



New South Wales

Gas and Electricity (Consumer Safety) Amendment (Medical Gas Work) Regulation (No 2) 2020

under the

Gas and Electricity (Consumer Safety) Act 2017

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Gas and Electricity (Consumer Safety) Act 2017*.

Minister for Better Regulation and Innovation

Explanatory note

The object of this Regulation is to amend the *Gas and Electricity (Consumer Safety) Regulation 2018* in connection with the enactment of the *Gas Legislation Amendment (Medical Gas Systems) Act 2020*.

This Regulation is made under the *Gas and Electricity (Consumer Safety) Act 2017*, including the definitions of **medical facility** and **medical gas** in section 4(1) and sections 38A(1)(a), 38E(a), 40(1)(b) and (2), 42(c), 54(3), 66 and 75 (the general regulation-making power).

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Gas and Electricity (Consumer Safety) Act 2017

1 Name of Regulation

This Regulation is the *Gas and Electricity (Consumer Safety) Amendment (Medical Gas Work) Regulation (No 2) 2020*.

2 Commencement

This Regulation commences 1 November 2020 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Gas and Electricity (Consumer Safety) Regulation 2018

[1] Clause 3 Definitions

Omit the definition of *authority number* from clause 3(1). Insert instead—

authority number, in relation to a person who carries out or supervises the carrying out of the following work, means the licence number or certificate number for a licence or certificate issued under the *Home Building Act 1989* that authorises the person to contract to do or to carry out, or supervise the carrying out of, the work—

- (a) electrical installation work,
- (b) medical gasfitting work,
- (c) medical gas technician work,
- (d) mechanical services and medical gas work.

[2] Clause 3(1), definition of “person responsible”

Omit the definition.

[3] Clause 3(1)

Insert in alphabetical order—

qualified person, for Part 13A, means, in relation to the following work, a person authorised under the *Home Building Act 1989* to do the work without supervision—

- (a) medical gasfitting work,
- (b) medical gas technician work,
- (c) mechanical services and medical gas work.

responsible person means, in relation to the carrying out of the following work, the person who carries out the work, or who supervises the carrying out of the work, under the authority of an appropriate supervisor certificate—

- (a) autogas work,
- (b) gasfitting work,
- (c) mechanical services and medical gas work.
- (d) medical gas technician work,
- (e) medical gasfitting work,

work provider—

- (a) for an electrical installation, means an electrical installation work provider, and
- (b) for a medical gas installation, see clause 69C(3)(c)(ii).

[4] Clause 3(1), definition of “safety and compliance test”

Omit the definition. Insert instead—

safety and compliance test means the following—

- (a) in relation to electrical installation work on an electrical installation, or part of an electrical installation—a test referred to in clause 36,
- (b) in relation to work on a medical gas installation, or part of a medical gas installation—a test referred to in clause 69B.

[5] Clauses 3A and 3B

Omit clause 3A. Insert instead—

3A Definition of “medical facility”

For the purposes of paragraph (d) of the definition of *medical facility* in section 4(1) of the Act, the following places are excluded—

- (a) premises used for residential purposes,
- (b) pathology laboratories.

3B Definition of “medical gas”

For the purposes of the definition of *medical gas* in section 4(1) of the Act, the following substances are prescribed—

- (a) oxygen,
- (b) nitrous oxide,
- (c) helium,
- (d) nitrogen,
- (e) carbon dioxide,
- (f) medical air,
- (g) surgical tool gas,
- (h) common mixtures of the gases referred to in paragraphs (a)–(g),
- (i) waste anaesthetic gas.

[6] Clauses 42 and 44–51

Omit “person responsible” wherever occurring. Insert instead “responsible person”.

