

PUBLIC HEALTH (AMENDMENT) ACT.

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 16, 1975.

An Act to dissolve the Advisory Board of Health; to make further provision for regulating the use of dangerous substances; for these and other purposes to amend the Public Health Act, 1902, and the Medical Practitioners Act, 1938; and for purposes connected therewith. [Assented to, 10th April, 1975.]

BE

Public Health (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by No. 16, 1975
 and with the advice and consent of the Legislative
 Council and Legislative Assembly of New South Wales in
 Parliament assembled, and by the authority of the same, as
 follows:—

PART I.**PRELIMINARY.**

1. This Act may be cited as the "Public Health Short title.
 (Amendment) Act, 1975".

2. (1) This Part and Part II shall commence on the Commence-
 date of assent to this Act. ment.

(2) The several provisions of Part III shall commence
 on such day or days as may be appointed by the Governor
 in respect thereof and as may be notified by proclamation
 published in the Gazette.

3. The Public Health Act, 1902, is, in this Act, referred Principal
 to as the Principal Act. Act.

4. This Act is divided as follows :— Division
of Act.

PART I.—PRELIMINARY—ss. 1-4.

**PART II.—DISSOLUTION OF ADVISORY BOARD OF
 HEALTH—ss. 5, 6.**

**PART III.—REGULATION OF DANGEROUS SUBSTANCES
 —ss. 7-9.**

PART

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PART II.

DISSOLUTION OF ADVISORY BOARD OF HEALTH.

Amendment
of Act No.
30, 1902.

5. The Principal Act is amended—

Sec. 1.
(Short title
and
division.)

(a) (i) by omitting from the matter relating to Part II in section 1 the words "ADVISORY BOARD OF HEALTH" and by inserting instead the word "COMMISSION";

(ii) by omitting from the same matter the words "*The Advisory Board of Health—ss. 6–16.*" and by inserting instead the words "*The Commission—ss. 10–16.*";Sec. 3.
(Interpre-
tation.)

(b) (i) by omitting the definition of "Board" in section 3;

(ii) by omitting the definition of "President" in section 3;

Part II.

(c) by omitting the headings to Part II and to Division 1 of Part II and by inserting instead the following headings :—

PART II.

THE COMMISSION AND LOCAL AUTHORITIES.

DIVISION 1.—*The Commission.*Sec. 6.
(Constitu-
tion of the
Board.)

(d) by omitting section 6;

Sec. 7.
(Members
of the
Board.)

(e) by omitting section 7;

Sec. 8.
(Quorum.)

(f) by omitting section 8;

Sec. 9.
(Advisory
powers of
the Board.)

(g) by omitting section 9.

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6. (1) In this section, "Board" has the meaning attributed thereto by section 3 of the Principal Act immediately before the commencement of this Part.

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Dissolution
of Advisory
Board of
Health.

(2) The Board that was in existence immediately before the commencement of this Part is dissolved.

(3) Any person who, immediately before the commencement of this Part, held office as a member of the Board—

- (a) ceases, upon that commencement, to hold that office; and
- (b) is not entitled to be paid any remuneration or compensation by reason of his ceasing to be a member of the Board.

PART III.

REGULATION OF DANGEROUS SUBSTANCES.

7. The Principal Act is further amended—

- (a) (i) by omitting from the matter relating to Part VIIA in section 1 the words "HYDROCYANIC ACID AND OTHER";
- (ii) by omitting from the same matter the matter "71C" and by inserting instead the matter "71G";
- (iii) by omitting from the matter relating to Division 5 of Part X in section 1 the matter "108" and by inserting instead the matter "108B";
- (b) by omitting from section 29 (3) the words "a fee of twenty-five cents" and by inserting instead the words "the prescribed fee";
- (c) by omitting from the heading to Part VIIA the words "HYDROCYANIC ACID AND OTHER";

Further
amendment
of Act No.
30, 1902.

Sec. 1.
(Short title
and
division.)

Sec. 29.
(Notification
of infectious
diseases.)

Heading to
Part VIIA.

(d)

(d)

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Sec. 71B.
(Restriction
on use of
dangerous
substance
for purpose
of
fumigation.)

Sec. 71C.
(Regula-
tions.)

