



New South Wales

Health Legislation (Miscellaneous) Amendment Bill 2022

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 Practitioner Regulation (Adoption of National Law) Act 2009*, which adopts, with modifications, the Health Practitioner Regulation National Law as set out in the Schedule (the **Queensland Schedule**) to the *Health Practitioner Regulation National Law Act 2009* of Queensland as a law of New South Wales, to ensure better parliamentary oversight by providing that future amendments to the Queensland Schedule do not take effect as law in New South Wales unless a regulation is made in New South Wales adopting, with or without modification, the amendments,
- (b) to amend the *Health Services Act 1997* to update the definitions of **COAG** and **Standing Council on Health** to reflect the current composition of those entities,
- (c) to amend the *Mental Health Act 2007* to—
 - (i) extend, until 30 June 2022, a COVID-19 related provision that enables certain examinations and observations to be conducted using an audio visual link, and
 - (ii) update the written statements of rights given to persons detained in, and voluntary patients of, mental health facilities to list LawAccess NSW as a service through which a person may seek help or advice instead of Legal Aid’s Mental Health Advocacy Service,
- (d) to amend the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* to update the certificate that a medical practitioner is required to complete when issuing an order to transfer a person imprisoned in, or a forensic patient detained in, a correctional centre or detention centre to a mental health facility, to include the place where the

- examination took place, and the name of the correctional centre or detention centre where the person is detained if that place is not the same as where the examination took place,
- (e) to amend the *Private Health Facilities Act 2007* to extend the following COVID-19 related provisions until 30 June 2022—
- (i) section 12A, which allows the Secretary of the Ministry of Health to impose conditions on a private health facility licence to protect the health and safety of the public, manage resources or ensure the provision of balanced and coordinated health services throughout the State,
 - (ii) section 70, which allows the Secretary of the Ministry of Health to exempt a licensee or a class of licensees from a condition of a licence or a requirement relating to the medical advisory committee for a facility operated by the licensee,
- (f) to amend the *Public Health Act 2010* to—
- (i) clarify that an authorised medical practitioner may only require a person who is the subject of a public health order to undergo a medical examination or test that relates to the condition for which the order was made, and
 - (ii) require that an authorised medical practitioner making a public health order give a person subject to the order information about the duration of the order, the person's rights of review and any other information prescribed by the regulations. It also provides that failure to give the information does not invalidate the order, and
 - (iii) clarify that a person takes reasonable precautions against spreading a sexually transmissible notifiable disease or scheduled medical condition if the person acts in accordance with any information, if provided, relating to the means of minimising the risk of infecting other people prescribed in the regulations that must be given by a medical practitioner to the person in relation to the disease or condition, and
 - (iv) extend the following COVID-19 emergency measures provisions until 30 September 2022—
 - (A) section 112(2), which enables a police officer to direct a person suspected of contravening a provision of the *Public Health Act 2010* or the regulations made under it to provide the person's name and residential address,
 - (B) section 118(6) and (7), which enable police officers to issue penalty notices under the *Public Health Act 2010* in addition to other authorised officers, and enable the Minister to impose conditions of the exercise of those powers by authorised officers, including police officers, under that Act,
- (g) to amend the *Subordinate Legislation Act 1989* to postpone the repeal of the *Poisons and Therapeutic Goods Regulation 2008* to 1 September 2024.

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.

Schedule 1 Amendments

Schedule 1.1 amends the *Health Practitioner Regulation (Adoption of National Law) Act 2009* to insert proposed section 4(2)–(6), which provides that—

- (a) future amendments to the Queensland Schedule do not take effect as law in New South Wales unless a regulation is made in New South Wales adopting the amendments, with or without modifications, and
- (b) a regulation applying an amendment to the Queensland Schedule with modifications may amend the Schedule to the Act to reflect the modifications.

Schedule 1.2 amends the *Health Services Act 1997*, Schedule 6A to update the definitions of **COAG** and **Standing Council on Health** in provisions relating to health funding arrangements under the National Health Reform Agreement.

Schedule 1.3[1] amends the *Mental Health Act 2007*, section 203(5)(b) to enable certain examinations and observations to be conducted using an audio visual link until 30 June 2022.

