

# **PUBLIC HEALTH ACT 1991 No. 10**

NEW SOUTH WALES



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*Public Health 1991*

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SCHEDULE 1—SCHEDULED MEDICAL CONDITIONS  
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# **PUBLIC HEALTH ACT 1991 No. 10**

## **NEW SOUTH WALES**



Act No. 10, 1991

An Act relating to the maintenance of proper standards of health for the public; and for other purposes. [Assented to 26 April 1991]

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See also Unhealthy Building Land Act 1990; Miscellaneous Acts (Public Health) Repeal and Amendment Act 1990.

**The Legislature of New South Wales enacts:****PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Public Health Act 1991.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Definitions**

3. (1) In this Act:
  - “**approved form**” means a form approved by the Minister;
  - “**area**”, in relation to a local authority, means the area in relation to which the local authority exercises its functions;
  - “**birth**” means the birth of a child who has breathed after delivery;
  - “**Category 1 medical condition**” means a medical condition listed under Category 1 in Schedule 1;
  - “**Category 2 medical condition**” means a medical condition listed under Category 2 in Schedule 1;
  - “**Category 3 medical condition**” means a medical condition listed under Category 3 in Schedule 1;
  - “**Category 4 medical condition**” means a medical condition listed under Category 4 in Schedule 1;
  - “**Category 5 medical condition**” means a medical condition listed under Category 5 in Schedule 1;
  - “**delivery**”, in relation to a child or still-born child, means the complete expulsion or extraction of the child or still-born child from the mother;
  - “**Director-General**” means the Director-General, Department of Health;
  - “**environmental health officer**” means a holder of that office who is:
    - (a) an officer of the Department of Health; or
    - (b) an employee of a local authority; or

(c) an employee of an area health service constituted under the Area Health Services Act 1986; or

(d) an employee of a hospital or separate institution specified in the Second, Third or Fifth Schedule to the Public Hospitals Act 1929;

**“local authority”** means:

(a) a council within the meaning of the Local Government Act 1919; or

(b) the Western Lands Commissioner; or

(c) the Lord Howe Island Board;

**“medical district”** means a medical district described in an order in force under section 63;

**“medical officer of health”** means a medical practitioner holding office under section 62 as a medical officer of health;

**“occupier”**, in relation to premises or a part of premises, means:

(a) a person who has the right to occupy the premises or part to the exclusion of the owner; or

(b) the person who is the owner of the premises or part if there is no person with a right to occupy the premises or part to the exclusion of the owner,

even if the premises are, or the part is, vacant;

**“perinatal death”** means:

(a) the death of a child on the day of his or her birth or within the next succeeding 28 days; or

(b) a still-birth;

**“premises”** means:

(a) a building or other structure on land; or

(b) vacant land; or

(c) a vessel; or

(d) an aircraft;

**“public authority”** means an incorporated or unincorporated body constituted by or under an Act for public purposes;

**“public health order”** means a public health order in force under section 23;

**“scheduled medical condition”** means a medical condition listed in Schedule 1;

**“still-birth”** means the birth of a child who:

- (a) at the time of delivery, is of at least 20 weeks gestation or weighs at least 400 grams; and
- (b) has not breathed after delivery.

**(2)** In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, in relation to a duty, a reference to the performance of the duty.

## **PART 2—HEALTH RISKS**

### **Orders and directions during state of emergency**

**4. (1)** This section applies if:

- (a) action is being taken under the State Emergency and Rescue Management Act 1989 in relation to an emergency within the meaning of that Act; and
- (b) the Minister, in consultation with the Minister administering that Act, decides that the emergency could result in the spread of a scheduled medical condition; and
- (c) the Minister administering that Act agrees that action should be taken under this section.

**(2)** If this section applies, the Minister:

- (a) may, by order published in the Gazette, give such directions; and
- (b) if such an order is in force, may take such action,

as the Minister considers to be necessary to avert or deal with any spread of a scheduled medical condition and its consequences.

**(3)** An order published under this section may direct all persons:

- (a) in a specified group; or
- (b) residing in a specified area,

to submit themselves for medical examination as provided by the order.

