

THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

EXPLANATORY MEMORANDUM

PUBLIC HEALTH AMENDMENT BILL 2000

Circulated by Authority of the
Minister for Health and Community Care
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PART 1—PRELIMINARY

Clause 1 Name of Act

Clause 1 names the Act as the *Public Health Amendment Act 2000*.

Clause 2 Commencement

Clause 2 provides that the *Public Health Amendment Act 2000* will commence on the day it is notified in the *Gazette*.

PART 2—AMENDMENT OF PUBLIC HEALTH ACT 1997

Clause 3 Act Amended-pt 2

Clause 3 provides that Part 2 and Schedule 1 of the *Public Health Amendment Act 2000* amends the *Public Health Act 1997*.

Clause 4 Public health risk activities and procedures—declaration

Clause 4 provides that section 18 of the *Public Health Act 1997* is amended by:

- inserting after subsection 18(1) an example to further the explain the use of a declaration of public health risk activity;
- omitting the current subsection 18(3) in the *Public Health Act 1997* and substituting a new subsection 18(3) that provides that a declaration as a public health risk activity or procedure must indicate whether the activity or procedure is licensable, registrable or non-licensable;
- inserting a new subsection 18(4) that provides that a registrable public health risk activity may indicated that the activity is a location-specific activity. This new subsection ensures that where an public health risk activity is declared registrable, the registration can be tied to a specific location. For example, a specific piece of building plant equipment is an inherent part of a building and cannot be moved. Whereas a registered business may move locations;
- inserting a new subsection 18(5) that provides that a registrable public health risk activity that is location-specific is registrable separately for each premises where it is carried on and each location, if more than one, in each premises; and
- inserting a new subsection 18(6) that provides that a declaration under section 18 is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Clause 18 is further amended by the addition of notes that provide direction to the reader.

Clause 5 Insertion

Clause 5 amends the *Public Health Act 1997* by inserting after Division 3 of Part 3, Division 3.4—Registration of public health risk activities (sections 56C to 56U) and Division 3.5—Registration of specialised systems (sections 56V to 56ZD).

Divisions 3.4 and 3.5 are explained in detail below.

Division 3.4—Registration of public health risk activities

Section 56C Registrable public health risk activities—offences

Subsection 56C(1) provides that a person must not carry on a registrable public health risk activity unless the person is registered to carry on the activity or is a defined influential person in relation to a person who is registered to carry on the activity. If a person carries on a registrable public health risk activity without being registered, they may be penalised a maximum of 50 penalty units, 6 months imprisonment or both.

Subsection 56C(2) provides that if a person is registered to carry on a location-specific public health risk activity, the person must not carry on the activity except at the registered location. If a person carries on a location-specific registrable public health risk activity at a location other than the location that they are authorised to carry on the activity, they may be penalised a maximum of 50 penalty units.

Section 56D Activity register

Section 56D provides that the Minister must keep a register of registrable public health risk activities showing the nature of the activity, whether the activity is location-specific, the date of the declaration under section 18 of the *Public Health Act 1997*, whether the declaration has been varied along with the date and details of variation, and whether the declaration has been revoked.

Section 56D also provides that the register may be kept in electronic form and that the register must be available for inspection by the public (at no cost) during normal business hours on business days.

Section 56E Registered people register

Section 56E provides that the Minister must keep a register of registered people showing the information on the person's registration certificate, the details of any transfers of the registration, the date and reasons for suspension of the registration, the date and reason for cancellation of the registration, the date of surrender of the registration.

Section 56E also provides that the registered people register may be kept in electronic form and that the register must be available for inspection by the public (at no cost) during normal business hours on business days.

Section 56F Registration—application

Section 56F provides that a person may apply to the Minister for registration to carry on a registrable public health risk activity. However, the application must be in a form approved by the Minister and accompanied by the determined fee. The Minister may, by written notice, also require the applicant to provide further documentation in support of his/her application.

Section 56G Registration—grant or refusal

Subsection 56G(1) provides that if a person applies to the Minister under section 56F for registration to carry on a registrable public health risk activity and the person complies with that section, the Minister must register the person by giving the person a registration certificate.

Subsection 56G(2) provides that the Minister must refuse to register the person if the person has previously contravened the Act or a corresponding public health law, or the registration has been cancelled within the past 12 months. However, the Minister may register an applicant if the Minister is satisfied on reasonable grounds that a similar contravention will not recur. This section ensures that persons who have contravened the Act or other public health law have taken reasonable steps to avoid further contraventions of the Act or other public health laws.

Subsection 56G(3) provides that the Minister must refuse to register the person if the registration of the person to carry on a registrable public health risk activity has been cancelled during the previous year.

Section 56H Registration—certificate

Section 56H provides that the form of the registration certificate must be approved by the Minister. This section also details the information required on the registration certificate.