(d) by omitting from section 71B (2) the words "two hundred dollars" and by inserting instead the words "\$200 and, in addition, where a contravention continues, to a further penalty not exceeding \$100 for each day the contravention continues";

(e) (i) by inserting in section 71C (1) after the word "regulations" the words "for or";

(ii) by inserting in section 71C (1) (a) after the word "granting" the words ", renewing and cancelling";

(iii) by omitting section 71C (1) (b) and (c) and by inserting instead the following paragraphs :—

(b) prohibiting or regulating the use of a dangerous substance;

(c) the design, supply, cleanliness, maintenance, marking and disposal of any container, equipment, appliance or thing which is to be, or has been, used in connection with a dangerous substance;

(d) precautions against risk of absorption of a dangerous substance, or risk of injury or poisoning arising out of the use of a dangerous substance including the use of things provided in pursuance of the regulations;

(e) the storage, handling and conveyance of a dangerous substance;

(f) procedures to be followed in the event of escape or spillage of a dangerous substance;

(g) preventing the contamination of any thing or person by a dangerous substance;

(h)

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- (h) the design, supply, use, storage, main- No. 16, 1975
tenance, washing and cleansing of
protective clothing and other clothing
and of other things required for pro-
tecting persons, clothing, equipment
and appliances from contamination
by any dangerous substance or
for removing any contamination
therefrom;
- (i) the provision, design, location and
maintenance of amenities, including
accommodation, facilities for washing
and eating and the supply and use of
drinking water, in prescribed circum-
stances involving risk of absorption of
a dangerous substance or risk of injury
or poisoning arising out of the use of a
dangerous substance;
- (j) requiring persons, in prescribed cir-
cumstances involving risk of absorption
of a dangerous substance or risk of
injury or poisoning arising out of the
use of a dangerous substance, to
undergo a prescribed biological test;
- (k) requiring persons to abstain from eat-
ing, drinking or smoking in prescribed
circumstances involving risk of absorp-
tion of a dangerous substance or risk
of injury or poisoning arising out of
the use of a dangerous substance;
- (l) securing intervals between, or limita-
tions of, periods of exposure to risk of
absorption of a dangerous substance or
risk of injury or poisoning arising out
of the use of a dangerous substance;

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- (m) prohibiting (temporarily or permanently) or restricting the exposure of persons to risk of absorption of a dangerous substance or risk of injury or poisoning arising out of the use of a dangerous substance ;
- (n) measures for detecting and investigating cases in which absorption of a dangerous substance or injury or poisoning arising out of the use of a dangerous substance has occurred including medical examinations, the making of prescribed biological tests and the notification of absences from work in prescribed circumstances involving risk of absorption of a dangerous substance or risk of injury or poisoning arising out of the use of a dangerous substance ;
- (o) the provision, keeping available in good order, and the use, of facilities, equipment and other things for preventive and first aid treatment in prescribed circumstances involving risk of absorption of a dangerous substance or risk of injury or poisoning arising out of the use of a dangerous substance ;
- (p) requiring the provision of, and submission to, instruction and training in the use of things provided in pursuance of the regulations and in the effects of dangerous substances and the observance of precautions ;
- (q) the making, keeping and inspection of records of matters relating to the risk of absorption of, or risk of injury or poisoning arising out of the use of, a dangerous substance and the furnishing

of

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of returns and information relating to No. 16, 1975
 those matters including returns and
 information related to medical examin-
 ations, biological tests and injury or
 poisoning;

- (r) imposing on prescribed persons or classes of persons the obligation to comply with the provisions of the regulations; and
 - (s) all matters which by this Part are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (iv) by omitting from section 71c (2) the words "paragraph (c) of";
- (v) by omitting from section 71c (2) the words "Factories and Shops Act, 1912-1943" and by inserting instead the words "Factories, Shops and Industries Act, 1962";
- (vi) by inserting after section 71c (2) the following subsections :—
- (3) Regulations made under subsection (1) may—
 - (a) apply differently according to such factors as may be specified in the regulations;
 - (b) provide that any act or thing shall be done or be in accordance wholly or partly with a specified standard or with the approval or to the satisfaction of a prescribed person or class of persons;
 - (c) confer upon a prescribed person or class of persons a discretionary authority;

(d)