Schedule 1.3[2] amends the *Mental Health Act 2007*, Schedules 3 and 3A to replace references to the Mental Health Advocacy Service with LawAccess NSW in the statements of rights required to be given to persons detained in, and voluntary patients of, mental health facilities.

Schedule 1.4 amends the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, Schedule 1 to include that the medical practitioner must state the location where the examination took place and the name of the correctional centre where the person is detained, if not the same place, in the certificate a medical practitioner is required to complete when ordering that a person imprisoned in, or a forensic patient detained in, a correctional centre or detention centre be transferred to a mental health facility.

Schedule 1.5[1] amends the *Private Health Facilities Act 2007*, section 12A to allow the Secretary of the Ministry of Health to impose conditions on a private health facility licence to protect the health and safety of the public, manage resources or ensure the provision of balanced and coordinated health services throughout the State until 30 June 2022.

Schedule 1.5[2] amends the *Private Health Facilities Act 2007*, section 70 to allow the Secretary of the Ministry of Health to exempt compliance with a condition on a private health facility licence until 30 June 2022.

Schedule 1.6[1] amends the *Public Health Act 2010*, section 62 to clarify that an authorised medical practitioner who makes a public health order may only require a person the subject of the public health order to undergo a medical examination or test that relates to the condition for which the order was made.

Schedule 1.6[2] amends the *Public Health Act 2010*, section 62 to requires an authorised medical practitioner making a public health order to give a person subject to the order information about the duration of the order, the person's rights of review and any other information prescribed by the regulations. It also provides that failure to give the information does not invalidate the order.

Schedule 1.6[3] amends the *Public Health Act 2010*, section 79 to clarify that a person takes reasonable precautions against spreading a sexually transmissible notifiable disease or scheduled medical condition if the person acts in accordance with any information, if provided, relating to the means of minimising the risk of infecting other people prescribed in the regulations that must be given to the person by a medical practitioner in relation to the disease or condition.

Schedule 1.6[4] and [5] amends the *Public Health Act 2010*, section 135 to extend the following provisions of that Act until 30 September 2022—

- (a) section 112(2), which enables a police officer to direct a person suspected of contravening a provision of the *Public Health Act 2010* or the regulations made under it to provide the person's name and residential address,
- (b) section 118(6) and (7), which enables police officers to issue penalty notices under the *Public Health Act 2010* in addition to other authorised officers, and enables the Minister to impose conditions of the exercise of those powers by authorised officers, including police officers, under that Act.

Schedule 1.7 amends the *Subordinate Legislation Act 1989*, Schedule 5 to postpone the repeal of the *Poisons and Therapeutic Goods Regulation 2008* to 1 September 2024.



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Health Legislation (Miscellaneous) Amendment Bill 2022

No. _____, 2022

A Bill for

An Act to amend the *Health Practitioner Regulation (Adoption of National Law) Act 2009*, the *Health Services Act 1997*, the *Mental Health Act 2007*, the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, the *Private Health Facilities Act 2007*, the *Public Health Act 2010* and the *Subordinate Legislation Act 1989* for particular purposes.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Health Legislation (Miscellaneous) Amendment Act 2022*.

3

2 Commencement

4

This Act commences on the date of assent to this Act.