Section 56J Registration—duration

Section 56J provides that a registration certificate remains in force for the period stated on the certificate and that it may be renewed under section 56K.

Section 56K Registration—renewal

Section 56K provides that a registered person may apply to the Minister for a renewal of his/her registration before the end of the term of the registration. This section ensures that the registered person can have continual registration without any gaps in the registration period. However, renewal of registration does not result in a suspension being lifted.

Section 56L Registration—change of information

Subsection 56L(1) provides that a registered person must give the Minister written notice of an intended change to the registered location of the registered activity at least 28 days before the intended change. This subsection ensures that the *registered people register* (referred to in section 56E) is kept up to date. If a person fails to notify the Minister of an intended change to the registered location of the registered activity at least 28 days before the intended change, they may be penalised a maximum of 5 penalty units.

Subsection 56L(2) provides that the registered location of a location-specific registered activity may not be changed under this section. This subsection makes it clear that location-specific registered activities, e.g. specific building plant equipment, cannot change location.

Subsection 56L(3) provides that a registered person must give the Minister written notice of a change of the name or address of the owner or manager of registered premises, or of the owner or manager of equipment associated with the conduct of a registered activity, within 14 days after the registered person is first given notice of the change or otherwise becomes aware of it. This subsection ensures that the *registered people register* (referred to in section 56E) is kept up to date. If a person fails to notify the Minister of a change of the name or address of the owner or manager or registered premises, or of the owner or manager of equipment associated with the conduct of a registered activity within 14 days of first being given notice of the change or otherwise becoming aware of it, they may be penalised a maximum of 5 penalty units.

Subsection 56L(4) provides that on receiving notice of a change of information in registration certificate, the Minister must vary the registration certificate accordingly.

Section 56L(5) provides that any variation takes effect from the day on which the change happens or the day the Minister was notified of the change. This subsection ensures that there is a clear delineation in time between the change of information on the registration certificate.

Section 56M Registration—application for transfer

Section 56M provides that a registered person (except a person whose registration has been suspended) may submit a joint application, with the person to whom the application is proposed to be transferred, for transfer of the registration. Such a transfer application must be made in a form approved by the Minister and be accompanied by the registration certificate and the determined fee. This section also allows the Minister to seek further information from the proposed transferee about the application.

Section 56N Registration—grant or refusal of transfer

Subsection 56N(1) provides that if a registered person and the proposed transferee of registration, jointly apply to the Minister under section 56M for approval of the transfer of registration and they comply with that section, then the Minister must approve the transfer of registration.

Subsection 56N(2) provides that the Minister must refuse an application for transfer of registration if the transferee has previously contravened the Act or a corresponding public health law, or the registration has been cancelled within the past 12 months. However, the Minister may register an applicant if the Minister is satisfied on reasonable grounds that a similar contravention will not recur. This section ensures that persons who have contravened the Act or other public health law have taken reasonable steps to avoid further contraventions of the Act or other public health laws.

Subsection 56N(3) provides that the Minister must refuse to approve the transfer of registration to the proposed transferee if the proposed transferee's registration to carry on the registrable public health risk activity has been cancelled during the previous year.

Subsection 56N(4) provides that the Minister must give to the registered person and the proposed transferee written notice of his/her decision.

Subsection 56N(5) provides that if the Minister approves the transfer of registration, the transfer takes effect on the day the proposed transferee is given written notice of the decision or the date which is stated in the written notice.

Subsection 56N(6) provides that if the Minister approves the transfer of registration, the Minister may vary the registration period if the proposed transferee asks for it to be varied.

Section 56P Registration—notified suspension and cancellation

Subsection 56P(1) provides for the grounds for suspension or cancellation of registration being obtaining the registration by fraud or misrepresentation, and contravening the Act or a corresponding public health law.

Subsection 56P(2) provides that this section applies if the Minister reasonable believes that there is a ground for notified suspension or cancellation and it is desirable in the interests of public health to suspend or cancel the registration (the proposed action).

Subsection 56P(3) provides that the Minister must give written notice to the registered person stating the proposed action including any proposed suspension, the ground on which the Minister intends to suspend or cancel the registration, stating the facts and circumstances that constitute that ground, and telling the registered person that s/he may, within 28 days, give a written response to the Minister.

Subsection 56P(4) provides that the Minister, after considering any written representations made by the registered person, may, if satisfied on reasonable grounds that a ground exists for notified suspension or cancellation of the registration, by written notice to the registered person suspend or cancel the registration for a period determined by the Minister. However, if the proposed action was to cancel the registration, the registration may be cancelled or suspended for a maximum of one year. If the proposed action was to suspend the registration, the registration may only be suspended for no longer than was stated in the notice.

Subsection 56P(5) provides that the Minister must tell the registered person in writing of his/her decision to suspend or cancel the registration.