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- (d) confer on either the Commission or other prescribed persons, or both, power to give, in such manner as may be prescribed, instructions, orders, directions or requirements;
 - (e) exempt persons or classes of persons, either absolutely or subject to conditions, from provisions of the regulations or provide for the grant of absolute or conditional exemptions from provisions of the regulations by the Commission or other prescribed persons, or both; and
 - (f) impose a penalty not exceeding \$200 for any breach of a regulation and, in addition, where the breach continues, a penalty not exceeding \$100 for every day that the breach continues.
- (4) No person shall—
- (a) wilfully interfere with or misuse any clothing, appliance, equipment, facility or other thing provided in pursuance of a regulation made under subsection (1); or
 - (b) wilfully and without reasonable cause do anything likely to cause risk of absorption of a dangerous substance or risk of injury or poisoning by a dangerous substance, to himself or others.

Penalty for an offence against this subsection : \$200, and, in addition, for a continuing offence, \$100 for each day the offence continues.

(f)

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(f) by inserting after section 71C the following sections :—

Secs.
71D-71G.

71D. (1) The Commission may appoint officers to be inspectors of dangerous substances. Inspectors.

(2) Subject to subsection (3), an inspector of dangerous substances, for the purpose of the execution of this Part or of regulations made under this Part, may enter at any reasonable time any premises or conveyance—

- (a) in or on which a dangerous substance is being, has recently been or is about to be, used, stored, handled or conveyed;
- (b) in or on which things are required by regulations to be done or provided; or
- (c) which he has reasonable cause to believe to be premises or a conveyance falling within paragraph (a) or (b).

(3) An inspector of dangerous substances shall not enter any premises or conveyance, or any part of premises or of a conveyance, used exclusively as a residence except with the consent of the occupier.

(4) Any person refusing or failing to admit an inspector of dangerous substances in the exercise of his authority under subsection (2) is, for the purposes of section 96 (1) (b) (iii), subject to a penalty.

(5) The provisions of section 96 apply where an inspector of dangerous substances has an authority to enter any premises or conveyance in the same way as they apply where the Commission or a local authority or their officers have a power to enter any premises under, or referred to in, section

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95 and they so apply as if the word "premises" wherever occurring in section 96 were construed so as to include a conveyance.

(6) For the purpose of the execution of this Part or of regulations made under this Part, an inspector of dangerous substances may—

- (a) require the production of, and inspect, examine and copy, registers, records or other documents kept in pursuance of regulations made under this Part;
- (b) make examinations, enquiries and tests and take such photographs as he considers necessary to ascertain whether the provisions of this Part, and the regulations made under this Part, are being complied with;
- (c) require any person whom he finds in or on any premises or conveyance referred to in subsection (2) to give such information as it is in his power to give as to who is the owner or occupier of those premises or that conveyance or the employer of persons employed to work in or on those premises or that conveyance;
- (d) either alone or in the presence of any other person, as the inspector thinks fit, require any person whom he finds in or on any premises or conveyance referred to in subsection (2) or whom he has reasonable cause to believe to be, or to have been within the preceding three months, employed to work in or on those premises or that conveyance to answer questions with respect to the observance of the provisions of this Part, or the regulations made under this Part;

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- (e) take for analysis a sample of any substance No. 16, 1975 or thing which in his opinion may be, contain or be contaminated by, a dangerous substance or a degradation product of a dangerous substance;
- (f) in the case of an inspector who is a legally qualified medical practitioner, carry out medical examinations;
- (g) carry out prescribed biological tests in a prescribed manner in prescribed circumstances; and
- (h) exercise such other powers as may be necessary for carrying out the provisions of this Part, and regulations made under this Part.

(7) Where, under this section, an inspector requires a person to answer a question and the answer tends to incriminate that person, neither the question nor the answer may be used in any proceedings against that person except proceedings under subsection (9) in respect of a wilfully false or misleading answer to the question.

(8) Subsection (7) applies whether the person required to answer a question objects to answering it or not.

(9) A person shall be deemed to have obstructed a person in the discharge of a duty imposed on him under an authority conferred by this Act if that person—

- (a) wilfully delays an inspector of dangerous substances in the exercise of any power under this section;
- (b) fails to comply with any requirement of an inspector made in pursuance of this section;

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- (c) prevents or attempts to prevent, a person from appearing before, or complying with a requirement of, an inspector under this section; or
- (d) wilfully gives a false or misleading answer in purported compliance with such a requirement.

