

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 Services Act 1997 and the Criminal Procedure Act 1986 to create offences of obstructing and hindering ambulance officers and obstructing and hindering such officers by acts of violence,
- (b) to amend the Health Administration Act 1982 and the Private Health Facilities Act 2007 with respect to root cause analysis teams,
- (c) to amend the Assisted Reproductive Technology Act 2007 to require certain information to be provided for the purposes of the central ART donor register,
- (d) to amend the Guardianship Act 1987 to clarify the relationship between Part 5 of that Act and the Mental Health (Forensic Provisions) Act 1990,
- (e) to amend the Health Administration Act 1982 with respect to the bodies and organisations that are part of NSW Health,
- (f) to amend the Health Services Act 1997 with respect to the delegation of functions by area health services and the joint management of services or facilities by statutory health corporations,

Explanatory note page 2

Health Legislation Amendment Bill 2010

Explanatory note

- (g) to amend the Public Health (Tobacco) Act 2008 to increase the period within which tobacco retailers must provide notification of certain matters.

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 a day or days to be appointed by proclamation except for certain provisions that are to commence on the date of assent to the proposed Act.

Schedule 1 Amendments relating to ambulance officers

Schedule 1.1 Health Services Act 1997 No 154

Schedule 1.1 [1] creates an offence if a person intentionally obstructs or hinders an ambulance officer when the ambulance officer is providing or attempting to provide ambulance services to another person or persons. The maximum penalty for the offence is imprisonment for 2 years or a fine of \$5,500 or both. However, if the ambulance officer is hindered or obstructed by an act of violence against the ambulance officer the maximum penalty is imprisonment for 5 years. Provision is made for an alternative verdict where a trier of fact finds that the more serious offence is not proven but it is satisfied that the person charged committed the less serious offence. Schedule 1.1 [2] makes a consequential amendment that enables the offence of obstructing or hindering an ambulance officer by an act of violence on the ambulance officer to be tried by way of indictment.

Schedule 1.2 Criminal Procedure Act 1986 No 209

Schedule 1.2 provides that the offence proposed in Schedule 1.1 [1] of obstructing or hindering an ambulance officer by an act of violence on the ambulance officer is to be tried summarily unless the prosecutor elects otherwise. The proposed amendment also reorganises the order and layout of some existing provisions.

Schedule 2 Amendments relating to root cause analysis teams

Schedule 2.1 Health Administration Act 1982 No 135

A relevant health services organisation (which includes all area health services and those statutory health corporations and affiliated health organisations that are prescribed) is required to appoint a root cause analysis team if a reportable incident involving the organisation is reported to the chief executive officer of the

organisation. Schedule 2.1 [1] permits a root cause analysis team to be appointed if the incident reported to the chief executive officer is not a reportable incident but is one that, in the opinion of the chief executive officer, may be the result of a serious

Explanatory note page 3

Health Legislation Amendment Bill 2010

Explanatory note

systemic problem that justifies the appointment of such a team. Schedule 2.1 [2] and [5] make consequential amendments.

Schedule 2.1 [3] requires a member of a root cause analysis team to act in a fair and reasonable manner in the exercise of his or her functions. This replaces an obligation that a root cause analysis team is to have regard to the rules of natural justice.

A root cause analysis team is required to notify the relevant health services organisation if the incident that it is considering raises matters that may involve professional misconduct or unsatisfactory professional conduct by a visiting practitioner or staff member or if such a person may be suffering from an impairment.

A root cause analysis team may also make such a notification if the incident indicates unsatisfactory professional performance. Schedule 2.1 [4] specifies that any such notification is to disclose the identity of the person to whom it relates and whether

the notification relates to professional misconduct, unsatisfactory professional conduct, unsatisfactory professional performance or impairment. Schedule 2.1 [4] also includes a new ground for making a notification if the root cause analysis team

is of the opinion that the incident that it is considering indicates a problem giving rise to a risk of serious and imminent harm to a person. Schedule 2.1 [9] provides that a

member of a root cause analysis team may disclose information acquired by the person as such a member for the purposes of any such notification. Schedule 2.1 [8] includes definitions of the terms professional misconduct, unsatisfactory

professional conduct, unsatisfactory professional performance and impairment. Schedule 2.1 [6] clarifies that a root cause analysis team may, but is not required to, make recommendations in respect of an incident that it has considered.

