



New South Wales

# Health Legislation Amendment Bill 2014

## Explanatory note

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

## Overview of Bill

The objects of this Bill are:

- (a) to amend the *Health Practitioner Regulation (Adoption of National Law) Act 2009* so as to modify the *Health Practitioner Regulation National Law (NSW)* to enable the Civil and Administrative Tribunal to make prohibition orders against former registered health practitioners, and
- (b) to amend the *Health Services Act 1997* to restore the substantive effect of certain provisions relating to the transfer of members of staff within the Health Service under the *Public Sector Employment and Management Act 2002* immediately before its repeal, and
- (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, and
- (d) to amend the *Public Health Act 2010* 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.

## 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 its date of assent.

## **Schedule 1      Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86**

**Schedule 1** enables the Civil and Administrative Tribunal to make a prohibition order against a former registered health practitioner under section 149C of the *Health Practitioner Regulation National Law (NSW)* if the Tribunal would have made an order suspending or cancelling the practitioner's registration if he or she had been registered. A **prohibition order** is an order that prohibits a person from providing specified health services or imposes conditions on the provision of specified health services by a person.

## **Schedule 2      Amendment of Health Services Act 1997 No 154**

**Schedule 2 [1]** restores the substantive effect of provisions relating to the transfer of members of staff within the Health Service that applied under the general government sector staff transfer provisions (sections 86A and 87) of the *Public Sector Employment and Management Act 2002* immediately before its repeal by the *Government Sector Employment Act 2013*. The *Government Sector Employment Act 2013* continued provisions relating to the transfer of staff between the services of the Crown, but left transfers within a service of the Crown (other than the Public Service) to be regulated by the separate provisions that apply to those other services. The *Health Services Act 1997* does not currently contain specific provisions (other than in the case of redundancy) relating to transfers between public health organisations. **Schedule 2 [2]** makes a consequential amendment.

## **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 the Governor to make regulations of a savings or transitional nature consequent on amendments made to the Act by another Act (including the proposed Act).

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

**Schedule 4** makes 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.



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New South Wales

# Health Legislation Amendment Bill 2014

No. , 2014

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## A Bill for

An Act to make miscellaneous amendments to various Acts that relate to health and associated matters.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Health Legislation Amendment Act 2014</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent to this Act.	5

<b>Schedule 1</b>	<b>Amendment of Health Practitioner Regulation</b>	1
	<b>(Adoption of National Law) Act 2009 No 86</b>	2
	<b>Schedule 1 Modification of Health Practitioner Regulation National Law</b>	3
	Insert after section 149C (5) in Schedule 1 [15]:	4
(5A)	The power of the Tribunal to make a prohibition order extends to a person who	5
	is no longer registered if the Tribunal decides under subsection (4) that it	6
	would have suspended or cancelled the person’s registration if the person were	7
	still registered.	8

## Schedule 2 Amendment of Health Services Act 1997 No 154

### [1] Section 116BA

Insert after section 116B:

#### 116BA Transfer of staff within the NSW Health Service

- (1) The Health Secretary may, subject to this section, transfer a member of the NSW Health Service (a *member of staff*) to another position within the NSW Health Service (or a part of the Service).
- (2) A transfer of a member of staff under this section may be temporary or, following consultation with the member of staff, permanent.
- (3) A member of staff may request a transfer under this section, but is not entitled to be transferred at his or her request.
- (4) The Health Secretary may transfer a member of staff under this section without a request or the consent of the member of staff.
- (5) A member of staff may be transferred under this section to any different workplace location in the State.
- (6) A transfer under this section is to be made to a position that is at the same level or grade as the member of staff's existing level or grade, unless the member of staff requests the transfer or consents to it.
- (7) A member of staff who is permanently transferred under this section must be suitable for the role and work assigned to the position to which the member of staff is transferred.
- (8) A permanent appointment may be made to the original position of a member of staff temporarily transferred under this section:
  - (a) if the member of staff consents, or
  - (b) if the transfer has continued or is likely to continue for more than 12 months, the member of staff is advised of the proposed appointment and the member of staff is given a reasonable opportunity to terminate the transfer and return to his or her original position.
- (9) This section does not apply to the transfer of a staff member on the ground of redundancy.  
**Note.** See section 116C for transfers on the ground of redundancy.
- (10) Nothing in this section affects any other method (statutory or otherwise) by which members of staff can transfer or be transferred.

### [2] Section 116C Transfer of redundant staff within the NSW Health Service

Insert "(except section 116BA)" after "other law" in section 116C (5).

<b>Schedule 3</b>	<b>Amendment of Private Health Facilities Act 2007</b>	1
	<b>No 9</b>	2
<b>[1]</b>	<b>Section 7 Approval in principle or refusal of application</b>	3
	Omit section 7 (4) (c). Insert instead:	4
	(c) having regard to any development guidelines approved by the	5
	Director-General and published in the Gazette, the application should	6
	be refused, or	7
<b>[2]</b>	<b>Schedule 4 Savings, transitional and other provisions</b>	8
	Insert at the end of clause 1 (1):	9
	any other Act that amends this Act	10



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

### [1] 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.

### [2] 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.

### [3] 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.