

PUBLIC HEALTH (AMENDMENT) ACT, 1985, No. 70

New South Wales



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ELIZABETHÆ II REGINÆ

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Act No. 70, 1985.

An Act to amend the Public Health Act, 1902, for the purpose of making further provision with respect to land declared under that Act to be unhealthy building land; to validate certain matters; and for certain other purposes. [Assented to, 15th May, 1985.]

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BE it enacted by the Queen's Most Excellent Majesty, by 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:—

Short title.

1. This Act may be cited as the "Public Health (Amendment) Act, 1985".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.
(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

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

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENT TO THE PRINCIPAL ACT RELATING TO LAND DECLARED UNHEALTHY BUILDING LAND.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

SCHEDULE 3.—REPEALS.

SCHEDULE 4.—SAVINGS AND OTHER PROVISIONS.

Amendment of Act No. 30, 1902.

5. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

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Repeals.

6. Each Act specified in Schedule 3 is, to the extent indicated therein, repealed.

Savings and other provisions.

7. Schedule 4 has effect.

SCHEDULE 1.

(Sec. 5.)

AMENDMENT TO THE PRINCIPAL ACT RELATING TO LAND DECLARED
UNHEALTHY BUILDING LAND.

Sections 54-55G—

Omit sections 54 and 55, insert instead:—

Secretary to report that specified land is unsuitable for building in certain cases.

54. (1) Where, after causing due inquiry to be made, the Secretary finds that it would be prejudicial to health for specified land to be built on, or to be built on for specified purposes or in specified cases, the Secretary shall prepare in writing a report of the finding in accordance with subsection (2) and forthwith submit the report to the Minister.

(2) A report prepared for the purpose of subsection (1) shall specify—

- (a) the land to which the report relates; and
- (b) the reasons which influenced the Secretary in coming to the finding referred to in that report.

(3) A report prepared for the purpose of subsection (1) may recommend—

- (a) either that building on the land be prohibited absolutely or that building on the land be prohibited for specified purposes or in specified cases; and

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SCHEDULE 1—*continued.*

AMENDMENT TO THE PRINCIPAL ACT RELATING TO LAND DECLARED
UNHEALTHY BUILDING LAND—*continued.*

- (b) the measures that in the opinion of the Secretary ought to be taken, the events that in the opinion of the Secretary ought to occur or, as the case may be, the conditions that in the opinion of the Secretary ought to be complied with before the land will become fit to be built on or, as the case may be, to be built on for specified purposes or in specified cases.

Power of Minister to declare land to be unhealthy building land.

55. (1) Where the Minister receives a report under section 54 concerning any specified land, the Minister may, after causing such inquiries to be made, and such notifications to be given, as the Minister thinks necessary, declare the land, or such part of the land as may be specified in the declaration, to be unhealthy building land.

(2) Notice of a declaration under subsection (1)—

(a) shall be published in the Gazette; and

(b) shall be—

(i) served on the owner of the land to which the declaration relates; or

(ii) published in 3 consecutive issues of a newspaper circulating in the district in which the land to which the declaration relates is situated.

(3) A declaration made under subsection (1) shall take effect on the day on which notice of the declaration is published in the Gazette under subsection (2) (a).

Specification of measures, etc., to be taken in order to build.

55A. (1) Where a declaration under section 55 (1) is in force in respect of any land, the Secretary may, at any time, and shall, at the request of the owner of the land, or of any person with the consent of the owner, specify—

(a) the measures which are required to be taken;

(b) the events which are required to occur; and

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SCHEDULE 1—*continued.*

AMENDMENT TO THE PRINCIPAL ACT RELATING TO LAND DECLARED
UNHEALTHY BUILDING LAND—*continued.*

(c) the conditions which are required to be complied with,

before a structure may be built on the land or, where the specification is given pursuant to a request, such part of the land as may be specified in the request.

(2) The Secretary may, at any time, vary a specification of measures, events and conditions under subsection (1).

Restriction on building of structures.

55B. (1) Where a declaration under section 55 (1) is in force in respect of any land, a person shall not build any structure, or cause any structure to be built, on the land except with the approval of the Secretary.

(2) Application for an approval under subsection (1) may be made by the owner of the land in respect of which the approval is sought, or by any person with the consent of the owner, and shall be made in such form (if any) as the Secretary may require.

(3) An approval under subsection (1) may be given unconditionally or subject to such conditions as may be specified in the approval.