**(4)** Subsection (3) and the other provisions of this Act do not affect the generality of subsection (2).

**(5)** A person (other than a public authority) who:

- (a) is subject to a direction under this section; and
- (b) has notice of the direction; and



(c) refuses or fails to comply with the direction,  
is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

**(6)** A public authority has a duty to comply with a direction given to the public authority under this section.

**(7)** Unless it is earlier revoked, an order published under this section expires on cessation of the emergency on which it was based.

**(8)** A function exercised under this section in an emergency in respect of which a state of emergency exists under Division 4 of Part 2 of the State Emergency and Rescue Management Act 1989 has effect as a function exercised in the execution of that Division.

### **Public health risks generally**

**5. (1)** If the Minister considers, on reasonable grounds, that a situation has arisen under which the health of the public is, or is likely to be, at risk and, in relation to the situation:

(a) action under the State Emergency and Rescue Management Act 1989 is neither contemplated nor underway; and

(b) the Premier has approved the taking of action under this section, the Minister may take such action, and may by order published in the Gazette give such directions, as the Minister considers to be necessary to deal with the risk and any of its possible consequences.

**(2)** If an order in force under this section declares a specified area to be a public health risk area, the action taken and directions given may be such as the Minister considers to be necessary:

(a) to reduce or remove any risk to the health of the public in the area;  
and

(b) to segregate or isolate inhabitants of the area; and

(c) to prevent, or conditionally permit, access to the area,

**(3)** Subsection (2) does not affect the generality of subsection (1).

**(4)** A person (other than a public authority) who:

(a) is subject to a direction given under this section; and

(b) has notice of the direction; and

(c) refuses or fails to comply with the direction,  
is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

(5) A public authority has a duty to comply with a direction given to the public authority under this section.

(6) An order published under this section expires on a date that is specified in the order as its expiry date and is not more than 28 days later than the publication of the order.

(7) Section 72 (Powers of entry) applies in relation to any entry on premises required or directed for the purposes of this section.

### **Disinfection or destruction of articles**

6. (1) This section applies to an article that:

- (a) has been in contact with a person suffering from a scheduled medical condition which is transmissible by contact with an article; or
- (b) is verminous; or
- (c) is likely to be verminous, or dangerous, or prejudicial to health, because it has been used by a person infested with vermin.

(2) If the Director-General:

- (a) has reasonable grounds for suspecting that there is on any premises an article to which this section applies; and
- (b) by written order authorises a person to enter the premises and take action under this section,

the person may enter the premises, seize any article found there that might reasonably be suspected of being an article to which this section applies and there or elsewhere disinfect or destroy it.

(3) Section 72 (Powers of entry) applies in relation to the powers of entry conferred by this section.

(4) A person (other than a public authority) who, without reasonable excuse:

- (a) transfers possession of an article to another person; or
- (b) exposes an article to another person; or
- (c) removes an article,

knowing it to be an article to which this section applies is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

(5) A public authority has a duty to avoid doing anything that, if done by a person other than a public authority, would be an offence under this section.

(6) A person who suffers damage as a result of the disinfection or destruction of an article under this section is entitled to reasonable compensation unless the condition of the article that necessitated its disinfection or destruction was attributable to an act or default of the person.

(7) Compensation under this section is payable out of money provided by Parliament.

### **Closure of water supply**

7. (1) This section applies to water in, or flowing from, any source if:

- (a) the water is, or may be, used for drinking or domestic purposes and the Minister has reason to suspect that the water is unfit for those purposes; or
- (b) the Minister has reason to suspect that a scheduled medical condition has been caused by, or may be spread by, the water (whether or not it is water that is, or may be, used for drinking or domestic purposes).

(2) If this section applies to any water, the Minister may take such action, and may by order published in the Gazette give such directions, as the Minister considers to be necessary in order to:

- (a) restrict or prevent use of the water; and
- (b) bring the water as nearly as practicable to a condition under which the circumstances that caused it to be water to which this section applies no longer exist.

(3) Section 72 (Powers of entry) applies in relation to any entry on premises required or directed for the purposes of this section.