Subsection 56P(6) provides that if the Minister decides to cancel or suspend the registration, s/he must also tell the person in writing when the cancellation or suspension takes effect.

Subsection 56P(7) provides that the cancellation or suspension must not take effect earlier than the day when the registered person is told about the decision by the Minister to cancel or suspend his/her registration.

Section 56Q Registration—automatic suspension (prohibition notice)

Section 56Q provides that registration is automatically suspended if the registered activity is prohibited by a prohibition notice. The automatic suspension takes effect at the end of the period, if any, stated in the prohibition notice or when the prohibition notice is given. This section also provides that automatic suspension ceases when the prohibition notice is revoked.

Section 56R Registration—return of suspended or cancelled certificates

Section 56R provides that a person whose registration has been suspended or cancelled must not without a reasonable excuse fail to return the registration certificate to the Minister within 7 days after the date of effect of the suspension or cancellation. If a person fails to return his/her registration certificate within 7 days without a reasonable excuse after being suspended or cancelled, they may be penalised a maximum of 5 penalty units.

Section 56S Registration—surrender

Section 56S provides that a registered person may surrender his/her registration by giving to the Minister a signed notice that the registration is surrendered and the registration certificate. This section also provides that a person may surrender his/her registration while the registration is surrendered.

Section 56T Registration—false representation

Subsection 56T(1) provides that a person other than a registered person must not falsely represent that s/he is a registered person. If a person falsely represents that s/he is a registered person, they may be penalised a maximum of 30 penalty units.

Subsection 56T(2) provides that a person whose registration is suspended must not represent that s/he is registered without disclosing that the registration is suspended. If a registered person fails to disclose that his/her registration is suspended, they may be penalised a maximum of 30 penalty units.

Section 56U Registration—inspection

Section 56U provides that a registered person must ensure that, at any reasonable time, at the request of an authorised officer, the registration certificate is available for inspection at premises and associated records with the registration or conduct of the registered activity. If a registered person fails to ensure that the registration certificate or its associated records is available for inspection by an authorised officer, they may be penalised a maximum of 5 penalty units.

Division 3.5—Registration of specialised systems

Section 56V Definitions

Section 56V details definitions relevant to the registration of specialised systems and defines the following terms:

applicable standard
commencement day
registration
specialised system
system licence
transitional licensee
unamended Building Act

Section 56W Meaning of specialised system

Section 56W defines 'specialised system'.

Section 56X Specialised systems—registrable public health risk activity

Subsection 56X(1) provides that the operation of a specialised system is, on and after the commencement day, taken to have been declared a location-specific registrable public health risk activity.

Subsection 56X(2) provides that subsection 56X(1) does not apply to specialised systems that were exempt under section 42A(a) or Division 5 of Part 3A of the unamended *Building Act 1972*.

Subsection 56X(3) provides that the Minister may revoke an exemption under Division 5 of Part 3A of the unamended *Building Act 1972* if the Minister considers such a revocation is desirable in the interests of public health.

Subsection 56X(4) provides that the Minister must make an entry in the activities register recording that under this section, on and after the commencement day, the operation of a specialised system is taken to have been declared a location-specific registrable public health risk activity.

Section 56Y System licences—registration

Subsection 56Y(1) provides that if a person held a system licence under the unamended *Building Act 1972* immediately before the commencement day, the person is, on and after that day, considered to be registered until the day on which the system licence would have otherwise expired under the *Building Act 1972*.

Subsection 56Y(2) provides that a system licence granted to a transitional licensee has effect as a registration certificate under this Act.

Subsection 56Y(3) provides that on and after the commencement day, a transitional licensee is not required to comply with any conditions subject to which the licensee's system licence was granted.

Subsection 56Y(4) provides that the Minister must enter on the registered person's register, for each transitional licensee, the information mentioned in section 56H(b) for licence and, if the transitional licensee's system licence was under suspension immediately before the commencement day, the date of the suspension, the reason for suspension and the date (if known) on the which the suspension is to be lifted.

This section ensures that a person whom holds a system licence under the *Building Act 1972* need not reapply for a registration under this Act until their existing licence expires.

Section 56Z System licences—transitional applications

Section 56Z provides that if a person makes an application for a system licence under the *Building Act 1972* and no decision has been made about the application, then application is taken to be an application for registration under section 56F. This section ensures that all persons who have made an application for a system licence under the *Building Act 1972* are duly considered to have made an application for registration under this Act.

Section 56ZA System licences—transitional renewals

Section 56ZA provides that if an application has been made under section 42F of the unamended *Building Act 1972* for the renewal of a system licence but no decision has been made about the application, then the application is taken to have been made under section 56K of this Act.

Section 56ZB System licences—transitional transfers

Section 56ZB provides that if an application has been made under section 42G of the unamended *Building Act 1972* for the transfer of a system licence but no decision has been made about the application, then the application for transfer is taken to have been made under section 56M of this Act.

