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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

PUBLIC HEALTH AMENDMENT BILL 2016

EXPLANATORY STATEMENT

**Presented by
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Outline

The Public Health Amendment Bill 2016 (the Bill) proposes to amend the *Public Health Act 1997* (the Public Health Act) to implement measures designed to reduce administrative complexity and streamline regulatory processes in dealing with an alleged insanitary condition. Specifically the Bill seeks to make the following amendments to the Public Health Act:

- Allow the Minister to determine a Code of Practice setting out guidelines for the Chief Health Officer (CHO) about the public health management of insanitary conditions caused by hoarding and domestic squalor;
- Improve administrative mechanisms for the submission and implementation of an abatement order, as granted by the ACT Magistrates Court; and
- Corrects an oversight in the structuring of an offence provision for causing or suffering an insanitary condition.

This Bill fundamentally seeks to better address the serious public health risks associated with a reoccurring insanitary condition and in doing so, seeks to minimise possible health impacts to any person living in or adjacent to the insanitary condition as well as safeguard property and privacy rights of affected neighbouring residents. The Bill also seeks to improve regulatory transparency in the public health management of instances concerning hoarding, hoarding-like behaviours and domestic squalor through the determination of a Ministerial Code of Practice.

A Code of Practice that gives consideration to the public health and social complexities of compulsive hoarding-like behaviours would provide guidance to the CHO about the complex management of certain insanitary conditions. This would provide greater regulatory transparency, community awareness and certainty around the ACT Government's approach to the public health management of insanitary conditions associated with hoarding-like behaviour or domestic squalor

Human Rights Assessment

It is a requirement that compatibility with the *Human Rights Act 2004* (the HRA) be addressed in explanatory statements to Bills presented to the ACT Legislative Assembly.

While the Bill does not in itself introduce new measures to limit human rights, the provisions of the *Public Health Act 1997* have not previously been assessed for compatibility against the HRA. It is therefore prudent that the proposed amendments to the Public Health Act are not assessed against the HRA in isolation. Where necessary, this explanatory statement assesses individual clauses of the Bill against the HRA to ensure that individual human rights, as guaranteed by the HRA, are not unjustifiably or unlawfully compromised.

Section 12(a) of the HRA provides that everyone has the right “not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily”. The implementation of an abatement order could be seen to interfere with this right if undertaken without regard to reasonable notice to the occupant as well as the duration and frequency at which an abatement order may be implemented. In recognising that compulsive behaviours, mental impairment and general neglect can generate insanitary conditions for the purposes of the Public Health Act, it is noted that the use of abatement notices and abatement orders under the Public Health Act may operate as having a greater impact on the abovementioned population groups.

To guarantee a degree of regulatory transparency and to ensure that potential human rights and social consequences of any public health intervention for an insanitary condition are identified and duly considered (particularly those associated with alleged hoarding-like behaviours), the Bill proposes alterations to section 133 of the Public Health Act. The new provisions of section 133 will enable the Minister to determine a Code of Practice that would set out guidelines for the CHO relating to management of hoarding, compulsive hoarding-like behaviours and domestic squalor (a Hoarding Code of Practice). In line with best practice principles, any such Hoarding Code of Practice conditions would have regard to certain elements such as the potential impact on privacy and property, health and wellbeing, referring affected persons to appropriate support agencies/services, the protection of public health and any other least restrictive means that are reasonable available. A Hoarding Code of Practice must also provide that the circumstances that give rise to the issue of an abatement notice or abatement order are to be subject to regular review.

Under Section 133 as amended by this Bill, a Code of Practice that has regard to the public health and social complexities of compulsive hoarding-like behaviours would provide valuable guidance to the CHO about the best-practice management of certain insanitary conditions and ensure that potential human rights concerns are identified and considered. The determination of a Hoarding Code of Practice ultimately helps to ensure that actions taken under the Public Health Act are considered, balanced, proportionate and complement existing safeguards under the HRA.

The Hoarding Code of Practice would also formally establish an intergovernmental advisory body to provide advice to the CHO on these matters. This function is currently performed by the Hoarding Case Management Group (HCMG), an intergovernmental working group that discusses and addresses the impacts of hoarding-like behaviours in the ACT. The HCMG provides operational advice about whether the seeking and implementation of an abatement order is absolutely necessary to remove a serious public health risk. The working group maintains varied membership including representation from ACT Government agencies including: ACT Health Protection Service; ACT Mental Health; ACT Fire and Rescue; ACT Housing; Access Canberra; Parks and Territory Services; Enforcement Planning, City Services; Domestic Animal Services in addition to non-government agencies such as the Canberra Living Conditions Network and the RSPCA. Under a Hoarding Code of Practice, the HCMG (or similar body) will continue to provide advice to the CHO about the management of insanitary conditions associated with compulsive hoarding-like behaviours to ensure that regulatory actions are only employed when in the public interest and when other least restrictive means are not reasonably available.

