



New South Wales

Health Legislation Amendment Bill 2017

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 Administration Act 1982* to establish new procedures for dealing with reportable incidents and other incidents and to make a consequential amendment to the *Government Information (Public Access) Act 2009* to protect information arising from reviews of those incidents,
- (b) to amend the *Health Services Act 1997* to change the name of the Ambulance Services Advisory Council to the Ambulance Service Advisory Board, to require the Secretary of the Ministry of Health (the **Health Secretary**) (instead of the Minister for Health) to appoint persons to the Board, to provide that local health district boards must not exercise functions inconsistently with the exercise of functions by the Health Secretary and to provide that the employment of a NSW Health Service senior executive may not be terminated without the concurrence of the Health Secretary,
- (c) to amend the *Human Tissue Act 1983* to enable persons (other than medical practitioners) appointed by the Health Secretary to remove tissue from the body of deceased persons,
- (d) to amend the *Mental Health Act 2007* to enable the Mental Health Review Tribunal to hear reviews and electro convulsive therapy inquiries in the absence of a patient or person in certain circumstances if the patient or person refuses to attend or is too unwell to attend,
- (e) to amend the *Mental Health (Forensic Provisions) Act 1990* to require regular reviews by the Mental Health Review Tribunal of persons (other than forensic patients) who are subject to community treatment orders and who are detained in correctional centres and to provide

for the apprehension of forensic patients and correctional patients who breach conditions of leave from mental health facilities,

- (f) to amend the *Government Sector Employment Act 2013* to clarify that the Health Secretary may terminate the employment of a health executive for unsatisfactory performance.

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 for Schedules 1, 4, 5 and 7 which commence on proclamation.

Schedule 1 Amendment of Health Administration Act 1982 No 135

Schedule 1 [2] inserts proposed Part 2A into the *Health Administration Act 1982* (the *principal Act*) to establish new procedures for dealing with incidents involving relevant health services organisations. **Schedule 1 [1]** contains a consequential amendment.

Proposed Division 1 of Part 2A includes a number of definitions to be used in the proposed Part and also specifies the incidents to which the proposed Part applies. These incidents are those involving the provision of health services by local health districts, prescribed statutory health corporations or prescribed affiliated health organisations (in which case the *relevant health services organisation* in respect of the incident is the local health district, prescribed statutory health corporation or prescribed affiliated health organisation) and incidents involving the provision of health services under Chapter 5A of the *Health Services Act 1997* or the provision of services under Part 1A of Chapter 10 of that Act (in which case the *relevant health services organisation* in respect of the incident is the Secretary of the Ministry of Health (the *Health Secretary*)).

Proposed Division 2 of Part 2A requires a relevant health services organisation to direct one or more assessors appointed by the organisation to carry out a preliminary risk assessment of an incident that has been reported to the organisation if the organisation is of the opinion that the incident is (or may be) a type prescribed by the regulations under the principal Act as a *reportable incident* or if the incident is not a reportable incident but may be the result of a serious systemic problem and the organisation is of the opinion that a preliminary risk assessment of the incident should be carried out. The assessor is to carry out a preliminary risk assessment of the incident and is to provide advice to the organisation about the incident to assist the organisation in understanding the cause of the incident and the measures to be taken. An assessor must immediately notify the organisation if the assessor is of the opinion that the incident raises matters that indicate a problem giving rise to a risk of serious or imminent harm to a person.

Proposed Division 3 of Part 2A requires a relevant health services organisation to appoint one or more persons to a serious adverse event review team to carry out a serious adverse event review of an incident if the incident is a reportable incident or the incident is not a reportable incident but may be the result of a serious systemic problem and the organisation is of the opinion that a serious adverse event review of the incident should be carried out. The team is to report to the organisation findings identified by the team as to how the incident occurred, any factors contributing to the incident and any procedures, practices or systems that could be reviewed. After considering the findings the organisation may direct the team to prepare a report setting out the team's recommendations. If the team forms the opinion that the incident raises matters that may involve professional misconduct or unsatisfactory professional conduct by a health practitioner, or may indicate that a health practitioner is suffering from an impairment, it must notify the organisation as soon as practicable. A team must immediately notify the organisation if it is of the opinion that the incident raises matters that indicate a problem giving rise to a risk of serious or imminent harm to a person.

Proposed Division 4 of Part 2A places some general limitations on *incident reviewers* (being members of serious adverse event review teams and assessors) relating to the recording and disclosure of information and the requirement to act in a fair and reasonable manner. It also makes it clear that an incident reviewer does not have authority to carry out an investigation relating to the competence of an individual. Certain information and documents relating to preliminary risk assessments, serious adverse event reviews or clinical incident reviews cannot be used in evidence in courts and other proceedings. Incident reviewers are also protected from personal liability.

Proposed Division 5 of Part 2A sets out how an incident is reported to a relevant health services organisation and permits regulations to be made for the purposes of proposed Part 2A.

Schedule 1 [4] inserts a number of savings and transitional provisions relating to incidents occurring, and RCA teams created, before the commencement of proposed Part 2A.

Schedule 1 [3] permits regulations to be made under the *Health Administration Act 1982* containing savings and transitional provisions consequent on any Act that amends that Act (including the proposed Act).

Schedule 2 Amendment of Health Services Act 1997 No 154

Schedule 2 [1] provides that a local health district board must not exercise a function in a way that is inconsistent with the exercise of a function by the Health Secretary (including a function that has been delegated to the Health Secretary).