(4) A person (other than a public authority) who:

- (a) is subject to a direction given under this section; and
- (b) has notice of the direction; and
- (c) refuses or fails to comply with the direction,

is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months.,

(5) A public authority has a duty to comply with a direction given to the public authority under this section.

### **Closure of premises**

8. (1) If the Minister considers on reasonable grounds that any premises on which the public, or sections of the public, are required, permitted or accustomed to congregate should be closed in order to

preserve the health of the public, the Governor may, by order published in the Gazette, direct that the premises be closed, and kept closed, in accordance with the order while it is in force.

(2) If:

- (a) a direction given under this section is in force in relation to premises that are not under the control of a Minister; and
- (b) a person who controls, or is involved in the control of, the premises is notified of the direction,

the person must take such reasonably practicable action as may be necessary to ensure compliance with the direction.

(3) A person who, after being notified' under subsection (2) of a direction given under this section, fails to comply with that subsection is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

#### **Directions to public authorities**

9. (1) If the Minister considers, on reasonable grounds, that the health of the public is, or is likely to be, endangered because of an action by a public authority, the Minister may direct the public authority to rectify any adverse consequences of the action by taking other specified action.

(2) It is the duty of a public authority to comply with any direction given to the public authority under this section.

(3) The generality of this section is not affected by any other provision of this Act.

#### **Direction to exercise statutory function**

10. (1) If the Minister considers, on reasonable grounds:

- (a) that a public authority has failed to exercise a function conferred or imposed on it (other than a power to make regulations or by-laws); and
- (b) that the failure is likely to endanger the health of the public,

the Minister may, by written notice to the public authority, require it to exercise the function within a time stated in the notice.

(2) If a notice given under this section is not complied with, the Minister may exercise the function to which the notice relates and:

- (a) unless the public authority represents the Crown — recovers a debt owed by the public authority to the Crown, an amount equal to the cost of exercising the function; or

- (b) if the public authority represents the Crown—require the public authority to pay to the Department of Health an amount equal to the cost of exercising the function.

### **PART 3—SCHEDULED MEDICAL CONDITIONS**

#### **Division 1—General precautions**

##### **Precautions against spread of certain medical conditions**

- 11. (1)** A person who:
- (a) suffers from a Category 2, Category 3, Category 4 or Category 5 medical condition; and
  - (b) is in a public place or other place of public resort (including any means of public transport); and
  - (c) fails to take reasonable precautions against spreading the medical condition,

is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

**(2)** It is a defence to a prosecution of a person for an offence under this section if it is proved that the person was, at the time of commission of the alleged offence, ignorant of the existence of the medical condition on which the prosecution is based.

#### **Division 2—Sexually transmissible medical conditions**

##### **Provision of information**

**12. (1)** A medical practitioner who believes on reasonable grounds that a person receiving attention from the medical practitioner suffers from a sexually transmissible medical condition must, as soon as practicable, provide the person with such information concerning the condition as is required by the regulations.

**(2)** A medical practitioner who fails to comply with this section is guilty of an offence unless the court is satisfied that the medical practitioner knew that the information to which the offence relates had been supplied to the patient by another medical practitioner.

Maximum penalty: 50 penalty units.

**Sexual intercourse—sexually transmissible medical condition**

**13. (1)** A person who knows that he or she suffers from a sexually transmissible medical condition is guilty of an offence if he or she has sexual intercourse with another person unless, before the intercourse takes place, the other person:

- (a) has been informed of the risk of contracting a sexually transmissible medical condition from the person with whom intercourse is proposed; and
- (b) has voluntarily agreed to accept the risk.

Maximum penalty: 50 penalty units.

**(2)** An owner or occupier of a building or place who knowingly permits another person to:

- (a) have sexual intercourse at the building or place for the purpose of prostitution; and
- (b) in doing so, commit an offence under subsection (1),

is guilty of an offence.

Maximum penalty: 50 penalty units.

**(3)** For the purposes of this section, a person is not to be presumed incapable of having sexual intercourse if the only ground for the presumption is the age of the person.

