

PUBLIC HEALTH BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

Unhealthy Building Land Bill 1990;

Miscellaneous Acts (Public Health) Repeal and Amendment Bill 1990.

The principal object of this Bill is to replace the present Public Health Act 1902 and certain related Acts (such as the Noxious Microbes Act 1900 and the Sydney Abattoir and Nuisances Prevention Act 1902) with modern legislation which would:

- (a) enable appropriate standards of public health to be established and maintained; and
- (b) eliminate overlapping of functions which has occurred in relation to the Department of Health and other Departments such as the Department of Local Government; and
- (c) provide for the taking of such precautions as may be necessary in order to prevent the spread of communicable medical conditions.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 contains definitions for the purposes of the proposed Act. These include a definition of “scheduled medical condition” which is any one of the medical conditions listed in 5 Categories set out in Schedule 1 to the Bill.

PART 2—HEALTH RISKS

Clause 4 enables directions to be given, and action to be taken, by the Minister if there is an emergency under the State Emergency and Rescue Management Act 1989 and there is a danger to the health of the public because of a possible spread of a

* Amended in committee—see table at end of volume.

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scheduled medical condition. The powers would be exercisable only by agreement with the Minister administering the State Emergency and Rescue Management Act 1989.

Clause 5 enables the Minister, with the approval of the Premier, to give directions, and to take action, to reduce or remove a risk to public health arising otherwise than during an emergency under the State Emergency and Rescue Management Act 1989. These could include directions to isolate inhabitants of the area or to restrict access to the area

Clause 6 provides for the disinfection or destruction of articles that are verminous or have been in contact with a person suffering from a scheduled medical condition.

Clause 7 enables the Minister to restrict or prevent the use for drinking or domestic purposes of water that is polluted or liable to cause or spread a scheduled medical condition.

Clause 8 enables the Governor to direct the closure of premises where people congregate if the Minister considers it to be necessary to do so in order to preserve the health of the public.

Clause 9 enables the Minister to direct a public authority to take action to rectify any adverse consequences of an action of the authority that is likely to endanger the health of the public.

Clause 10 enables the Minister to require a public authority to rectify a failure on its part to exercise a function if the failure constitutes a danger to the health of the public.

PART 3—SCHEDULED MEDICAL CONDITIONS

Division 1—General precautions

Clause 11 penalises a person who suffers from any one of certain scheduled medical conditions and fails to take proper precautions against spreading the medical condition.

Division 2—Sexually transmissible medical conditions

Clause 12 requires a medical practitioner to give appropriate information (to be prescribed by regulations) to a patient whom the medical practitioner believes to be suffering from a sexually transmissible medical condition.

Clause 13 creates offences in relation to sexual intercourse engaged in by a person suffering from a sexually transmissible medical condition.

Division 3—Notification and treatment of certain medical conditions

Clause 14 requires a medical practitioner to provide the Director-General Department of Health, with certain particulars relating to a patient believed to be suffering from certain scheduled medical conditions. In certain cases, the particulars are not to include the name or address of the patient.

Clause 15 makes it an offence not to comply with a requirement under clause 14.

Clause 16 requires that the Director-General be informed of the result of any serological or other test performed for the purpose of detecting certain medical conditions.

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Division 4—Category 5 medical condition

Clause 17 prohibits, with certain exceptions, the disclosure of the identity of a person who suffers from a Category 5 medical condition (AIDS and HIV).

Clause 18 enables the District Court, on the application of the Director-General, to make an order authorising the service of a notice requiring a medical practitioner to disclose the name and address of a person who suffers from a Category 5 medical condition. The order may be made only if the Court is satisfied that identification is necessary in order to safeguard the health of the public.

Clause 19 requires a medical practitioner to comply with the requirements of a notice authorised by the District Court as referred to in Clause 18.

Division 5—Death from scheduled medical condition

Clause 20 requires the Principal Registrar of Births, Deaths and Marriages to notify the Director-General of registration of the death of a person apparently caused by a scheduled medical condition.

Division 6—Public health orders—Categories 4 and 5

Clause 21 contains definitions for the purposes of the proposed Division. These include “authorised medical practitioner” who would be either the Chief Health officer in the Department or a medical practitioner authorised by the Director-General.

Clause 22 enables the Director-General to require a person to undergo a medical examination if the Director-General reasonably believes that the person is suffering from a Category 4 or Category 5 medical condition.

