



New South Wales

Health Legislation (Miscellaneous Amendments) Bill 2020

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 make various amendments to the *Health Care Complaints Act 1993*, including to—
 - (i) create a new category of health organisation, being a **relevant health organisation**, and provide for the Health Care Complaints Commission (the **Commission**) to deal with complaints relating to relevant health organisations, including by making prohibition orders in relation to relevant health organisations, and
 - (ii) enable the Commission to take action, including exercising entry and search and information gathering powers, to assess a person's compliance with prohibition orders and other matters, and
 - (iii) modify the circumstances in which an authorised officer of the Commission may exercise certain entry, search and seizure powers, and
 - (iv) provide the Commission with additional options for referral following the assessment of a complaint, and
 - (v) extend existing protections against disclosure to information exchanged between the Commission and a professional council for a health profession established under the *Health Practitioner Regulation National Law (NSW)* (a **Council**), and
 - (vi) make other minor or related amendments,
- (b) to make various amendments to the *Health Practitioner Regulation (Adoption of National Law) Act 2009*, including to—

- (i) provide that a Council is, with certain exceptions, subject to the control and direction of the Minister, and
 - (ii) provide that a Council, when exercising its functions in relation to a complaint about a registered health practitioner or student, may have regard to certain matters about the practitioner or student including previous complaints or findings, and
 - (iii) specify certain conduct as unsatisfactory professional conduct of a registered health practitioner, and
 - (iv) impose various notification requirements on National Boards and Councils relating to specified matters and events concerning practitioners and students, and
 - (v) make other minor or related amendments,
- (c) to make various amendments to the *Health Services Act 1997*, including to prevent a person being compelled to disclose documents and information relating to certain inquiries by the Secretary of the Ministry of Health (the **Secretary**) and to enable the Secretary to remove an appointed member of the Ambulance Service Advisory Board from office,
- (d) to amend the *Human Tissue Act 1983* to insert a regulation-making power to prescribe specified bodily materials as, or exclude specified bodily materials from being, tissue and to enable a coroner to provide consent, before a person's death, to the removal of tissue from the person's body after death,
- (e) to amend the *Private Health Facilities Act 2007* to require registered health practitioners practising at private health facilities to report certain criminal and disciplinary matters to the licensee of the facility and to enable proceedings for offences under that Act to be dealt with summarily before the Supreme Court,
- (f) to make various amendments to the *Public Health Act 2010*, including to enable the Secretary to direct a person known to have a Category 4 or 5 medical condition to undergo a related medical examination or test, to provide for the regulations to prescribe a code of conduct for the provision of health services by relevant health organisations, and to introduce related offences,
- (g) to amend the *Public Health (Tobacco) Act 2008* to regulate e-cigarette liquids and to provide for the seizure and disposal of smokeless tobacco products,
- (h) to amend the *Saint Vincent's Hospital Act 1912* to replace the trustees of the trust relating to St Vincent's Hospital, Darlinghurst and to modify the trustees' powers relating to leases over land subject to the trust,
- (i) to enact other minor and consequential provisions,
- (j) to make miscellaneous amendments to other Acts.

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.

Schedule 1 Amendment of Health Care Complaints Act 1993 No 105

Relevant health organisations

Schedule 1[1] inserts a definition for a new subset of health organisation—a **relevant health organisation**. A relevant health organisation is defined as a person that is a health organisation, other than a public health organisation, a public hospital or a private health facility. **Schedule 1[3]** provides that a complaint may be made under the *Health Care Complaints Act 1993* concerning an alleged breach by a relevant health organisation of a code of conduct under the *Public Health Act 2010* or an alleged breach of Part 7, Division 1 or 3 of that Act. **Schedule 1[23]** provides the Commission with functions to receive and deal with complaints about relevant health

organisations. Accordingly, a complaint of this nature may be dealt with by the Commission under the existing framework for dealing with complaints.