**(4)** In this section, “sexual intercourse” means:

- (a) sexual connection by the introduction into the vagina, anus or mouth of a person of any part of the penis of another person; or
- (b) cunnilingus.

**Division 3—Notification and treatment of certain medical conditions****Medical practitioner to notify certain scheduled medical conditions**

**14. (1)** This section applies to a medical practitioner who:

- (a) attends a person because of a Category 1 medical condition or believes on reasonable grounds that a person receiving attention from the medical practitioner suffers from a Category 2 medical condition; or
- (b) as a result of any kind of post-mortem examination, believes on reasonable grounds that a person has died as a result of such a medical condition.

(2) A medical practitioner to whom this section applies in relation to a person must:

- (a) as soon as practicable, record in accordance with the regulations particulars concerning the person; and
- (b) keep the record for the prescribed period; and
- (c) immediately after recording the particulars, send to the Director-General a certificate that relates to the particulars and is in an approved form that does not provide for the provision of information that the medical practitioner is prohibited by section 17 from disclosing.

(3) Except to the extent that the regulations otherwise provide, this section applies to a person engaged in a prescribed occupation in the same way as it applies to a medical practitioner.

### **Offence**

**15. (1)** A person who fails to comply with a requirement of section 14 applicable to the person is guilty of an offence.

Maximum penalty: 50 penalty units.

(2) It is a defence to a prosecution for an offence under this section if the court is satisfied:

- (a) that the record alleged not to have been made or kept; or
- (b) that the certificate alleged not to have been sent,

had been made, kept or sent by another medical practitioner or person to whom section 14 applies.

### **Notification of test results—Category 3 medical condition**

**16. (1)** If:

- (a) a medical practitioner requests a serological or other prescribed test for the purpose of detecting whether a person is suffering from a Category 3 medical condition; and
- (b) the test has a positive result,

the person who, in response to the request, certifies the result of the test to the medical practitioner must, as soon as practicable, send to the Director-General a report in the approved form that relates to the test but does not disclose the name or address of the patient if the medical condition is also a Category 5 medical condition.

(2) A person who is required to send a report under this section and fails to do so is guilty of an offence.

Maximum penalty: 50 penalty units.

**Division 4—Category 5 medical condition****Protection of identity**

**17. (1)** A medical practitioner must not state the name or address of a patient:

- (a) in a certificate sent to the Director-General under section 14 in relation to a Category 5 medical condition; or
- (b) except as may be prescribed, in a written or oral communication made by the medical practitioner for the purpose of arranging a test to find out whether the patient suffers from a Category 5 medical condition.

**(2)** A person who, in the course of providing a service, acquires information that another person:

- (a) has been, or is required to be, or is to be, tested for a Category 5 medical condition; or
- (b) is, or has been, infected with a Category 5 medical condition,

must take all reasonable steps to prevent disclosure of the information to another person.

**(3)** Information about a person that is of a kind referred to in subsection (2) may be disclosed:

- (a) with the consent of the person; or
- (b) in connection with the administration of this Act or another Act; or
- (c) by order of a court or a person authorised by law to examine witnesses; or
- (d) as a normal duty as a consequence of providing the service in the course of which the information was obtained; or
- (e) in such circumstances as may be prescribed.

**(4)** A medical practitioner or other person who fails to comply with the requirements of this section is guilty of an offence.

Maximum penalty: 50 penalty units.

**District Court may authorise disclosure of name and address**

**18. (1)** The Director-General may apply to the District Court, in accordance with the rules of the District Court, for an order authorising the service on a medical practitioner of a notice under section 19 requiring disclosure of a name and address that would otherwise be protected by section 17 from disclosure.



(2) An application under this section may be made in relation to a medical practitioner only if the Director-General has reasonable grounds for believing that:

- (a) the person whose name and address are sought is suffering from a Category 5 medical condition; and
- (b) identification of the person is necessary in order to safeguard the health of the public.

(3) An application to the District Court under this section is to be heard and determined in the absence of the public but is to be otherwise heard and determined in accordance with the rules of the District Court.