Clause 23 enables an authorised medical practitioner to make a “public health order” in respect of a person if reasonably satisfied that the person is suffering from a Category 4 medical condition (Leprosy or Tuberculosis) or a Category 5 medical condition (AIDS or HIV). The order could make any one or more of a number of requirements, including a requirement that the person be detained (a “detention order”) while undergoing treatment or to undergo detention at a specified place while the order is in force.

Clause 24 provides for a public health order based on Category 5 (AIDS or HN) to cease having effect unless application is made to a Local Court for its confirmation within 3 business days after service on the person it would affect. Unless continued by the District Court (see clause 26) a confirmed public health order expires not later than 28 days after its original service.

Clause 25 requires a Local Court to investigate an application made to it for confirmation of a public health order and either to confirm it (with or without variation) if satisfied its making was justified, or revoke it if not so satisfied.

Clause 26 enables the District Court to continue a public health order if the necessary application is made before expiration of the order.

Clause 27 provides for the inclusion in a detention order of conditions with respect to the security of the person subject to the order. It also provides that the person subject to a detention order could, for a special reason, be permitted to leave the place of detention, but only under the supervision of a person nominated by an authorised medical practitioner.

Clause 28 makes it an offence to contravene a public health order.

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Clause 29 provides for the apprehension, and for the detention, pending an inquiry under clause 30 by the appropriate Court, of a person who contravenes a public health order.

Clause 30 enables the Court before which a person appears for contravention of a public health order to confirm or vary the order, caution the person or order that the person be discharged. The appropriate Court is the Local Court if the order was confirmed by a Local Court and has not been continued by the District Court. In other cases, the appropriate Court is the District Court.

Clause 31 would enable an authorised medical practitioner to revoke a public health order if satisfied that the person subject to the order is no longer endangering public health.

Clause 32 restricts the making of a further public health order against a person who was the subject of a public health order that has been revoked or that the District Court has refused to continue.

Clause 33 provides for the apprehension of a person who escapes from a place of detention while subject to a detention order.

Clause 34 makes it an offence to release, without lawful authority, a person who is detained under a public health order.

Clause 35 restricts the publication of matters relating to proceedings dealing with public health orders.

Clause 36 authorises the inspection of his or her medical records by a person who is subject to a public health order.

Division 7—Procedural matters

Clause 37 requires proceedings for offences under Divisions 2 and 3 to be heard in the absence of the public.

Clause 38 requires proceedings under Division 6 (Leprosy, T.B., AIDS and HIV) to be held in public unless there is an objection and the objection is upheld.

Clause 39 enables a party to proceedings under Division 6 to be represented by a barrister or solicitor or, by leave of the Court, by any other person.

Division 8—Appeals

Clause 40 provides for an appeal to the District Court against any action taken, or direction given, by the Minister in relation to public health risks.

Clause 41 provides for an appeal to the District Court against the making of a public health order that is based on a Category 4 medical condition or on a Category 5 medical condition that has been confirmed by a Local Court.

Clause 42 provides for an appeal to the Supreme Court, on a matter of law, from a decision of a Local Court confirming a public health order, from a decision of the District Court on an application for continuation of a public health order, and from a decision of the District Court on an appeal.

PART 4—MICROBIAL CONTROL

Clause 43 describes the purpose of proposed Part 4 as being to prevent or inhibit the growth on premises of micro-organisms liable to cause Legionnaires' disease and

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other diseases and to do so by regulating the installation, operation and maintenance of systems used for heating or cooling water or air, or both, on the premises.

Clause 44 contains definitions of expressions used in proposed Part 4. These include a definition of “regulated system” as a system to which that Part applies.

Clause 45 requires a regulated system to be installed as required by the regulations.

Clause 46 requires a regulated system to be operated and maintained as required by the regulations.

Clause 47 confers on an authorised officer powers of entry and inspection to find out whether a regulated system has been installed, and is being operated and maintained, as required by the regulations.

Clause 48 enables the Director-General or the local authority to serve on the occupier of premises a notice requiring the carrying out of specified maintenance of a regulated system installed on the premises.

Clause 49 enables the Director-General or a local authority to carry out work that is the subject of a direction referred to in clause 48 that has been ignored.

Clause 50 enables proceedings for an offence under the proposed Part to be brought either before a Local Court or before the Supreme Court in its summary jurisdiction. The maximum penalty that could be imposed by a Local Court would be lower than that which could be imposed by the Supreme Court.