(4) The Secretary may vary the conditions of an approval under subsection (1) on application made by a person who is entitled to apply for the approval.

(5) The Secretary shall give notice, in writing, of an approval under subsection (1) or of any variation of the conditions of an approval to the applicant for the approval or the variation, as the case may be.

(6) Nothing in this section derogates from or otherwise affects the provisions of any other Act or law relating to the building of structures on land.

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SCHEDULE 1—*continued.*

AMENDMENT TO THE PRINCIPAL ACT RELATING TO LAND DECLARED
UNHEALTHY BUILDING LAND—*continued.*

Offence—unlawful building of structures.

55C. Where a declaration under section 55 (1) is in force in respect of any land, a person who builds a structure, or causes a structure to be built, on the land without the approval of the Secretary under section 55B or otherwise than in accordance with the conditions of such an approval is guilty of an offence and liable on conviction to a penalty not exceeding \$50 for every day or part of a day during which the structure remains on the land without the approval of the Secretary under section 55B or otherwise than in accordance with the conditions of such an approval.

Revocation of declaration.

55D. (1) Where, in relation to land the subject of a declaration under section 55 (1), the Minister is satisfied that—

- (a) measures have been taken as to the whole of the land, or as to a specified part of the land, so as to render the land or part, as the case may be, fit to be built upon;
- (b) events have occurred as to the whole of the land, or as to a specified part of the land, so as to render the land or part, as the case may be, fit to be built upon;
- (c) conditions have been complied with as to the whole of the land, or as to a specified part of the land, so as to render the land or part, as the case may be, fit to be built upon; or
- (d) it is for some other reason in the public interest that the declaration be revoked as to the whole of the land, or as to a specified part of the land,

the Minister shall revoke the declaration as to the whole of the land or as to the specified part of the land, as the case requires.

(2) Notice of the revocation under subsection (1) of a declaration under section 55 (1) shall be published in the Gazette.

(3) A revocation under subsection (1) shall take effect on the day on which notice of the revocation is published in the Gazette.

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SCHEDULE 1—*continued.*

AMENDMENT TO THE PRINCIPAL ACT RELATING TO LAND DECLARED
UNHEALTHY BUILDING LAND—*continued.*

Certificates relating to land in respect of which a declaration under section 55 may be in force.

55E. (1) A person is, on making an application to the Secretary in or to the effect of the prescribed form and payment of the prescribed fee, entitled to obtain from the Secretary a certificate to the effect that land specified in the application is or, as the case may be, is not subject to a declaration made under section 55 (1).

(2) The production of a certificate obtained from the Secretary under subsection (1) shall, for all purposes, be conclusive evidence in favour of the person who obtained the certificate that, at the date of issue of certificate, the matters certified in the certificate were correct.

Declarations made under section 55 to be open for public inspection.

55F. (1) It is the duty of the Secretary to keep copies of declarations made under section 55 (1), and of all variations and revocations of those declarations, at the head office of the Department in Sydney for inspection by members of the public.

(2) Any person is, at any time during the ordinary business hours of the head office of the Department in Sydney, entitled, on payment of the prescribed fee, if any, to inspect the documents referred to in subsection (1) and to make copies of those documents or of any parts of them.

Duty of local authority to notify Secretary of certain matters relating to land that is subject to a declaration under section 55.

55G. It is the duty of a local authority, forthwith after approving a subdivision of land in respect of which a declaration under section 55 (1) is in force, to notify the Secretary in writing of the locality and particulars of the subdivision.

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SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

- (1) Section 1—
Omit the section, insert instead:—
Short title.
1. This Act may be cited as the “Public Health Act, 1902”.
- (2) (a) Section 3, definition of “Local authority”—
Omit “municipality” wherever occurring, insert instead “city, municipality”.
- (b) Section 3, definition of “Officer”—
Omit “, sub-inspector,”.
- (3) Section 10—
Omit “as amended by subsequent Acts,”.
- (4) Section 26C—
Omit “or any Act amending it,”.
- (5) Section 26E—
Omit “Factories and Shops Act, 1912, as amended by subsequent Acts”, insert instead “Factories, Shops and Industries Act, 1962”.
- (6) Section 34 (2)—
Omit “subdivision”, insert instead “paragraph”.
- (7) Section 39A (1), definition of “Council”—
Omit “as amended by subsequent Acts, undertaking the immunisation of persons against an infectious disease under and in accordance with the provisions of section 299A of the said Act, as so amended”, insert instead “undertaking the immunisation of persons against an infectious disease under and in accordance with the provisions of section 299A of that Act”.
- (8) Section 43A (2), (3)—
Omit the subsections, insert instead:—
(2) A regulation made under subsection (1) may impose a penalty not exceeding \$500 or imprisonment for a term not exceeding 3 months, or both, for any contravention thereof.
(3) Proceedings for an offence against a regulation made under subsection (1) may be taken before a Magistrate or any 2 justices constituting a Local Court.
- (9) Section 48 (5)—
Omit the subsection.