(4) The District Court:

- (a) is to make an order applied for under this section if satisfied that there are reasonable grounds for making the order; or
- (b) is to dismiss the application if not so satisfied.

#### **Notice by Director-General requiring disclosure of name and address**

19. (1) If authorised to do so by an order of the District Court made under section 18, the Director-General may, by written notice served personally or by post on:

- (a) a medical practitioner or other person who has sent a certificate to the Director-General under section 14; or
- (b) a medical practitioner who has requested a serological or other test to which a report under section 16 relates,

require the medical practitioner or other person to provide the Director-General, within a reasonable time specified in the notice, with the name and address of the person the subject of the certificate or report.

(2) A medical practitioner or other person who, without reasonable excuse, refuses or neglects to comply with the requirement of a notice served on the medical practitioner or other person under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

#### **Division 5—Death from scheduled medical condition**

##### **Notification of certain deaths**

20. Immediately after registration of the death of a person apparently caused by a scheduled medical condition, the Principal Registrar of Births, Deaths and Marriages is to arrange to have sent to the Director-General, in the approved form, a notification of the death stating:

- (a) the name, address and age of the deceased; and
- (b) the name of the person who certified the cause of death; and
- (c) such other particulars as may be prescribed.

### **Division 6—Public health orders—Categories 4 and 5**

#### **Definitions**

**21.** In this Division:

**“appropriate court”**, in relation to a public health order, means:

- (a) if the order relates to a Category 5 medical condition and there has been no application to the District Court for its continuation—the Local Court by which the order was confirmed; or
- (b) in any other case—the District Court;

**“authorised medical practitioner”** means:

- (a) the Chief Health Officer, Department of Health; or
- (b) a medical practitioner authorised by the Director-General to exercise the functions of an authorised medical practitioner under this Division;

**“proceeding”** includes an inquiry and an appeal relating to a matter arising under this Division.

#### **Power to require medical examination**

**22. (1)** The Director-General may, by written notice, require a named person to undergo a medical examination that:

- (a) is carried out by a medical practitioner chosen by the person; and
- (b) is of a kind described in the notice,

if the Director-General believes on reasonable grounds that the person is suffering from a Category 4 or Category 5 medical condition.

**(2)** If:

- (a) a notice under this section is served personally on the person to whom it relates; and
- (b) the person fails, without reasonable excuse, to comply with the requirements of the notice,

the person is guilty of an offence.

Maximum penalty: 50 penalty units.

**Making of public health order**

**23. (1)** An authorised medical practitioner may make a written public health order in respect of a person if satisfied on reasonable grounds that the person:

- (a) is suffering from a Category 4 or Category 5 medical condition; and
- (b) is behaving in a way that is endangering, or is likely to endanger, the health of the public because the person is suffering from that medical condition.

**(2)** A public health order must:

- (a) name the person to whom it applies; and
- (b) state the circumstances purporting to justify the making of the order; and
- (c) state that, unless the order is earlier varied as to its duration or is earlier revoked, it expires a specified number of days (not exceeding 28) after its service on the person; and
- (d) comply with subsection (3).

**(3)** A public health order must require the person to whom it applies to do any one or more of the following:

- (a) refrain from specified conduct;
- (b) undergo specified treatment;
- (c) undergo counselling by a specified person or by one or more persons belonging to a specified class of persons;
- (d) submit to the supervision of a specified person or one or more persons belonging to a specified class of persons;
- (e) undergo specified treatment and be detained at a specified place while undergoing the treatment;
- (f) if the order is based on a Category 5 medical condition—be detained at a specified place while the order is in force.

**(4)** A public health order may include provisions ancillary to, or consequential upon, the matters required to be included in the order.

**(5)** A public health order does not take effect until it is served personally on the person to whom it applies.

**Duration of public health order**

**24. (1)** A public health order that relates to a Category 5 medical condition ceases to have any effect if:

- (a) the person subject to the order is not, within 3 business days after service on the person of the order, also served with a copy of an application made to a Local Court for confirmation of the order; or
- (b) such an application is made and the Local Court revokes the order; or
- (c) the order expires before it is confirmed or revoked by a Local Court; or
- (d) the order expires before or after an application to continue the order is made to the District Court under section 26.