Section 56ZC System licences—transitional suspension

Subsection 56ZC(1) provides that if a system licence was under suspension under the unamended *Building Act 1972* immediately before the commencement day, this Division applies to the licence and licensee as if the licence was held by the licensee immediately before the commencement and the licensee was a transitional licensee.

Subsection 56ZC(2) provides that if the Building Controller, defined in the *Building Act 1972*, had immediately before the commencement day given a notice to a transitional licensee requiring the licensee to show cause why the licence should not be suspended, but no decision had been made about the intended suspension, the notice is taken to have been made under subsection 56P(3) of this Act. If an extension of the notice period had been granted under subsection 42J(4) of the *Building Act 1972*, the 28 day period referred to in subsection 56P(4) of this Act is taken to have been extended. This subsection further provides that after the end of 28 days after the notice of intended suspension is given, or of the extended period, the Minister may suspend the registration of the transitional licensee if the Minister is satisfied on reasonable grounds that there is a ground for suspension of the licence, and that ground is mentioned in the notice, given under section 42J(1) of the *Building Act 1972*, and the suspension is desirable in the interests of public health.

Subsection 56ZC(3) provides a suspension, mentioned in subsections 56ZC(1) or (2), remains in force under this Act as a suspension of the transitional licensee's registration. This subsection ensures that any licence suspended under section 42J(1), or for any other reason, remains suspended when the provisions are transferred to this Act.

Section 56ZD Expiration of div 3.5

Section 56ZD provides that Division 3.5 of this Act expires on 1 July 2005. This section allows time for system licences granted under the *Building Act 1972* with a five year term to expire.

Clause 6 Review of decisions

Clause 6 amends section 130 of the *Public Health Act 1997* by adding at the end paragraphs allowing review of decisions about refusing to register an applicant for registration, refusing to approve the transfer of a registration, refusing to vary the registration period in association with a transfer of registration, and suspending and cancelling the registration of a registered person. This clause adds the equivalent review mechanisms for registration that pertain to licensing currently in the Act.

Clause 7 Notification of decisions

Clause 7 amends section 131 of the *Public Health Act 1997* by adding at the end paragraphs providing that where a person makes a decision under sections 130(f), 130(g), 130(h), 130(i) or 130(j), the person shall cause a notice in writing of the decision to be given to the applicant for registration or to the registered person and the proposed transferee, as applicable. This clause adds the equivalent requirements for decisions made for registration that currently exist for licensing.

Clause 8 Regulations

Clause 8 repeals section 138 of the *Public Health Act 1997* and substitutes a new section 138 that clarifies the regulation-making power available under the Act and provides that regulations may be made with respect to:

- communicable disease control;
- cervical cytology;
- cancer reporting;
- cemeteries and crematoria;
- drug preparation and supply;
- general sanitation; and
- private hospitals.

The clause also provides for the maximum penalty for an offence against the regulations being 10 penalty units.

This amendment makes clear the regulation-making available under the Act.

Clause 9 Insertion

Clause 9 amends the *Public Health Act 1997* by inserting after section 138 a Dictionary that explains certain common terms and phrases used in the Act. The terms and phrases defined in the Dictionary are:

activity accreditation scheme
activity accreditation standards
activity premises alteration
activity register
automatic
contravention
licensable public health risk activity
licensable public health risk procedure
location
location-specific
notified suspension or cancellation
occupier
procedure accreditation scheme
procedure accreditation standards
procedure appliance alteration
registered activity
registered location
registered person
registered people register
registrable public health risk activity
registration
registration certificate

PART 3—AMENDMENT TO THE PUBLIC HEALTH (MISCELLANEOUS PROVISIONS) ACT 1997

Clause 10 Act amended-pt 3

Clause 10 provides that Part 3 of the *Public Health Amendment Act 2000* amends the *Public Health (Miscellaneous Provisions) Act 1997*.

Clause 11 Interpretation

Clause 11 amends section 4 of the *Public Health (Miscellaneous Provisions) Act 1997* by omitting the following definitions:

amended Building Act
commencement day
specialised system
unamended Building Act

Clause 12 Repeal

Clause 12 amends the *Public Health (Miscellaneous Provisions) Act 1997* by repealing Division 3 of Part 2, and Parts 4 and 6. This clause ensures that the transitional provisions of transferring the specialised systems licences contained in the *Public Health (Miscellaneous Provisions) Act 1997*, and the repeal of the *Sexually Transmitted Diseases Act 1956* and the *Tuberculosis Act 1950*, are repealed.

SCHEDULE 1

Schedule 1 amends the *Public Health Act 1997* by making structural and minor amendments to the Act as a consequence of the amendments found in the *Public Health Amendment Act 2000*.