It is stressed that only the Magistrates Court may issue an abatement order after a thorough and independent review of all available evidence. This Bill only seeks to allow the CHO to apply to the Court for another abatement order to address recurrence of an alleged insanitary condition. As per current processes, any decision to issue an abatement order is to remain at the discretion of the court. Independent assessment by the Magistrates Court helps to ensure that any regulatory activities that are undertaken by ACT Health are appropriately balanced against the HRA and that responsible persons are afforded reasonable notice and opportunity to challenge any allegation of an insanitary condition or make representations to the contrary.

The CHO, as public authority must also have regard to, and act consistently with human rights in accordance with section 40B of the HRA. The CHO (or CHO delegate) is currently the only public officer who may apply to the Magistrates Court for an abatement order under section 73(1) of the Public Health Act. Authorised public health officers must also consider and act consistently with human rights in making decisions under the Public Health Act, this is particularly important in instances where compulsive behaviour, mental impairment or disability could reasonably be seen to contribute to an insanitary condition. The ability to determine a new Code of Practice about the public health management of hoarding-like behaviours (as inserted by this Bill) seeks to complement existing obligations under the HRA.

The principal objective of the Bill is to mitigate public health risks of an insanitary condition and improve regulatory transparency around the public health management of hoarding-like behaviours and domestic squalor. This Bill is not considered to introduce any new measures that unnecessarily engage human rights. The Bill also aims to improve community awareness, regulatory transparency and accountability with respect to the complex management of insanitary conditions associated with hoarding, hoarding-like behaviours and domestic squalor in-line with the HRA. The measures introduced by this Bill are consistent with accepted best-practice approaches and other states and territories.

Clauses

A detailed explanation of each clause of the Bill follows:

Clause 1 **Name of Act**

This clause declares the name of the Bill to be the *Public Health Amendment Bill 2016*.

Clause 2 **Commencement**

Pursuant to this provision, the Public Health Amendment Bill 2016 (the Bill) is to commence on the day after notification.

Due to the operation of section 75(1) of the *Legislation Act 2001* (the Legislation Act) the naming and commencement provisions of this Bill, clauses 1 and 2, commence automatically on the day the Public Health Act is notified. A note to that effect is included in the provision.

Clause 3 **Legislation amended**

This clause provides that the Public Health Amendment Bill 2016 amends the Public Health Act. Upon commencement of this Bill, the *Public Health Amendment Act 2016* (Public Health Amendment Act) will alter the Public Health Act in accordance with the provisions that the Bill contains. The Public Health Amendment Act will then be immediately repealed. Consequentially from the date that the Public Health Amendment Act commences, a new republication of the Public Health Act will be available. The republication will feature the alterations made by the Public Health Amendment Act.

Clause 4 Offences against Act – application of Criminal Code etc
Section 6A, note 1

Section 6A of the Public Health Act alerts the reader to the application of other legislation in relation to offences in the Public Health Act, such as the Criminal Code. Note 1 in the section then specifically names two sections of the Public Health Act to which Chapter 2 of the Criminal Code impacts.

This amendment amends note 1 of section 6A to add a third dot point, and thereby a third section of the Public Health Act to which Chapter 2 of the Criminal Code will have application. The additional provision is section 67 (Offence – insanitary conditions).

The effect is that users of the legislation are alerted to the fact that when dealing with the offence in section 67 for causing or allowing an insanitary condition the user must have due regard to the provisions in Chapter 2 of the Criminal Code.

Clause 5 Section 67

This clause amends the Public Health Act to insert a restructured offence for causing or allowing an insanitary condition. The offence as currently drafted requires the prosecution to prove that the person causing the insanitary condition, or allowing it to exist, reasonably believes the condition to be insanitary. This construction is flawed and inappropriate as the presence of an insanitary condition should be an objective assessment applying the test of what an ordinary reasonable person would believe on reasonable grounds, not the person that is responsible for the existence of the insanitary condition.

It should also be noted that the definition of an ‘insanitary condition’ in the Dictionary for the Public Health Act already incorporates a reasonable person test. The meaning of an ‘insanitary condition’ for the Public Health Act is something that “a reasonable person would consider to be, or liable to become, a public health risk, damaging to public health or offensive to community health standards”.

As the meaning of ‘insanitary condition’ for the Public Health Act already contains a reasonable person test there is no need for this component to also appear within the structure of the offence in section 67. As such the amended offence provision contained in clause 5 has been simplified significantly. The offence now simply states that a person commits an offence if they either cause an insanitary condition, or they allow an insanitary condition to exist on, or emanate from, a place that the person occupies. The maximum penalty of the offence remains unchanged at 50 penalty units.