(2) In this section, “**business days**” means successive days excluding any Saturday, Sunday and public holidays.

#### **Local Court to confirm, vary or revoke certain public health orders**

**25.** (1) The Local Court to which application is made for confirmation of a public health order based on a Category 5 medical condition is, as soon as practicable, to inquire into the circumstances surrounding the making of the order and:

- (a) if satisfied that the making of the order was justified—is to confirm the order or vary the order and confirm it as varied; or
- (b) if not so satisfied—is to revoke the order.

(2) The Local Court may vary the order only by:

- (a) adding a requirement that could have been included in the order when made; or
- (b) substituting any such requirement for any one or more of them already included in the order.

(3) A Local Court may, from time to time, adjourn an inquiry under this section for not more than 7 days.

(4) For the purposes of an inquiry under this section, a Local Court may:

- (a) obtain the assistance of any person having medical or other qualifications relevant to the subject-matter of the inquiry; and
- (b) take into account a certificate given by such a person.

#### **District Court may continue public health order**

**26.** (1) An authorised medical practitioner may, before the expiration of a public health order:

- (a) that is based on a Category 4 medical condition; or

(b) that is based on a Category 5 medical condition and has been confirmed by a Local Court,

apply to the District Court for continuation of the order.

(2) An application for continuation of a public health order may be made under this section only if the applicant is satisfied, on reasonable grounds, that the person to whom the order relates would, if not subject to such an order, continue to endanger the health of the public as a consequence of suffering from a Category 4 or Category 5 medical condition.

(3) If continuation of a public health order is applied for under this section and the person subject to the order notifies the District Court that continuation of the order is not opposed, the Court may, without inquiry, continue the order for a period not exceeding 6 months.

(4) Unless the order is continued under subsection (3), the District Court is to make such inquiries as it thinks fit in relation to the application and may:

- (a) continue the order, with or without variation, for a period not exceeding 6 months; or
- (b) refuse to continue the order, or
- (c) revoke the order.

(5) The District Court may vary the order only by:

- (a) omitting a requirement included in the order, or
- (b) adding a requirement that could have been included in the order when made; or
- (c) substituting any such requirement for any one or more of them already included in the order.

(6) For the purposes of an inquiry under this section, the District Court may:

- (a) obtain the assistance of any person having medical or other qualifications relevant to the subject-matter of the inquiry; and
- (b) take into account a certificate given by such a person.

### **Conditions applicable if person detained**

27. (1) A person detained under the authority of a public health order may be so detained subject to such conditions with respect to the person's security as the medical practitioner making the order considers necessary in the interests of the health of the public and specifies in the order.

(2) A person detained under the authority of a public health order may, for any special reason accepted by an authorised medical practitioner, be

permitted to leave the place of detention, but only under the constant personal supervision of a person, or any one of a number of persons, nominated by the medical practitioner.

(3) A person who is detained under a public health order and:

(a) is in breach of a condition specified in the order; or

(b) evades supervision to which Re or she is subject under this section,

is to be taken to have contravened the public health order.

### **Offence to contravene public health order**

28. (1) If the person to whom a public health order applies contravenes the order, the person is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

(2) Proceedings for an offence under this section may be brought only by the Director-General or a police officer.

(3) Prosecution for an offence under this section does not preclude action under section 30 in respect of the contravention on which the prosecution is based.

### **Apprehension of person who contravenes public health order**

29. (1) A certificate by an authorised medical practitioner to the effect that a named person is contravening a public health order is a sufficient ground for the issue to a police officer of a warrant to apprehend the person and detain the person in custody pending an inquiry under section 30.

(2) A police officer who is provided with such a certificate is, as soon as practicable, to:

(a) obtain a warrant for which the certificate is a ground; and

(b) apprehend the person named in the certificate; and

(c) detain the person in custody pending an inquiry under section 30.

(3) Section 27 applies in relation to detention following apprehension under this section in the same way as it would apply if the certificate that led to the apprehension had been a public health order.