[7] Part 13A

Insert after Part 13—

Part 13A Medical gas

Division 1 General

69A Work to comply with certain standards

- (1) For the purposes of section 38A(1)(a) of the Act, the following standards (as in force from time to time) are prescribed—
 - (a) AS 2030.1:2009, *Gas Cylinders, Part 1: General Requirements*,
 - (b) AS 2473.1—2006, *Valves for compressed gas cylinders, Part 1: Specifications, type testing, and manufacturing tests and inspections*,
 - (c) AS 2473.2—2007, *Valves for compressed gas cylinders, Part 2: Outlet connections (threaded) and stem (inlet) threads*,
 - (d) AS 2473.3—2007, *Valves for compressed gas cylinders, Part 3: Outlet connections for medical gases (including pin-indexed yoke connections)*,
 - (e) AS 2568:2019, *Purity of medical air produced from on-site compressor systems*,
 - (f) AS 2896—2011, *Medical gas systems—Installation and testing of non-flammable medical gas pipeline systems*,

- (g) AS 2902—2005, *Medical gas systems—Low pressure flexible hose assemblies*.

Note. Section 38A(1)(a) of the Act makes it an offence for a person to carry out medical gasfitting work, medical gas technician work or mechanical services and medical gas work that is not in accordance with Australian Standards prescribed by the regulations. This clause sets out those standards.

- (2) For the purposes of section 38A(1)(b) of the Act, ISO 7396-1:2007, *Medical gas pipeline systems—Part 1: Pipeline systems for compressed medical gases and vacuum* (as in force from time to time) is prescribed.

Note. Section 38A(1)(b) of the Act makes it an offence for a person to carry out medical gasfitting work, medical gas technician work or mechanical services and medical gas work that is not in accordance with a relevant standard of the International Organization for Standardization that is prescribed by the regulations. This clause sets out that standard.

Section 38A(1)(c) of the Act also makes it an offence for a person to carry out medical gasfitting work, medical gas technician work or mechanical services and medical gas work that is not in accordance with the standards or requirements (if any) specified by the Health Secretary by order in writing and published on the website of the Ministry of Health.

69B Conduct of safety and compliance tests

A safety and compliance test on medical gasfitting work or mechanical services and medical gas work on a medical gas installation, or part of a medical gas installation, must be carried out by a qualified person in accordance with the requirements of AS 2896—2011, *Medical gas systems—Installation and testing of non-flammable medical gas pipeline systems* after the completion of the work.

69C Notification of results of safety and compliance tests

(1) Notices relating to medical gas installations

As soon as is reasonably practicable (but in any event no later than 7 days) after the completion of a safety and compliance test, the results of the test are to be notified by the person who conducted the test (the *tester*), as follows—

- (a) to the person for whom the work is carried out,
- (b) to the Secretary.

Note. It is an offence to provide false or misleading information or documents in purported compliance with subclause (1). See sections 307B (False or misleading information) and 307C (False or misleading documents) of the *Crimes Act 1900*.

(2) Notice must be given to owner or owner's agent

If the person for whom the work is carried out is not the owner of the medical gas installation or the owner's agent, that person must as soon as is reasonably practicable (but in any event no later than 7 days) after receiving the results of a test in accordance with subclause (1) notify the owner by giving a copy of the results to the owner of the medical installation or the owner's agent.

(3) Content of notice

The notice must—

- (a) be in the form approved by the Secretary, and
- (b) describe the work done and identify the medical gas installation concerned, and
- (c) specify—
 - (i) the name and authority number of each person who carried out, or supervised the carrying out of, the work concerned, and

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- (ii) if applicable, the name and authority number of any person engaged by the owner or occupier of the medical gas installation (whether or not for fee or reward) to provide, or arrange for the provision of, the work concerned (the *work provider*), and
- (d) specify the name and authority number of the tester and the date on which the test was carried out, and
- (e) be signed by the tester and the work provider (if any).

(4) Offence—failure to give notice

If the results of the test are not notified in accordance with this clause, the person required by subclause (1) or (2) to give notice of the results of the test is guilty of an offence.

Maximum penalty—40 penalty units (for a corporation) and 20 penalty units (for an individual).

(5) Offences—failure to retain notices or produce copies

The tester—

- (a) must keep a copy of the notice for at least 5 years from when the notice was given, and
- (b) must produce a copy of the notice to any of the following persons on written demand made by the person at any time during that 5-year period—
 - (i) the Secretary,
 - (ii) an authorised officer.

Maximum penalty—40 penalty units (for a corporation) and 20 penalty units (for an individual).