Schedule 2.1 [7] provides that the contents of a report of a root cause analysis team may be disclosed to any person and used for any purpose. However,

Schedule 2.1 [12] provides that evidence as to the contents of a notification or report of a root cause analysis team cannot be adduced or admitted in any proceedings.

Currently, any such notification or report is not admissible as evidence in any proceedings that a procedure or practice is or was careless or inadequate.

Schedule 2.1 [10] provides that a person (currently this privilege only applies to members of root cause analysis teams and the health services organisations that appoint them) cannot be required to produce any document or disclose any

communication to a court, tribunal, board, person or body if the document was prepared, or the communication was made, for the dominant purpose of the conduct of an investigation by a root cause analysis team. However, this does not apply to a

requirement made in proceedings in respect of an act or omission by a root cause analysis team or by a member of such a team. Schedule 2.1 [11] provides that this also does not apply to a requirement made by a person or body who has been

approved by the Director-General of the Department of Health (the Director-General) to carry out a review or audit of an investigation conducted by a

root cause analysis team. Schedule 2.1 [13] permits regulations to be made in relation to the conduct of reviews or audits of investigations conducted by root cause analysis teams.

Schedule 2.1 [14] omits a spent provision.

Explanatory note page 4

Health Legislation Amendment Bill 2010

Explanatory note

Schedule 2.1 [15] enables regulations to be made containing provisions of a savings

or transitional nature consequent on the enactment of the proposed Act.

Schedule 2.1 [16] inserts savings and transitional provisions consequential on the enactment of the proposed Act.

Schedule 2.2 Private Health Facilities Act 2007 No 9

A licensee of a private health facility is required to appoint a root cause analysis team if a reportable incident involving the facility is reported to the licensee.

Schedule 2.2 [1] permits a root cause analysis team to be appointed if the incident reported to the licensee is not a reportable incident but is one that, in the opinion of the licensee, may be the result of a serious systemic problem that justifies the appointment of such a team. Schedule 2.2 [2] and [5] make consequential amendments.

Schedule 2.2 [3] requires a member of a root cause analysis team to act in a fair and reasonable manner in the exercise of his or her functions. This replaces an obligation that a root cause analysis team is to have regard to the rules of natural justice.

A root cause analysis team is required to notify the licensee and the chair of the medical advisory committee for the relevant facility if the incident that it is considering raises matters that may involve professional misconduct or unsatisfactory professional conduct by a staff member or person who is accredited to provide health services at the facility or if such a person may be suffering from an impairment. A root cause analysis team may also make such a notification if the incident indicates unsatisfactory professional performance. Schedule 2.2 [4]

specifies that any such notification is to disclose the identity of the person to whom it relates and whether the notification relates to professional misconduct, unsatisfactory professional conduct, unsatisfactory professional performance or impairment. Schedule 2.2 [4] also includes a new ground for making a notification if the root cause analysis team is of the opinion that the incident that it is considering indicates a problem giving rise to a risk of serious and imminent harm to a person.

Schedule 2.2 [9] provides that a member of a root cause analysis team may disclose information acquired by the person as such a member for the purposes of any such notification. Schedule 2.2 [8] includes definitions of the terms professional misconduct, unsatisfactory professional conduct, unsatisfactory professional performance and impairment.

Schedule 2.2 [6] clarifies that a root cause analysis team may, but is not required to, make recommendations in respect of an incident that it has considered.

Schedule 2.2 [7] provides that the contents of a report of a root cause analysis team may be disclosed to any person and used for any purpose. However,

Schedule 2.2 [12] provides that evidence as to the contents of a notification or report of a root cause analysis team cannot be adduced or admitted in any proceedings.