### **Action following apprehension or surrender**

30. (1) If a person alleged to have contravened a public health order:

(a) is apprehended and brought before the appropriate court; or

(b) appears voluntarily before the appropriate court, the court is to inquire into the allegation.

(2) If, after inquiry, the appropriate court is not satisfied that the person has contravened a public health order, it is to order that the person be discharged.

(3) If, after inquiry, the appropriate court is satisfied that a person has contravened a public health order, it may confirm the public health order or:

- (a) vary the public health order by adding a requirement, direction or other provision that could have been included in the order when made; or
- (b) vary the public health order by substituting any such requirement, direction or other provision for any one or more of them already included in the order; or
- (c) caution the person and take no further action in the matter.

(4) A person may be dealt with under this section in respect of an alleged contravention of a public health order whether or not the person has been charged under section 28 for an offence in relation to the same contravention.

### **Revocation of public health order by authorised medical practitioner**

**31.** If an authorised medical practitioner considers that the person to whom a public health order applies is no longer endangering, or likely to endanger, the health of the public, the medical practitioner is to revoke the order and immediately give written notice of the revocation to:

- (a) the person to whom the order applied; and
- (b) the appropriate court.

### **Restriction on making further public health order**

**32. (1)** This section applies to a person who was the subject of a public health order if:

- (a) the order was revoked by a Local Court under section 25, by the District Court under section 26, by an authorised medical practitioner under section 31 or on an appeal against the order; or
- (b) the District Court has refused under section 26 to continue the order.

(2) A further public health order may be made in respect of a person to whom this section applies only if the authorised medical practitioner proposing to make the further order is satisfied on reasonable grounds that, since the earlier order ceased to have effect, there has been a change

in the person's health or behaviour which increases the risk of endangering the health of the public.

### **Apprehension of escapee**

**33. (1)** If a person detained under a public health order or following apprehension under section 29 escapes from the place of detention, he or she may be apprehended at any time by:

- (a) the person for the time being in charge of the place from which the person escaped; or
- (b) an authorised medical practitioner; or
- (c) a police officer; or
- (d) any person assisting a person referred to in paragraphs (a)–(c).

**(2)** On being apprehended, the escapee must be returned to the place from which he or she escaped.

### **Unlawful release from detention**

**34. (1)** A person who, without lawful authority, releases, or attempts to release:

- (a) a person detained under a public health order or following apprehension under section 29 or 33; or
- (b) a person being conveyed to a place at which he or she is to be so detained,

is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

**(2)** It is a defence to a prosecution for:

- (a) an offence under this section; or
- (b) aiding, abetting, counselling or procuring the escape of a person detained under a public health order or following apprehension under section 29 or 33,

if it is proved that the action of the defendant did not endanger the health of the public and that the defendant knew this to be so.

### **Restrictions on publication**

**35. (1)** The court in which proceedings under this Division have been instituted or are being heard may make orders having the effect of prohibiting or restricting the publication of matters relating to the proceedings or to a person in respect of whom the proceedings have been instituted.



(2) The orders that a court may make under this section include orders prohibiting or restricting publication of any one or more of the following:

- (a) any report that relates to the proceedings;
- (b) the identity of the person in respect of whom the proceedings have been instituted;
- (c) any information from which the identity of that person could be deduced;
- (d) any information from which could be deduced the identity of a person in respect of whom a public health order is, or at any time was, sought or made, whether or not in the proceedings.

(3) An order under this section may be made by the court of its own motion or on the application of a party to the proceedings.

(4) If an application under this section is made by a party to the proceedings, the onus is on the other party to show cause why the application should be refused.

(5) An order made under this section does not operate to prevent publication of a report of the proceedings if:

- (a) the report is published in a genuine volume of law reports, a legal journal or any other publication intended to be read mainly by legal practitioners, Magistrates and Judges; and
- (b) the person in respect of whom the proceedings were instituted, or in respect of whom a public health order is sought or made, is not identified in the report.

(6) A person who contravenes an order in force under this section (whether aware of the order or not) is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units; or
- (b) in any other case—50 penalty units or imprisonment for 6 months, or both.