Schedule 1[21] generally replicates, with appropriate modifications, existing provisions relating to the making of interim prohibition orders and prohibition orders in relation to health practitioners to enable the Commission to make an interim prohibition order or a prohibition order in relation to a relevant health organisation. The Commission will be able to make a prohibition order against a relevant health organisation that the Commission finds has breached a code of conduct or has been convicted of certain offences and that poses a risk to the health or safety of the public.

Schedule 1[1], [2], [4], [18]–[20] and [26] make consequential amendments.

Powers to assess compliance with prohibition orders and other matters

Schedule 1[22] enables the Commission to take action, including by exercising entry and search powers and information gathering powers, to assess a person's compliance with an interim prohibition order or prohibition order made by the Commission, a prohibition order made under the *Health Practitioner Regulation National Law (NSW)* or a recommendation of the Commission relating to a relevant health organisation (a *relevant matter*). Proposed Part 3A generally replicates, with appropriate modifications, existing provisions relating to the investigation of complaints by the Commission. This includes powers for an authorised officer of the Commission to enter and search premises and seize items from the premises for the purpose of assessing a person's compliance with a relevant matter. It also includes powers for the Commission to require a person to give information or evidence or produce documents that the Commission believes will assist it to assess a person's compliance with a relevant matter. Failure to comply, without a reasonable excuse, will be an offence.

Schedule 1[5], [17], [27] and [32] make consequential amendments. In particular, the amendments in **Schedule 1[17] and [27]** relocate, and expand the application of, existing offences.

Miscellaneous

Schedule 1[6] updates cross-references consequent on the commencement of Schedule 1 to the *Health Legislation Amendment Act 2018*.

Schedule 1[7], [27] and [28] increase the maximum monetary penalty for various offences to 200 penalty units. As noted above, **Schedule 1[27]** contains relocated offences.

Schedule 1[8] makes a consequential amendment relating to **Schedule 2[3]**.

Schedule 1[9] and [10] enable the Commission, following the assessment of a complaint, to refer the complaint to the licensee of a private health facility for resolution at a local level. This is consistent with existing arrangements for public health organisations. **Schedule 1[11]** enables the Commission to refer a complaint to another person or body able to take some appropriate action other than an investigation. **Schedule 1[12]** makes a consequential amendment.

Schedule 1[13] modifies the circumstances in which an authorised officer of the Commission may exercise certain entry, search and seizure powers for the purposes of the investigation of a complaint by the Commission. An authorised person will not be able to enter residential premises and exercise these powers without the occupier's consent or a search warrant. This is currently the requirement in relation to all premises. **Schedule 1[14] and [16]** remove the requirement for a search warrant to exercise certain of these powers and **Schedule 1[15]** makes a consequential amendment.

Schedule 1[25] enables the Commission to issue warnings about particular health service providers to protect public health or safety. **Schedule 1[24]** makes a consequential amendment.

Schedule 1[29] provides that a Council, or a person exercising functions on behalf of a Council, may not be compelled in legal proceedings to give evidence about, or produce documents containing, information exchanged between a Council and the Commission under the *Health Care Complaints Act 1993* or the *Health Practitioner Regulation National Law (NSW)*. **Schedule 1[30] and [31]** provide certain exceptions to this provision.

Schedule 2 Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86

Schedule 2[1] provides that a Council is, with certain exceptions, subject to the control and direction of the Minister. These exceptions include the assessment or management of a complaint about a registered health practitioner or a student and the assessment or management of a registered health practitioner or student who is or was the subject of a complaint or whose registration is subject to a condition.

Schedule 2[2] extends the circumstances in which a Council, in exercising functions in relation to a complaint about a registered health practitioner or a student, is required to have regard to certain matters such as earlier complaints, findings or decisions about the practitioner or student. A Council will be required to have regard to these matters, to the extent the Council reasonably considers the matter to be relevant to the complaint, when exercising its functions under Part 8 of the *Health Practitioner Regulation National Law (NSW)*.

