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1997  
THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

**Public Health (Miscellaneous  
Provisions) Bill 1997**

**EXPLANATORY MEMORANDUM**

**Circulated by the authority of  
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Minister for Health and Community Care**

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**PUBLIC HEALTH (MISCELLANEOUS PROVISIONS) BILL 1997****OUTLINE**

The *Public Health (Miscellaneous Provisions) Bill 1997*-

(a) provides for the transfer of various provisions of:

- (i) *Skin Penetration Procedures Act 1994*;
- (ii) *Sexually Transmitted Diseases Act 1956*;
- (iii) *Tuberculosis Act 1950*; and
- (iii) *Building Act 1972*.

to the new Public Health Act.

(b) repeals:

- (i) *Skin Penetration Procedures Act 1994*;
- (ii) *Sexually Transmitted Diseases Act 1956*;
- (iii) *Venereal Diseases (Amendment) Act 1977*;
- (iv) *Sexually Transmitted Diseases (Amendment) Act 1990*;
- (v) *Tuberculosis Act 1950*; and
- (vi) the sections of the *Building Act 1972* relating to legionella control.

(c) repeals the Public Health (Infectious and Notifiable Diseases) Regulations and replaces them with the Public Health (Immunisation and School Diseases Control) Regulations.

(d) amends various pieces of legislation to replace the terms-

- (i) Authorised Officer, Health Officer and Environmental Health Officer with Public Health Officer;
- (ii) Medical Officer of Health with Chief Health Officer;
- (iii) Infectious, contagious, and notifiable diseases with transmissible notifiable condition.

(e) creates transitional arrangements so that any licences, notices issued etc in operation at the commencement date of the new Public Health Act remain in force as if they had been issued under the new Act.

(f) creates offences under the *Crimes Act 1900* and *Domestic Violence Act 1986* of placing a person in danger of contracting a serious disease.

## **DETAILS OF THE BILL**

### **PART I - PRELIMINARY**

#### **1.1 Formal requirements (clauses 1 & 2)**

Clauses 1 & 2 are the formal requirements of all Acts, specifying the title and commencement arrangements. These clauses take effect from the day on which the Bill is notified in the *Gazette*. The rest of the Bill's provisions take effect from the date, or dates the Minister notifies in the *Gazette*.

#### **1.2 Interpretation (clause 3)**

Throughout this Bill, the following terms are used:

- (a) new Public Health Act meaning the *Public Health Act 1997*; and
- (b) old Public Health Act meaning the *Public Health Act 1928*.

### **PART II - BUILDING ACT 1972**

#### **Division 1 - Preliminary**

#### **2.1 Interpretation (clause 4)**

This clause gives definitions and terms used on in this Part such as:

- (a) Building Act meaning the *Building Act 1972*;
- (b) amended Building Act meaning the Building Act as amended by this Bill;
- (c) commencement day meaning the day on which this Part commences;
- (d) specialised system meaning a specialised system as defined in the unamended Building Act; and
- (e) unamended Building Act meaning the Building Act which was in force at the time of the commencement of this Part.

## **Division 2 - Amendment of the *Building Act 1972***

### **2.2 Interpretation (clause 5)**

This clause amends various terms in the definition section of the Building Act relating to building work, applicable standards and mechanical ventilation systems.

### **2.3 Position of the Crown (clause 6)**

Section 6A (2) of the Building Act which binds the Crown in matters relating to the control of legionella. These provisions are repealed because legionella control will be covered in the new Public Health Act and this Act binds the Territory Crown.

The Territory Crown will still be bound by the Building Act in the application of-

- (a) section 29 (carrying out building work in accordance with the Building Code); and
- (b) section 46 (notice to carry out building work) as it relates to specialised systems.

### **2.4 Insertion (clause 7)**

After section 6A of the Building Act the following section is inserted in Part I:

#### **Applicable standard - amendment**

6B. (1) The Minister may, by instrument, amend the applicable standard.

(2) An instrument under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

### **2.5 Inspection of a premises for loose asbestos (clause 8)**

Section 9A of the Building Act is variously amended by omitting the term "a hazardous substance" and substituting the term "loose asbestos".

Paragraphs (13) (a) and (b) are amended by omitting the term "or a substance containing *Legionella* bacteria (as the case may be).

### **2.6 Repeal (clause 9)**

Sections 9B and 9C of the Building Act relate to-

- (a) the routine inspection of a premises for legionella; as well as
- (b) the inspection of a premises during an outbreak.