Although this amendment simplifies the construction of the offence provision it does not alter its application or the legal or evidentiary burdens within the offence. As such there are no human rights implications associated with this provision.

Clause 6 Abatement orders
Section 73 (1)

This clause corrects a deficiency with the seeking of abatement orders under the Public Health Act.

At present section 73 (1) enables the Chief Health Officer (the CHO) to apply to the ACT Magistrates Court for an abatement order that will require a person to comply with an abatement notice regarding an insanitary condition, or if the insanitary condition has been abated, undertake specified actions to prevent the recurrence of the insanitary condition. The current construction of the section prevents the CHO from seeking an abatement order that will require compliance with an abatement notice to resolve an insanitary condition **and** take action to prevent its recurrence.

To resolve this problem this clause amends the Public Health Act by substituting a revised subsection 1 into section 73. The change means that paragraph (a) applies where the insanitary condition has yet to be abated, and paragraph (b) applies where the insanitary condition has been removed but is likely to happen again.

Under paragraph (a) an order can be sought that will require the respondent, being the person to whom an abatement notice had been served, to comply with the abatement notice and also undertake action to prevent any recurrence of the insanitary condition.

Paragraph (a) cannot be relied upon in circumstances where compliance with an abatement notice has occurred and the insanitary condition has been abated, even though there may be reasonable grounds for believing that the insanitary condition is likely to recur. This could be because a person that is served an abatement notice does what is required to lift the order, but shortly after the abatement notice is lifted does acts or omits to do things that results in the same insanitary condition recurring. That is, the person complies as directed to remove the insanitary condition, but actually has no intention to remain compliant. In these circumstances an abatement order under paragraph (b) can be sought that seeks to prevent the insanitary condition from recurring.

This clause does not introduce any new regulatory powers or fundamentally change the operation of existing powers. This clause only provides administrative efficiencies in the submission of applications to the ACT Magistrates Court for an abatement order to suppress one or more public health risks associated with an insanitary condition.

Responses to applications remain at the discretion of the ACT Magistrates Court. While not expressly provided for by the Bill, it is expected that the Court will have regard to the HRA in making any decision about an application for an abatement order. It is also expected that the Court will also have regard to factors expressed under the Public Health Act relating to the implementation of abatement notices and abatement orders.

Clause 7 New sections 73 (5A) and (5B)

This clause amends the Public Health Act to insert two new subsections into section 73 Abatement orders.

Clause 7 of this Bill proposes to insert into section 73 of the Public Health Act two new subsections; (5A) and (5B). These changes would allow the CHO to seek a new abatement order from the ACT Magistrates Court to address recurrence of an insanitary condition. Pursuant to new subsection 73 (5A) as inserted by this Bill, the CHO would only be able seek an abatement order to address recurrence of the insanitary condition if: the responsible person had been issued an abatement order within the previous 12 months in relation to an abatement notice; and the responsible person failed to prevent recurrence of the insanitary condition.

This provision recognises that the time period to seek a new abatement order should be limited to a 12 month period. Following expiration of this 12 month period, any attempt to abate an insanitary condition must be conducted as part of a new regulatory process (e.g. issue of an abatement notice).

This provision is aimed at streamlining existing regulatory processes by permitting the CHO to apply to the Magistrates Court for an abatement order without the need to recommence regulatory processes under a new abatement notice. The decision whether to issue abatement order to address an insanitary remains at the discretion of the ACT Magistrates Court.

Clause 8 New Section 133 (1A) to (1C)

This clause seeks to allow for the Minister to determine a code of practice to set out guidelines for the CHO in dealing with insanitary conditions caused by hoarding or domestic squalor. In accordance with section 133 of the *Public Health Act 1997*, a code of practice made under the Public Health Act is a disallowable instrument.

This provision is aimed at increasing regulatory transparency in the ACT Government's public health management of hoarding and squalor issues, as well as increasing community awareness and understanding about the complex public health and social impacts of insanitary conditions.

In line with best practice principles, this provision sets out certain elements that must be detailed under any Code of Practice for dealing with insanitary conditions including the objectives of the Public Health Act, minimising the impact of insanitary conditions, the referral of affected persons to appropriate support agencies or services and any other least restrictive means that are reasonable available. The Code of Practice also establishes an intergovernmental advisory body to provide advice to the CHO and ensures that the circumstances that give rise to the issue of an abatement notice or abatement order are subject to regular review.

The Code of Practice is to be determined through a disallowable instrument to allow for independent oversight and scrutiny by the ACT Legislative Assembly. The making of a Code of Practice on this issue is consistent with accepted best-practice approaches as well as other states and territories.