PART 5—MORTUARIES AND CREMATORIES

Clause 51 requires a local authority to withhold or withdraw registration of a mortuary unless the mortuary complies with the regulations to be made under the proposed Act and is conducted in accordance with the regulations.

Clause 52 makes it an offence to conduct a crematory if its equipment is not the subject of an approval by the Minister.

PART 6—TOBACCO PRODUCTS

Division 1—Preliminary

Clause 53 contains definitions for the purposes of proposed Part 6.

Division 2—Tobacco products

Clause 54 prohibits the sale of tobacco that is not in a package.

Clause 55 prohibits the packing of tobacco in a package that is not marked with the health warning set out in Schedule 2.

Clause 56 prohibits the sale of tobacco in a package that is not marked with the health warning.

Clause 57 prohibits the use of certain words on a package in which tobacco is packed or sold

Division 3—Juvenile smoking

Clause 58 defines “tobacco” for the purposes of the proposed Division.

Clause 59 prohibits the sale of tobacco to a person who is under 16 years of age.

Clause 60 requires that the Chief Commissioner for Business Franchise Licences (Tobacco) be notified of the conviction of a person for selling tobacco to a person who is under 16 years of age.

Clause 61 provides for the making of regulations with respect to the exhibition of signs relating to proposed Division 3 at places where tobacco is sold.

PART 7—ADMINISTRATION

Division 1—Medical officers of health

Clause 62 enables the Governor to nominate medical practitioners as medical officers of health.

Clause 63 enables the Governor to create a medical district and nominate a specified medical practitioner as the medical officer of health for the district.

Clause 64 enables a medical officer of health, or an officer of the Department, to inspect the registers kept under the Registration of Births, Deaths and Marriages Act 1973.

Clause 65 enables a medical officer of health to enter and inspect any premises for the purpose of giving effect to the proposed Act.

Clause 66 requires a medical officer of health to make certain reports.

Clause 67 authorises a medical officer of health to exercise any of the functions of an environmental health officer employed by a local authority.

Division 2—Notifications by hospitals

Clause 68 contains definitions for the purposes of the proposed Division. These include a definition of “notifiable disease” as a medical condition listed in Schedule 3 (cancer and medical conditions in Categories 2 and 3).

Clause 69 requires the chief executive officer of a hospital to provide the Director-General with information concerning persons suffering from a notifiable disease who are, or have been, patients at the hospital.

Division 3—Inspections and inquiries

Clause 70 enables the Minister to inspect any records of a public authority that relate to public health.

Clause 71 enables the Director-General to inquire into matters relating to the health of the public, and certain other matters.

PART 8—MISCELLANEOUS

Clause 72 sets out the conditions subject to which the powers of entry and inspection referred to in several provisions of the Bill may be exercised.

Clause 73 provides for the issue of search warrants and sets out the circumstances in which a search warrant may be obtained.

Clause 74 penalises obstruction of a person exercising, or attempting to exercise, a function under the proposed Act.

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Clause 75 penalises the disclosure, without lawful excuse, of information obtained in connection with the administration of the proposed Act.

Clause 76 provides for various methods of service of notices and other documents.

Clause 77 exonerates from liability a person acting in good faith in the execution of the proposed Act.

Clause 78 provides for the circumstances in which a director of a corporation that commits an offence, or a person concerned in its management, is guilty of the same offence.

Clause 79 provides for the disposal by a Local Court of offences under the proposed Act except those in respect of which the Supreme Court exercises its summary jurisdiction as referred to in clause 50.

Clause 80 provides for the manner in which it is proposed that amendments may be made to Schedule 1 (which sets out the 5 Categories of scheduled medical conditions) Schedule 2 (which sets out the form of the health warnings required in relation to tobacco) and Schedule 3 (which sets out the medical conditions that are notifiable by a hospital or laboratory).

Clause 81 provides for the proposed Act to bind the Crown.

Clause 82 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 83 provides for the repeal of the uncommenced Division 3 of Part 6 of the Public Health Act 1902 (which relates to Legionnaires' disease).

Clause 84 gives effect to Schedule 4 which contains savings and transitional provisions.

Schedule 1 sets out the 5 Categories of scheduled medical conditions.

Schedule 2 sets out the health warnings required to appear on packages containing tobacco.

Schedule 3 sets out the medical conditions which are notifiable diseases.

Schedule 4 sets out various savings and transitional provisions.