These sections are repealed because they are covered by Division 2 (Authorised officers' powers) in the new Public Health Act.

### **2.7 Carrying out building work (clause 10)**

Section 30 of the Building Act is amended by omitting from subsection (1) the phrase "other than the maintenance or cleaning of a specialised system".

**2.8 Repeal (clause 11)**

Part IIIA of the Building Act is repealed. This Part contains all the matters relating to specialised systems and will be covered under Part III (Public Health Risk Activities and Procedures) of the new Public Health Act.

**2.9 Notice to carry out building work (clause 12)**

Clause 12 of this Bill amends section 46 of the Building Act-

- (a) by omitting paragraph (1) (g) and substituting the following paragraph-
  - (g) a building inspector finds, on inspection, that a building contains loose asbestos:
- (b) by omitting from subsection (1) the phrase "with respect to building work other than the maintenance or cleaning of a specialised system"; and
- (c) by omitting from paragraph (4) (a) the phrase ", or maintenance or cleaning of a specialised system".

**2.10 Heading to Part IVA (clause 13)**

The heading to Part IVA of the Building Act is amended by omitting "HAZARDOUS SUBSTANCES" and substituting "LOOSE ASBESTOS".

**2.11 Heading to Part IVA, Division 1 (clause 14)**

The heading to Division 1 of Part IVA of the Building Act is omitted.

**2.12 Repeal (clause 15)**

Division 2 of Part IVA of the Building Act is repealed because any notices orders or directions in relation to legionella would be issued under the new Public Health Act.

**2.13 Review by the Administrative Appeals Tribunal (clause 16)**

Section 60 of the Building Act is amended-

- (a) by omitting paragraphs (1) (pa) to (pf) inclusive and (ra) and (rb);
- (b) by omitting paragraphs (3) (ka), (kb), (kc) and (ma); and
- (c) by omitting subsection (3A).

These review rights are to be incorporate into sections 130 (Review of decisions) and 131 (notification of decisions) of the new Public Health Act.



**Division 3 - Transitional****2.14 Specialised systems - public health risk activity (clause 17)**

Under clause 17, the operation of a specialised system is, on and after the commencement day, is to be taken to have been declared to be a licensable public health risk activity under section 18 of the new Public Health Act.

Subsection 1 of clause 17 does not apply to a specialised system that, immediately before the commencement day was exempt under paragraph 42A (a) or Division 5 of Part IIIA of the unamended Building Act.

On or after the commencement day, the Minister may revoke an exemption under Division 5 of Part IIIA of the unamended Building Act by a written notice to whom the exemption was granted if the Minister considers that such a revocation is desirable in the interests of public health.

**2.15 System licences - activity licences (clause 18)**

A system licence in force under the unamended Building Act immediately before the commencement day continues in force on and after that day as if the licence had been granted as an activity licence under section 30 (Activity licence - grant or refusal) of the new Public Health Act. This is in relation to the public health risk activity referred to in 2.13 above.

An activity licence referred in this clause is-

- (a) subject to the same conditions (if any) as the corresponding system licence, in addition to the condition referred to in subclause (3) of this clause;
- (b) to be taken to have been granted for the period expiring on the date on which the corresponding system licence under the unamended Building act would have otherwise expired; and
- (c) otherwise subject to the new Public Health Act.

An activity licence referred to in subclause (1) of this Bill in relation to a specialised system is to be taken to have been granted subject to the condition that any cleaning maintenance and structural modification of the system is only to be carried out in accordance with the written approval of the Minister.

An activity licence may be renewed under section 33 (Activity licence - renewal) of the new Public Health Act for a period determined by the Minister.

If immediately before the commencement day, a system licence (issued under the unamended Building Act) was under suspension, the suspension remains in force under the new Public Health Act-

- (a) in the case of a suspension on a ground specified in paragraph 42J (1) (a), (b) or (c) of the unamended Building Act, until the Minister gives notice in writing to the licensee that he or she has reasonable grounds for believing that the ground for the suspension of the licence no longer exists; or
- (b) in any other case, for a period referred to in paragraph 42J (7) (b) of the unamended Building Act.

**2.16 System licences - transitional (clause 19)**

If, immediately before the commencement day, an application has been made in accordance with section 42C of the unamended Building Act for a system licence but no decision has been made in relation to that application, then the application is taken to have been made in accordance with section 29 (Activity licence - application) of the new Public Health Act.