Schedule 2[3] provides that a breach by a registered health practitioner of section 21A(3) or proposed section 63G(4) of the *Health Care Complaints Act 1993* is **unsatisfactory professional conduct**. These provisions make it an offence for a person to fail, without a reasonable excuse, to give information or evidence, or produce documents, to the Commission when required to do so by the Commission to assist in the Commission's assessment of a complaint or a person's compliance with certain matters.

Schedule 2[4] requires a National Board that receives a notice from a registered health practitioner or student of certain events in relation to the practitioner or student, for example a charge or conviction in relation to the practitioner or student, to provide the Council for the health profession in which the practitioner or student is registered with a copy of the notice.

Schedule 2[6] requires a Council to notify each employer and accreditor of a registered health practitioner if the practitioner's registration is suspended or cancelled. It also enables a Council to notify each employer and accreditor of a registered health practitioner if the Council reasonably believes that the practitioner has contravened a condition imposed on the practitioner's registration. **Schedule 2[5]** makes a consequential amendment.

Schedule 2[7] requires the annual declaration of a person who holds a financial interest in a pharmacy business to be accompanied by a fee prescribed by the NSW regulations.

Schedule 3 Amendment of Health Services Act 1997 No 154

Schedule 3[1] and [2] restate, with modifications, existing requirements for registered health practitioners to report findings of professional misconduct or unsatisfactory professional conduct made under the *Health Practitioner Regulation National Law (NSW)*. The modifications extend the reporting requirements to also apply to similar findings under the laws of another State or Territory and are consistent with the proposed amendment to the *Private Health Facilities Act 2007* in **Schedule 5[1]**.

Schedule 3[7] and [9] enable the Secretary to remove an appointed member of the Ambulance Service Advisory Board from office.

Schedule 3[4] prevents a person who conducts or assists in the conduct of certain inquiries of the Secretary from being compelled to produce documents or disclose communications or related information to a court or other body or person if the document was prepared, or the communication was made, for the dominant purpose of the inquiry. However, the Secretary may provide a copy of a final report of an inquiry to a person or body at the Secretary's discretion.

Schedule 3[3] and [5] correct cross-references. **Schedule 3[6]** removes a redundant definition and **Schedule 3[8]** makes a related consequential amendment.

Schedule 4 Amendment of Human Tissue Act 1983 No 164

Schedule 4[1] inserts a regulation-making power to prescribe as tissue, or exclude from being tissue, specified bodily materials or classes or types of bodily materials.

Schedule 4[2] enables a coroner to provide consent, before a person's death, to the removal of tissue from the person's body after death. This consent may only be given if the coroner reasonably believes that the coroner will have jurisdiction to hold an inquest under the *Coroners Act 2009* into the person's death. The coroner may withdraw the consent at any time.

Schedule 5 Amendment of Private Health Facilities Act 2007 No 9

Schedule 5[1] introduces a duty on a registered health practitioner who practises at a private health facility and is the subject of a finding of unsatisfactory professional conduct or professional misconduct made under the *Health Practitioner Regulation National Law (NSW)*, or a similar finding under the law of another State or Territory, to notify the licensee of the private health facility of that finding. A registered health practitioner is also required to notify a licensee if the practitioner is charged with having committed, or is convicted of, a serious sex or violence offence.

Schedule 5[2] enables proceedings for offences under the *Private Health Facilities Act 2007* or the regulations under that Act to be dealt with summarily before the Supreme Court in its summary jurisdiction. Currently, proceedings for these offences may only be dealt with summarily before the Local Court. **Schedule 5[3]** provides that if proceedings for an offence are brought in the Local Court, the Local Court may not impose a penalty higher than 200 penalty units, even if a higher penalty is available for the offence.