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Schedule 1	Amendments to legislation	1
1.1	Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86	2
		3
	Section 4 Adoption of Health Practitioner Regulation National Law	4
	Insert at the end of the section—	5
	(2) If, after the commencement of this subsection, the Parliament of Queensland amends the Schedule to the <i>Health Practitioner Regulation National Law Act 2009</i> of Queensland, the amendment (the Queensland amendment) does not apply in New South Wales until a regulation is made applying the Queensland amendment as an amendment to the <i>Health Practitioner Regulation National Law (NSW)</i> , with or without modification.	6 7 8 9 10 11
	(3) A regulation made under subsection (2) that applies a Queensland amendment with modification may, for that purpose, amend the Schedule to this Act.	12 13
	(4) Despite the <i>Interpretation Act 1987</i> , section 39, a regulation made under subsection (2) may commence on the day the Queensland amendment commences, including a day that is earlier than the day the regulation is published on the NSW legislation website.	14 15 16 17
	(5) A regulation made under subsection (2) is repealed on the day after all of its provisions have commenced.	18 19
	(6) The repeal of a regulation under subsection (5) does not affect the application of the Queensland amendment, with or without modification, provided for by the regulation.	20 21 22
1.2	Health Services Act 1997 No 154	23
	Schedule 6A National Health Funding Pool and Administration	24
	Omit clause 1(1), definitions of <i>COAG</i> and <i>Standing Council on Health</i> .	25
	Insert in alphabetical order—	26
	<i>COAG</i> means the body, however named, consisting of—	27
	(a) the Prime Minister of the Commonwealth, and	28
	(b) the Premier or Chief Minister of each State.	29
	<i>Standing Council on Health</i> means the body, however named, consisting of Ministers of the Commonwealth and each State with portfolio responsibility for health.	30 31 32
1.3	Mental Health Act 2007 No 8	33
[1]	Section 203 COVID-19 pandemic—examination by audio visual link for purpose of detention	34
	Omit “31 March 2022” from section 203(5)(b). Insert instead “30 June 2022”.	35 36
[2]	Schedules 3 and 3A	37
	Omit “the Mental Health Advocacy Service” and “The Mental Health Advocacy Service” wherever occurring.	38 39
	Insert instead “LawAccess NSW” and “The LawAccess NSW”, respectively.	40

1.4 Mental Health and Cognitive Impairment Forensic Provisions Act 2020 No 12	1 2
Schedule 1 Medical certificate as to examination of inmate	3
Omit “at [<i>state name of correctional centre or detention centre where examination took place</i>] separately from any other medical practitioner, I personally examined [<i>name of inmate in full</i>]”.	4 5 6
Insert instead “at [<i>state place where examination took place</i>], separately from any other medical practitioner, I personally examined [<i>name of inmate in full</i>] *detained at [<i>name of correctional centre or detention centre where inmate is imprisoned or detained if not the place where the examination took place</i>]”.	7 8 9 10
1.5 Private Health Facilities Act 2007 No 9	11
[1] Section 12A Special conditions during COVID-19 pandemic	12
Omit section 12A(3). Insert instead—	13
(3) This section is repealed, and any conditions referred to in this section are revoked, on 30 June 2022.	14 15
[2] Section 70 Exemptions during COVID-19 pandemic	16
Omit section 70(3). Insert instead—	17
(3) This section is repealed on 30 June 2022.	18
1.6 Public Health Act 2010 No 127	19
[1] Section 62 Making of public health orders relating to person with Category 4 or 5 condition or contact order condition	20 21
Insert “relating to the condition for which the order was made” after “test” in section 62(3)(g).	22 23
[2] Section 62(9) and (10)	24
Insert after subsection (8)—	25
(9) The authorised medical practitioner making the public health order must give the person subject to the order—	26 27
(a) information about the duration of the order, and	28
(b) information about the person’s rights of review in relation to the order, and	29 30
(c) any other information prescribed by the regulations.	31
(10) Failure to give the information specified in subsection (9) does not invalidate the order.	32 33
[3] Section 79 Duties of persons in relation to sexually transmissible diseases or conditions	34 35
Insert after section 79(1)—	36
(1A) Without limiting subsection (1), reasonable precautions include acting in accordance with the information relating to the means of minimising the risk of infecting other people if the information is provided to the person under section 78(1).	37 38 39 40

[4] Section 135 COVID-19 emergency measures	1
Omit “The COVID-19 emergency measures provisions” from section 135(1).	2
Insert instead “Sections 63(2A) and (2B), 64(7) and 71A”.	3
[5] Section 135(2)	4
Omit the subsection. Insert instead—	5
(2) Sections 112(2) and 118(6) and (7) are repealed on 30 September 2022.	6
1.7 Subordinate Legislation Act 1989 No 146	7
Schedule 5 Further postponement of repeal of certain statutory rules	8
Omit “1 September 2022” from clause 11.	9
Insert instead “1 September 2024”.	10