If, immediately before the commencement day, an application has been made in accordance with section 42F of the unamended Building Act for renewal of a system licence but no decision has been made in relation to that application, then the application is taken to have been made in accordance with section 33 (Activity licence - renewal) of the new Public Health Act.

If, immediately before the commencement day, an application has been made in accordance with section 42G of the unamended Building Act for the transfer of a system licence but no decision has been made in relation to that application, then the application is taken to have been made in accordance with section 36 (Activity licence - application for transfer) of the new Public Health Act.

If, immediately before the commencement day, the Building Controller had, under subsection 42J (1) of the unamended Building Act, issued a notice to the holder of a system licence requiring the licensee to show cause why the licence should not be suspended, but no decision had been made in relation to the proposed suspension-

- (a) the notice is then taken to be given to the licensee under subsection 39 (3) of the new public Health Act;
- (b) if an extension had been granted under subsection 42J (4) of the unamended Building Act in relation to the notice then the 28 day period referred to in subsection 39 (4) of the new Public Health Act is amended accordingly; and

- (c) the Minister may suspend the corresponding activity licence under paragraph 39 (4) (a) of the new Public Health Act if he or she has reasonable grounds for believing that-
  - (i) there are grounds for suspension of the licence under subsection 42J (1) of the unamended Building Act which are the grounds specified in the notice; and
  - (ii) the suspension is necessary in the interests of public health.

### **PART III - CRIMES ACT 1900**

#### **3.1 Insertion (clause 20)**

Clause 20 amends the *Crimes Act 1900* by inserting a provision after section 28 which creates an offence for a person to put another person in danger of contracting a serious disease.

A "serious disease" is defined as a disease of such nature as-

- (a) to endanger or likely to endanger life; or
- (b) to cause permanent injury to health, or likely to cause permanent injury to health.

#### **3.2 Schedule 2 to the *Crimes Act 1900* (clause 21)**

Clause 21 amends Schedule 2 to the *Crimes Act 1900* by inserting after the item relating to section 28 of that Act, the following item:

28A Placing a person in danger of contracting a serious disease.

### **PART IV - DOMESTIC VIOLENCE ACT 1986**

#### **4.1 Schedule 1A to the *Domestic Violence Act 1986* (clause 22)**

Clause 22 amends Schedule 1A to the *Domestic Violence Act 1986* by inserting after the item relating to section 28 of the *Crimes Act 1900*, the following item:

28A Placing a person in danger of contracting a serious disease.

### **PART V - PUBLIC HEALTH ACT 1928**

#### **5.1 Interpretation - Part IV (clause 23)**

In this Part-

commencement day means the day on which section 3 (Repeal of the *Public Health Act 1928*) of the new Public Health Act commences.

**5.2 Medical Officer of Health - Chief Health Officer (clause 24)**

Clause 24 provides for continuity of office so that a person who occupied the office of Medical Officer of Health prior to the commencement of the new Public Health Act automatically holds the office of Chief Health Officer subject otherwise to the new Public Health Act.

Clause 24 also provides that any delegations of powers of the Medical Officer of Health under the old Public Health Act continue in force as if they had been made under the new Public Health Act, subject otherwise to the new Public Health Act.

**5.3 Environmental Health Officer - Public Health Officer (clause 25)**

Clause 24 provides for continuity of office, so that a person who is an Environmental Health Officer under section 7 of the old Public Health Act prior to the commencement of the new Public Health Act is taken to be a Public Health Officer under section 12 of the new Public Health Act, subject otherwise to the new Public Health Act.

On commencement of the new Public Health Act an identity card issued to an Environmental Health Officer under section 8 of the old Public Health Act is taken to be an identity card issued to that person in their capacity as a Public Health Officer under the new Public Health Act.

**5.4 Fee determinations (clause 26)**

Clause 26 provides that a determination of a fee under the old Public Health Act for the purposes of a regulation made under that Act, in force at the time of the commencement of the new Act continue to be in force as if the determination had been made under section 137 (Determination of fees) of the new Public Health Act.

**5.5 Regulations under the old Public Health Act (clause 27)**

Section 138 of the new Public Health Act is to be taken to authorise the Executive to make regulations providing for and in relation to matters set out in section 12 of the old Public Health Act.