Currently, any such notification or report is not admissible as evidence in any proceedings that a procedure or practice is or was careless or inadequate.

Explanatory note page 5

Health Legislation Amendment Bill 2010

Explanatory note

Schedule 2.2 [10] provides that a person (currently this privilege only applies to members of root cause analysis teams and the licensee and chair of the medical advisory committee for the facility for which the team was appointed) cannot be required to produce any document or disclose any communication to a court, tribunal, board, person or body if the document was prepared, or the communication was made, for the dominant purpose of the conduct of an investigation by a root cause analysis team. However, this does not apply to a requirement made in proceedings in respect of an act or omission by a root cause analysis team or by a member of such a team. Schedule 2.2 [11] provides that this also does not apply to a requirement made by a person or body who has been approved by the Director-General to carry out a review or audit of an investigation conducted by a

root cause analysis team.

Schedule 2.2 [13] permits regulations to be made in relation to the conduct of reviews or audits of investigations conducted by root cause analysis teams.

Schedule 2.2 [14] enables regulations to be made containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2.2 [15] inserts savings and transitional provisions consequential on the enactment of the proposed Act.

Schedule 3 Other amendments

Schedule 3.1 Assisted Reproductive Technology Act 2007 No 69

The Assisted Reproductive Technology Act 2007 establishes a central ART donor register which requires certain information about donors of gametes and adult offspring born as a result of assisted reproductive technology (ART) treatment using a donated gamete, to be given to the Director-General. The Director-General is then able to disclose certain information about a donor to any adult offspring of the donor and certain information about any offspring of a donor to the donor. This scheme is limited to information in respect of ART treatment occurring after 1 January 2010. For ART treatment occurring before this date a donor or offspring may apply to the Director-General to have the person's information included in the central ART donor register.

Schedule 3.1 [1] provides that when the Director-General receives such an application he or she may direct an ART provider to provide information so as to enable the Director-General to identify, in the case of an application by a donor, any offspring of the donor, and in the case of a person who was born as a result of ART treatment using a donated gamete, the donor of the gamete. An ART provider must comply with any such direction. Schedule 3.1 [2] makes a consequential amendment.

Schedule 3.1 [3] provides that the Director-General must not disclose any information provided by an ART provider as a result of a direction unless the person to whom the information relates is an adult and consents to the disclosure.

Explanatory note page 6

Health Legislation Amendment Bill 2010

Explanatory note

Schedule 3.2 Guardianship Act 1987 No 257

Schedule 3.2 provides that in the event of an inconsistency between Part 5 (Medical and dental treatment) of the Guardianship Act 1987 and the Mental Health (Forensic Provisions) Act 1990, the Mental Health (Forensic Provisions) Act 1990 prevails.

Schedule 3.3 Health Administration Act 1982 No 135

Schedule 3.3 provides that the expression "NSW Health" includes bodies and organisations under the control and direction of the Director-General.

Schedule 3.4 Health Services Act 1997 No 154

Schedule 3.4 [1] permits an area health service to delegate its functions to visiting practitioners, to councils or committees appointed by the area health service, to certain bodies appointed by the Minister for Health or the Director-General or to persons or bodies of a class prescribed by the regulations.

Schedule 3.4 [2] permits 2 or more statutory health corporations to agree to jointly manage a public hospital, health institution, health service or health support service or to agree that any such service under the control of one of the statutory health corporations be managed by another statutory health corporation. Such an agreement cannot be entered without the approval of the Minister for Health.

Schedule 3.4 [3] enables regulations to be made containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 3.5 Public Health (Tobacco) Act 2008 No 94

Schedule 3.5 amends the Public Health (Tobacco) Act 2008 to increase, from 7 to 28 days, the period within which a person engaged in tobacco retailing must notify

the Director-General after becoming aware of certain changes affecting the person's tobacco retailing business.