Schedule 6 Amendment of Public Health Act 2010 No 127

Schedule 6[3]–[5] enable the Secretary to direct a person to undergo a specified kind of medical examination or test if the Secretary knows the person has a Category 4 or 5 condition and the Secretary considers the person may be a risk to public health. The medical examination or test must relate to the condition. **Schedule 6[2] and [6]** make consequential amendments.

Schedule 6[9] provides for the regulations to prescribe a code of conduct for the provision of health services by relevant health organisations. **Schedule 6[1], [7], [8] and [10]** make consequential amendments. As noted above, the Commission will be able to make a prohibition order or an interim prohibition order under the *Health Care Complaints Act 1993* in relation to a relevant health organisation that the Commission finds has breached a code of conduct and poses a risk to the health of the public. For the purpose of the *Public Health Act 2010*, a prohibition order includes an interim prohibition order.

Schedule 6[15] imposes notification and other requirements on a relevant health organisation subject to a prohibition order in relation to the recipients of health services provided by the relevant health organisation and the employees of the relevant health organisation. Failure to comply with a requirement constitutes an offence. **Schedule 6[11]–[14], [17] and [18]** make amendments consequent on the application of prohibition orders to relevant health organisations.

Schedule 6[16] increases the maximum penalty for the offence of providing a health service in contravention of a prohibition order. **Schedule 6[20]** makes the offence an indictable offence that may be tried summarily unless the prosecutor or the accused person elects to have the matter dealt with on indictment. **Schedule 6[19]** makes a consequential amendment.

Schedule 7 Amendment of Public Health (Tobacco) Act 2008 No 94

Schedule 7[1] amends the existing definition of *e-cigarette* to include *e-cigarette liquid*, a definition of which is inserted by **Schedule 7[3]**. Accordingly, e-cigarette liquid will be subject to the same controls as already apply to e-cigarettes. An e-cigarette liquid is a liquid or other substance which, when used in connection with a device, generates or is released as an aerosol or vapour for inhalation in a manner that replicates the experience of smoking an ignited tobacco product. **Schedule 7[2]** makes a consequential amendment.

Schedule 7[5] creates, for the purposes of the offence of selling a tobacco product designed for consumption other than by smoking (a *smokeless tobacco product*), a rebuttable presumption that a smokeless tobacco product of certain quantity found on premises where tobacco products are sold is for the purposes of sale. **Schedule 7[6]** confers powers on an inspector to seize and dispose of smokeless tobacco products in certain circumstances.

Schedule 7[4] corrects a minor inconsistency.

Schedule 8 Amendment of Saint Vincent's Hospital Act 1912 No 5

Schedule 8[1] provides for the replacement of the trustees of the trust relating to St Vincent's Hospital, Darlinghurst and enables the trustees to delegate their powers under the *Saint Vincent's Hospital Act 1912*. The new trustees are the chair of St. Vincent's Hospital Sydney Limited and the chief executive officer and the company secretary of St Vincent's Health Australia Ltd.

Schedule 8[2] allows the trustees to enter into leases for land subject to the trust for a maximum term of 40 years. The current maximum term is either 10 or 21 years, depending on the type of lessee. **Schedule 8[3]** makes a consequential amendment. **Schedule 8[4]** allows the trustees to not charge market rental rates for leases to universities or charities.

Schedule 9 Amendment of other legislation

Schedule 9.1 makes a consequential amendment to the *Criminal Procedure Act 1986* relating to **Schedule 6[20]**.

Schedule 9.2 provides that information relating to the Secretary's inquiry functions under section 122(1)(c) or 123 of the *Health Services Act 1997* is *excluded information* under the *Government Information (Public Access) Act 2009*, which means that there is a conclusive presumption of an overriding public interest against disclosure of the information. However, the excluded information does not include a final report of an inquiry.

Schedule 9.3 makes a consequential amendment to the *Law Enforcement (Powers and Responsibilities) Act 2002* relating to **Schedule 1[22]**.