Appeals.

71E. (1) Any person aggrieved by any determination made by an inspector of dangerous substances under a discretionary authority may appeal, within ten days after the determination is notified to him, against the determination to the Commission.

(2) An appeal under subsection (1) shall be made in accordance with the regulations.

(3) The Commission, in deciding an appeal under subsection (1), may confirm the determination made by the inspector appealed against with or without modification or refuse to confirm that determination.

(4) The determination of the Commission in respect of any appeal under subsection (1) shall be final and shall be deemed to be the determination of the inspector.

Analysis.

71F. (1) In this section "analyst" means an analyst within the meaning of the Therapeutic Goods and Cosmetics Act, 1972.

(2) An inspector of dangerous substances may submit any sample taken under section 71D (6) (e) to an analyst for analysis.

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(3) Where an analysis has been made by ^{No. 16, 1975} an analyst or under his personal supervision in respect of any sample submitted for analysis under subsection (2), the analyst may issue a certificate setting out the results of that analysis.

(4) Where a certificate has been issued under subsection (3) setting out the results of an analysis made in respect of any sample, the owner of the substance or thing from which the sample was taken or the person in whose possession, care or custody or under whose control the substance or thing was at the time of the taking of the sample shall, upon payment of the prescribed fee, be supplied with a copy of the certificate.

(5) No person shall, for trade purposes or advertisement, use any analysis made for the purpose of this section.

71G. A person shall not disclose any information ^{Non-} obtained by him in connection with the implemen- ^{disclosure} tation of this Part or the regulations made under ^{of informa-} this Part except in the course of his implementing ^{tion.} this Part or those regulations.

- (g) (i) by inserting in section 108 (1) (b) after the ^{Sec. 108.} word "officer" where secondly occurring the ^{(Proof in} words ", inspector of dangerous substances"; ^{certain} ^{cases.)}
- (ii) by inserting after section 108 (2) the following subsection :—

(3) In any legal proceeding or prosecution under the provisions of this Act a certificate purporting to be signed by an analyst and setting out the results of an analysis is evidence of the substance analysed, of the result of the analysis and that the analysis was carried out in such manner as may be specified in the certificate.

(h)

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Secs. 108A
and 108B.Third party
procedure.

(h) by inserting after section 108 the following sections :—

108A. (1) A person against whom proceedings are brought for a contravention of the provisions of this Act or the regulations is, upon information laid by him and on giving to the prosecution not less than three clear days' notice of his intention, entitled to have any other person to whose act or default he alleges that the contravention was due brought before the court in the proceedings.

(2) If, after the contravention has been proved, the original defendant proves that the contravention was due to the act or default of that other person, that other person may be convicted of the offence, and, if the original defendant further proves that he used all due diligence to secure that the provisions in question were complied with, the information against him for the offence shall be dismissed.

(3) Where a defendant seeks to avail himself of the provisions of subsection (2)—

- (a) the prosecution, as well as the person whom the defendant charges with the offence, has the right to cross-examine the defendant if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence; and
- (b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party to those proceedings.

Offences by
corpora-
tions.

108B. A person who is a director, within the meaning of the Companies Act, 1961, or an employee, of a corporation which offends against

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this Act or the regulations is guilty of the same No. 16, 1975 offence, and liable to be punished accordingly, unless—

- (a) the offence committed by the corporation was committed without the knowledge of that person;
- (b) that person was not in a position to influence the conduct of the corporation in relation to the commission of the offence by it; or
- (c) that person, being in such a position, used all due diligence to prevent the commission of the offence by the corporation.

8. The Medical Practitioners Act, 1938, is amended by inserting after section 42 (3) the following subsection :—

Amendment
of Act No.
37, 1938.
Sec. 42.

(4) Subsection (2) shall not apply to an advertisement or holding out by an inspector of dangerous substances appointed under section 71D of the Public Health Act, 1902, in relation to the lawful exercise of his functions or duties under that Act or the regulations made under that Act.

(Penalty for
posing as
medical
practitioner
when not
registered.)

9. A regulation made under section 71C of the Principal Act and in force immediately before the commencement of section 7 of this Act shall, if it could have been made under the Principal Act as amended by this Act, be deemed to have been made under the Principal Act, as so amended.