69D Unqualified persons not to carry out safety and compliance tests

- (1) A person must not carry out a safety and compliance test on medical gasfitting work, medical gas technician work or mechanical services and medical gas work on a medical gas installation, or part of a medical gas installation, if the person is not a qualified person.
Maximum penalty—200 penalty units.
- (2) A work provider must not cause or permit an employee, agent or contractor of the provider to carry out a safety and compliance test on the work concerned unless the employee, agent or contractor is a qualified person.
Maximum penalty—500 penalty units (for a corporation) and 200 penalty units (for an individual).

[8] Clause 70, heading

Omit “**or gas accident**”. Insert instead “, **gas accident or medical gas accident**”.

[9] Clause 70(1)(a1)

Insert after clause 70(1)(a)—

- (a1) for a serious medical gas accident—the person apparently in charge of the medical facility concerned,

[10] Clause 70(1), note

Insert at the end of the note—

Section 5A(2) of the Act defines *serious medical gas accident*.

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[11] Clause 70(2)–(3)

Insert “or serious medical gas accident” after “serious gas accident” wherever occurring.

[12] Clause 71, heading

Omit “or gas accident”. Insert instead “, gas accident or medical gas accident”.

[13] Clause 71

Insert “or a serious medical gas accident” after “serious gas accident”.

[14] Clause 72A

Insert after clause 72—

72A Rectification of defective electrical, gas or medical gas installation work

- (1) This clause applies to electrical installation work, gasfitting work or medical gasfitting work that is found to be non-compliant with this Act or the regulations (*non-compliant work*).
- (2) For the purposes of section 54(3) of the Act, an authorised officer may, by written notice given to the responsible person for the non-compliant work, direct the responsible person to rectify the work.
- (3) Without limiting subclause (2), the direction may require the responsible person to—
 - (a) repair, as specified by the authorised officer, work done otherwise than in a proper and skilful manner, or
 - (b) make compliant work that is not compliant with the relevant standards set out in clause 34, 39 or 69A, or
 - (c) repair, as specified by the authorised officer, a defective fitting used in the work done, or
 - (d) replace an electrical article or a gas component that is not authorised with an authorised article or component, or
 - (e) disconnect the supply of electricity, gas or medical gas, as applicable, to premises, or part of premises, if the authorised officer considers, on reasonable grounds, that there is a risk to public health, or
 - (f) disconnect an installation installed by the responsible person that is connected to another installation that has previously been installed in contravention of the Act or these regulations, or
 - (g) give a notice or other document required to be given under clause 37, 42, 45, 49 or 69C, in accordance with the requirements of the relevant clause, if the responsible person has failed to do so.
- (4) A responsible person to whom a direction is given must comply with the direction within the period specified, unless the responsible person has a reasonable excuse.
Maximum penalty—100 penalty units and, for a continuing offence, a further penalty of 50 penalty units for each day the offence continues.
- (5) If a direction is given to a responsible person for gasfitting work before a certificate of compliance is given for the work, the responsible person must comply with the direction before continuing with the work.
Maximum penalty—100 penalty units.

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- (6) A direction ceases to have effect if the work subject of the direction or is the subject of an order made by the Civil and Administrative Tribunal under the *Home Building Act 1989*.
- (7) A direction may require remedial work to be approved by any authorised officer.
- (8) To avoid doubt—
 - (a) a single written notice may contain more than one direction, and
 - (b) a direction may be subject to conditions, and
 - (c) a direction may be varied by giving a further written notice containing the variation to the responsible person.
- (9) A direction is of no effect if it is issued more than 2 years after the work to which it relates has been completed.
- (10) For the purposes of subsection (9), work is completed by a responsible person when the responsible person completes, in accordance with the Act, the whole of the work that the person was engaged to carry out, and any notice or other document required to be given under clause 37, 45 or 49 has been provided.

[15] Schedule 3 Penalty notice offences

Insert in appropriate order—

Section 38D(1) or (2)	\$1,100 (for a corporation) or \$550 (for an individual)
Clause 69C(4) or (5)	\$1,100 (for a corporation) or \$550 (for an individual)
Clause 72A(4)	\$2,200 and, for a continuing offence, an additional \$1,100 for each additional day for which the offence continues
Clause 72A(5)	\$2,200