*Public Health (Amendment) 1985*SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION—*continued.*

- (10) (a) Section 51A (2)—
Omit the subsection.
- (b) Section 51A (4)—
Omit “, as amended by subsequent Acts”.
- (11) Section 51C (4)—
Omit “as amended by subsequent Acts,”.
- (12) (a) Section 63 (1)—
Omit “Quarter Sessions”, insert instead “the District Court”.
- (b) Section 63 (2) (b)—
Omit “Court of Quarter Sessions”, insert instead “District Court”.
- (13) Section 69 (1)—
Omit “Quarter Sessions”, insert instead “the District Court”.
- (14) Section 71C (2)—
Omit “Explosives Act, 1905, as amended by subsequent Acts”, insert instead “Dangerous Goods Act, 1975”.
- (15) Section 94 (1), (2) (c)—
Omit “Revenue” wherever occurring.
- (16) Section 98 (1)—
Omit “police or stipendiary magistrate or any two justices in petty sessions”, insert instead “Magistrate or any 2 justices constituting a Local Court”.
- (17) Section 103—
Omit the section, insert instead:—
Requirements for valid regulations and by-laws.
103. Section 41 of the Interpretation Act, 1897, applies in respect of a regulation or by-law made under this Act as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.
- (18) Section 108B—
Omit “Companies Act, 1961”, insert instead “Companies (New South Wales) Code”.

*Public Health (Amendment) 1985*SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION—*continued.*

(19) (a) Section 111—

Omit “the Sydney Corporation Act, 1932, and any Act amending those Acts.”.

(b) Section 111—

Omit “Factories and Shops Act, 1912”, insert instead “Factories, Shops and Industries Act, 1962”.

(20) Second Schedule, Part II—

Omit item 7, insert instead:—

7. The administration of the health and welfare provisions of Divisions 4, 8 and 9 of Part III of the Factories, Shops and Industries Act, 1962.

SCHEDULE 3.

(Sec. 6.)

REPEALS.

Public Health (Amendment) Act, 1944, No. 16—section 6 (1) (b).

Public Health (Amendment) Act, 1965, No. 22—so much of the Schedule as amends section 55 (3) of Act No. 30, 1902.

Miscellaneous Acts (Health Administration) Amendment Act, 1982, No. 138—so much of Schedule 1 as amends section 6 (1) (b) of Act No. 16, 1944.

SCHEDULE 4.

(Sec. 7.)

SAVINGS AND OTHER PROVISIONS.

Interpretation.

1. In this Schedule, “appointed day” means the day appointed and notified under section 2 (2).

Saving and transitional provision—declarations.

2. (1) A declaration made by the Minister under section 55 (1) of the Principal Act before the appointed day and which was in force immediately before that day—

(a) shall be deemed to be a declaration made by the Minister under section 55 (1) of the Principal Act, as amended by this Act; and

(b) may accordingly be revoked under section 55D (1) of the Principal Act, as so amended.

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SCHEDULE 4—*continued.*

SAVINGS AND OTHER PROVISIONS—*continued.*

- (2) The measures—
- (a) referred to in a declaration made by the Minister and which was in force immediately before the appointed day; and
 - (b) specified in a document deposited in the office of a local authority, under section 55 (1) of the Principal Act before the appointed day—
 - (c) shall be deemed to be a specification of measures, events and conditions by the Secretary under section 55A (1) of the Principal Act, as amended by this Act; and
 - (d) may accordingly be varied under section 55A (2) of the Principal Act, as so amended.

Validation.

3. Any act, matter or thing done or purporting to have been done under section 55 of the Principal Act before the appointed day which would have been valid had the Principal Act, as amended by this Act, been in force at the time at which the act, matter or thing was done or was purported to be done is validated.