A regulation in force under section 12 of the old Public Health Act at the commencement day continues in force on and after that day (as amended by this Bill) as if it had been made under section 138 of the new Public Health Act, subject otherwise to that Act.

**PART VI - SEXUALLY TRANSMITTED DISEASES ACT 1956****6.1 Interpretation (clause 28)**

In this Part, the term commencement day means the day on which Part VI of the new Public Health Act commences and Sexually Transmitted Diseases Act means the *Sexually Transmitted Diseases Act 1956*.

**6.2 Repeal of the *Sexually transmitted Diseases Act 1956* (clause 29)**

The following Acts are repealed by this Bill-

- (a) *Sexually Transmitted Diseases Act 1956*;
- (b) *Venereal Diseases (Amendment) Act 1977*; and
- (c) *Sexually Transmitted Diseases (Amendment) Act 1990*.

**6.3 Notification requirements for medical practitioners (clause 30)**

A medical practitioner is deemed to have complied with the requirements of section 102 of the new Public Health Act in relation to the notification of a sexually transmitted disease within the *Sexually Transmitted Diseases Act*, which is a transmissible notifiable condition within the meaning of the new Public Health Act.

A medical practitioner is also deemed to have complied with the requirements of this clause, if before the commencement day, a medical practitioner had notified the Medical Officer of Health under subsection 6 (1) of the *Sexually Transmitted Diseases Act* in relation to person who the practitioner reasonably believes has that disease.

**6.4 Notification requirements for pathologists (clause 31)**

A pathologist is deemed to have complied with the requirements of section 103 of the new Public Health Act in relation to the notification of a sexually transmitted disease within the *Sexually Transmitted Diseases Act*, which is a transmissible notifiable condition within the meaning of the new Public Health Act.

A pathologist is also deemed to have complied with the requirements of this clause, if before the commencement day, the pathologist had notified the Medical Officer of Health under subsection 6A (1) of the *Sexually Transmitted Diseases Act* in relation to a positive test for that disease.

**PART VII - SKIN PENETRATION PROCEDURES ACT 1994****7.1 Interpretation (clause 32)**

In this Part-

- (a) commencement day means the day on which this Part commences; and
- (b) *Skin Penetration Procedures Act* means the *Skin Penetration Procedures Act 1994*.

**7.2 Repeal of the *Skin Penetration Procedures Act 1994* (clause 33)**

Clause 33 of this Bill repeals the *Skin penetration Procedures Act 1994*.

**7.3 Skin penetration - public health risk activity and procedures (clause 34)**

The carrying on of a prescribed business within the meaning of the Skin Penetration Procedures Act is, on and after the commencement day, to be taken to be declared a licensable public health risk activity under section 18 of the new Public Health Act.

The performance of any skin penetration procedure within the meaning of the Skin Penetration Procedures Act is, on and after the commencement day, to be taken to be declared a licensable public health risk procedure under section 18 of the new Public Health Act.

**7.4 Authorised officers - Public Health Officers (clause 35)**

An authorised officer under section 5 of the Skin Penetration Procedures Act, immediately before the commencement day is, on and after that day is taken to be a Public Health Officer under the new Public Health Act who is authorised under section 14 (Functions of officers etc) to perform functions under Part III of the new Public Health Act, subject otherwise to that Act.

An identity card issued to an authorised officer under the Skin Penetration Procedures act, before the commencement day, is on and after that day, to be taken as an identity card issued to him or her under the new Public Health Act in his or her capacity as a Public Health Officer under that Act.

**7.5 Codes of Practice (clause 36)**

A Code of Practice in force under the Skin Penetration Procedures Act immediately before the commencement day is, on and after that day, to be taken to have been determined as a Code of Practice under section 133 of the new Public Health Act.

**7.6 Conversion from business licences to activity licences (clause 37)**

A business licence in force under the Skin Penetration Procedures Act immediately before the commencement day continues in force on and after that day as if it had been granted as an activity licence under section 30 (Activity licence - grant or refusal) of the new Public Health Act.

The activity licence referred to above is-

- (a) subject to the same conditions as the corresponding business licence;
- (b) taken to have been granted for the period expiring on the anniversary of the granting of the corresponding business licence; and
- (c) otherwise subject to the new Public Health Act.

An activity licence referred to above may be renewed under section 33 (Activity licence - renewal) of the new Public Health act.

If a business licence issued under the Skin Penetration Procedures Act, was under suspension immediately before and on the commencement day because the licence fees had not been paid then the suspension continues until the fees are paid.