Schedule 2 [2] changes the name of the Ambulance Services Advisory Council to the Ambulance Service Advisory Board (the *Board*). **Schedule 2 [3], [7], [8] and [11]** make consequential amendments.

Schedule 2 [4] removes the requirement for the Minister for Health to appoint persons to the Board and instead requires the Health Secretary to appoint persons to the Board.

Schedule 2 [5] requires persons appointed to the Board to have, in the opinion of the Health Secretary, expertise and experience in health management, financial management, health services or business management and removes a requirement that at least 3 of the persons appointed must be members of the Ambulance Service of NSW. **Schedule 2 [9] and [10]** make consequential amendments (including enabling the Health Secretary to determine the remuneration of persons appointed to the Board).

Schedule 2 [6] provides that a person who exercises employer functions in relation to a NSW Health Service senior executive may not terminate the employment of the executive under section 121H of the *Health Services Act 1997* or section 68 (2) of the *Government Sector Employment Act 2013* unless the employer is, or has the concurrence of, the Health Secretary.

Schedule 2 [12] inserts a savings provision to make it clear that the proposed amendments made in relation to the Ambulance Service Advisory Board by the proposed Act do not terminate an existing member's appointment.

Schedule 3 Amendment of Human Tissue Act 1983 No 164

Schedule 3 [1]–[3] and [5] update references to the Director-General of the Department of Health and to the Director-General of the Department of Family and Community Services.

Section 27 (1A) enables a person other than a medical practitioner to remove certain tissue from the body of a deceased person referred to in an authority for that purpose if the person is appointed by the Health Secretary to remove that tissue and is not the person by whom the authority was given. **Schedule 3 [4]** extends that provision to include the removal of tissue for the purpose of skin transplantation and any other purpose prescribed by the regulations.

Schedule 4 Amendment of Mental Health Act 2007 No 8

Schedule 4 [1], [3] and [5] have the effect of enabling the Mental Health Review Tribunal (the *Tribunal*) to hear reviews and ECT inquiries (*hearings*) in the absence of the person to whom the hearing relates in certain circumstances. An authorised medical officer may apply to have the hearing heard in the absence of the person if the person has refused to attend the hearing or because the officer is of the opinion that the person is too unwell to attend the hearing. The Tribunal must be satisfied that the person has refused to attend or is too unwell to attend, that the person's *representative* (being an Australian legal practitioner or other person approved by the Tribunal to represent the person at the hearing) has been notified and that it has considered the views (if known) of the person, the person's representative, the designated carer of the person and the principal care provider of the person. Finally, the Tribunal must be of the opinion that conducting the hearing in the absence of the person is desirable for the safety or welfare of the person. In the case of an ECT inquiry the Tribunal is not required to be satisfied that the person's representative has been notified if the Tribunal is satisfied that reasonable steps have been taken to notify the representative. **Schedule 4 [9]** makes a consequential amendment to ensure that the rights to representation are the same for a patient or person who is absent from proceedings as for a patient or person who appears before the Tribunal. **Schedule 4 [6]–[8]** make consequential amendments to allow the Tribunal to take reasonable steps to carry out certain procedures for the purposes of an ECT inquiry (in circumstances where the patient is absent from the inquiry).

Schedule 4 [2] makes it clear that a person who apprehends a person who is absent from a mental health facility does not have to convey that person directly to the mental health facility from which the person absented himself or herself but can instead convey the person to another mental health facility from which the person will be conveyed to the mental health facility from which the person absented himself or herself.

Schedule 4 [4] requires a designated carer or principal care provider of a person to be notified of matters before the Tribunal involving the person.

Schedule 5 Amendment of Mental Health (Forensic Provisions) Act 1990 No 10

Schedule 5 [1] updates a definition of *correctional patient* to take account of the different ways in which a person can cease to be a correctional patient.

Schedule 5 [2] requires the Mental Health Review Tribunal to review the case of each person (not being a forensic patient) who is subject to a community treatment order and who is detained in a correctional centre no longer than 3 months after the order is made and at least once every 6 months during the term of the order.

Schedule 5 [3] makes it clear that a person does not cease to be a correctional patient if the person is transferred between mental health facilities.

Schedule 5 [4] makes it clear that a requirement that a person be discharged from a mental health facility on the person ceasing to be a correctional patient does not apply if the reason that the person ceased to be a correctional patient was because the person was reclassified as an involuntary patient.

Schedule 5 [5] permits an authorised medical officer of a mental health facility to apprehend a person, or direct a person be apprehended if the person fails to return to the facility at the end of a period of leave of absence or fails to comply with a condition to which that grant of leave was subject. Persons including police officers are authorised to apprehend the person and, in the case of a police officer, may enter premises to do so. **Schedule 5 [6]** inserts savings and transitional provisions.

Schedule 6 Amendment of Government Sector Employment Act 2013 No 40

Schedule 6 makes it clear that the Health Secretary, who is authorised to terminate the employment of a NSW Health Service senior executive under section 121H of the *Health Services Act 1997* for any reason (including misconduct), even though the Health Secretary is not the employer of the executive, may also terminate the employment of an executive for unsatisfactory performance.

Schedule 7 Amendment of Government Information (Public Access) Act 2009 No 52

Schedule 7 provides that it is to be conclusively presumed that there is an overriding public interest against disclosure of information if the disclosure of that information is prohibited under proposed Part 2A of the *Health Administration Act 1982* (as inserted by Schedule 1 [2]).