*:
  - (i) to enable inspectors to seize and dispose of any tobacco product found on retail premises that exceeds a prescribed quantity and that is not in its original packaging or is in packaging without a health warning, and
  - (ii) to prohibit obtaining or selling tobacco product by wholesale without a tobacco retailer notification number.

## 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, except proposed **Schedule 4 [4]–[6]** and proposed **Schedule 5 [3]–[5] and [7]**, which commence on a day or days to be appointed by proclamation.

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

**Schedule 1 [1]** requires the Commission to keep a public register of prohibition orders and interim prohibition orders made under the *Health Care Complaints Act 1993* that prohibit certain health practitioners from providing health services or specified health services or that place conditions on the provision of health services or specified health services by health practitioners.

**Schedule 1 [2]** enables the Commission to cause a statement to be issued to warn the public about a particular treatment or health service if, during an investigation, the Commission is of the view that the warning is necessary to protect an individual or public health or safety. **Schedule 1 [3]** makes a consequential amendment.

### **Schedule 2      Amendment of Mental Health Act 2007 No 8**

**Schedule 2** excludes from personal liability members of staff of the NSW Health Service in the exercise of their functions under the *Mental Health Act 2007* or the *Mental Health (Forensic Provisions) Act 1990* and in their assistance of health care professionals or ambulance officers in the exercise of their functions under those Acts.

### **Schedule 3      Amendment of Private Health Facilities Act 2007 No 9**

**Schedule 3 [1]** removes a current ground for the refusal of a licence for a private health facility where the approval of the application will result in more than an adequate number of health services becoming available in a particular clinical or geographic area and will undermine the provision of viable, comprehensive and coordinated health services.

**Schedule 3 [2]** enables savings and transitional regulations to be made as a consequence of the amendments to the *Private Health Facilities Act 2007*.

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

**Schedule 4 [1]–[3]** make minor amendments that update terminology consequent on the enactment of the *Government Sector Employment Act 2013* and past administrative changes.

**Schedule 4 [4]–[6]** make it an offence for a subcontractor of a person who is engaged by the occupier of any premises to install, operate or maintain a regulated system for the control of legionella not to ensure that installation, operation or maintenance requirements prescribed by regulations are complied with. The maximum penalty for an offence will be:

- (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.

**Schedule 4 [7]** gives effect to prescribed interstate prohibition orders within New South Wales.

**Schedule 4 [8]** enables the regulations to prescribe the laws of another State or Territory under which interstate prohibition orders must be made in order to have effect in New South Wales.

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

**Schedule 5 [1] and [2]** make minor amendments that update terminology consequent on the enactment of the *Government Sector Employment Act 2013* and past administrative changes.

**Schedule 5 [3]** enables the regulations to prescribe a quantity of tobacco product to be presumed for sale if it is not in the package in which it was packed by the manufacturer.

**Schedule 5 [4]** enables the regulations to prescribe a quantity of tobacco product to be presumed for sale if it is not in packaging marked with a health warning.

**Schedule 5 [5]** enables inspectors to seize and dispose of any tobacco product found on retail premises that exceeds the quantity prescribed by the regulations and that is not in its original packaging or is in packaging without a health warning.

**Schedule 5 [6]** requires the Secretary of the Ministry of Health to issue a person who intends to engage in tobacco retailing with a tobacco retailer notification number.

**Schedule 5 [7]** makes it an offence for:

- (a) a tobacco retailer to obtain tobacco product from a tobacco wholesaler without providing a tobacco retailer notification number to the wholesaler, and
- (b) a tobacco wholesaler to sell tobacco product to a tobacco retailer without obtaining a tobacco retailer notification number from the retailer.