If however the licence was suspended under another provision of the Act then suspension of the licence continues for the same period as was stipulated in the notice of suspension.

If immediately before the commencement day, an application had been made in accordance with section 14 of the Skin Penetration Procedures Act for a business licence, but decision had not been made in relation to the application, the application is therefore taken to have been made in accordance with section 29 (Activity licence - application) of the new Public Health Act.

**7.7 Conversion from operator's licences to procedure licences (clause 38)**

An operator's licence in force under the Skin Penetration Procedures Act immediately before the commencement day continues in force on and after that day as if it had been granted as a procedure licence under section 45 (Procedure licence - grant or refusal) of the new Public Health Act.

A procedure licence referred to above is-

- (a) subject to the same conditions as the corresponding operator's licence; and
- (b) otherwise subject to the new Public Health Act.

If an operator's licence issued under the Skin Penetration Procedures Act, was under suspension immediately before and on the commencement day because the licence fees had not been paid then the suspension continues until the fees are paid. If however the licence was suspended under another provision of the Act then suspension of the licence continues for the same period as was stipulated in the notice of suspension.

If immediately before the commencement day, an application had been made in accordance with section 15 of the Skin Penetration Procedures Act for an operator's licence, but decision had not been made in relation to the application, the application is therefore taken to have been made in accordance with section 43 (Procedure licence - application) of the new Public Health Act.

**7.8 General transitional arrangements (clause 39)**

Subject to this Part, the new Public Health Act applies in relation to any application made, notice given, decision made, or action taken under or for the purposes of a provision of the Skin Penetration Procedures Act as if the any application made, notice given, decision made, or actions taken under or for the purposes of the new Public Health Act that mostly closely corresponds to that provision.

**PART VIII - TUBERCULOSIS ACT 1950****8.1 Interpretation (clause 40)**

In this Part-

- (a) commencement day means the day on which Part VI of the new Public Health Act commences; and
- (b) Tuberculosis Act means the *Tuberculosis Act 1950*.

**8.2 Repeal of the *Tuberculosis Act 1950* (clause 41)**

Clause 41 of this Bill repeals the *Tuberculosis Act 1950*.

**8.3 Notification requirements for medical practitioners (clause 42)**

A medical practitioner is deemed to have complied with the requirements of section 102 of the new Public Health Act in relation to the notification of a case of tuberculosis within the meaning of the Tuberculosis Act, which is a transmissible notifiable condition within the meaning of the new Public Health Act.

A medical practitioner is also deemed to have complied with the requirements of this clause, if before the commencement day, a medical practitioner had notified the Medical Officer of Health under subsection 6 (1) of the Tuberculosis Act in relation to person who the practitioner reasonably believes has that disease.

**PART IX - GENERAL TRANSITIONAL PROVISIONS****9.1 Interpretation (clause 43)**

In this Part-

commencement day means the day on which section 3 (Repeal of the *Public Health Act 1928*) of the new Public Health Act commences.

**9.2 Actions of the Medical Officer of Health (clause 44)**

Any action of the Medical Officer of Health for the purposes of a law of the Territory before the commencement day is to be taken on and after that day to have been taken by the Chief Health Officer for the same purposes.

A delegation under a provision of a law of the Territory (other than the old Public Health Act) of a power of the Medical Officer of Health which was in force immediately before the commencement day, continues in force as if that delegation had been made under that provision as amended by this Act.

**9.3 Actions of Environmental Health Officers (clause 45)**

Any action of an Environmental Health Officer for the purposes of a law of the Territory before the commencement day is to be taken on and after that day to have been taken by a Public Health Officer for the same purposes.



**PART X - MISCELLANEOUS AMENDMENTS**

**10.1 References to statutory officers (clause 46)**

The Acts specified in Schedule 1 are amended as set out in that Schedule and the regulations specified in Schedule 2 are amended as set out in that Schedule.

The amendments, replace the term Medical Officer of Health with Chief Health Officer, wherever it appears in the various pieces of legislation. and replace the terms Environmental Health Officer, Health Officer and Authorised Officer with Public Health Officer, wherever they appear.

**10.2 References to infectious and contagious diseases (clause 47)**

The Acts specified in Schedule 3 are amended as set out in that Schedule and the regulations specified in Schedule 4 are amended by that Schedule.

The amendments, replace the terms infectious and contagious disease with the term transmissible notifiable condition wherever they appear.