(7) This section does not prevent punishment, as a contempt, of a contravention of an order made in proceedings before a court but, in respect of such a contravention, a person may not be dealt with both for a contempt of the court and by prosecution for an offence.

(8) In this section:

“publish” means:

- (a) publish in a newspaper, magazine or other periodical publication; or
- (b) publish by radio or television transmission; or

- (c) include in a cinematographic film or videotape that is, or is to be, available to the public; or
- (d) include in a book or sound recording that is, or is to be, available to the public; or
- (e) make known to the public in any other manner or by any other means.

**Inspection of medical records**

**36. (1)** A person to whom a public health order applies, or the authorised agent of such a person, is, unless the appropriate court otherwise directs, entitled to inspect, and make copies of, medical records relating to the person that are kept by another person.

**(2)** If the medical records are not kept in a readable form, the person in charge of the records is to provide a readable copy of them.

**Division 7—Procedural matters****Proceedings—Divisions 2 and 3**

**37.** Proceedings for offences under Divisions 2 and 3 are to be heard and determined in the absence of the public.

**Proceedings—Division 6**

**38.** Proceedings under Division 6 before a court:

- (a) are to be open to the public unless an objection is made by or on behalf of a party to the proceedings and is upheld by the court; or
- (b) are to be held in closed court if such an objection is made and upheld.

**Representation in proceedings under Division 6**

**39.** A party to proceedings under Division 6 before a court may be represented by a barrister or solicitor or, with the leave of the court, by a person other than a barrister or solicitor.

**Division 8—Appeals****Appeal against action or direction by Minister**

**40. (1)** An appeal lies to the District Court, in accordance with the rules of the District Court, against:

- (a) any action taken by the Minister under section 5 other than the giving of a direction by an order published under that section; or

(b) any direction given by an order so published.

(2) On the hearing of an appeal under subsection (1) (a), the District Court may:

- (a) confirm the action the subject of the appeal; or
- (b) uphold the appeal and order that the action be discontinued; or
- (c) order the taking of action other than the action the subject of the appeal.

(3) On the hearing of an appeal under subsection (1) (b), the District Court may:

- (a) confirm the direction the subject of the appeal; or
- (b) vary the direction and confirm the direction as varied; or
- (c) uphold the appeal and revoke the direction.

(4) A decision of the District Court made on an appeal under this section:

- (a) that action be discontinued or other action taken; or
- (b) that a direction be revoked or varied,

has effect (except as the basis of an appeal under this section) as if it were an order of the Minister under section 5.

(5) The lodging of an appeal under this section does not operate to stay the action or direction the subject of the appeal.

### **Appeal against public health order**

**41. (1)** An appeal lies to the District Court, in accordance with the rules of the District Court, against the making of a public health order that:

- (a) is based on a Category 4 medical condition; or
- (b) is based on a Category 5 medical condition and has been confirmed by a Local Court.

(2) On an appeal under this section, the District Court may:

- (a) confirm the order the subject of the appeal; or
- (b) vary the order and confirm the order as varied; or
- (c) revoke the order.

(3) The District Court may vary a public health order only by:

- (a) adding a requirement that could have been included in the order when made; or
- (b) substituting any such requirement for any one or more of them already included in the order.

(4) A decision of the District Court confirming an order of a Local Court, whether or not with variations, has effect (except as the basis of an appeal under this section) as if it had been made by the Local Court.

(5) Fresh evidence may be admitted on the hearing of an appeal under this section.

(6) If there is an appeal against a public health order:

(a) the lodging of the appeal does not operate to stay proceedings on the order; and

(b) a stay of proceedings on the order may not be granted because of the appeal.

#### **Appeal to Supreme Court on matter of law**

42. An appeal on a matter of law lies to the Supreme Court:

(a) by way of stated case under section 101 of the Justices Act 1902 — against a decision of a Local Court confirming a public health order; or

(b) in accordance with the rules of the Supreme Court — against a decision of the District Court on an application under section 26 for continuation of a public health order; or

(c) in accordance with rules of the Supreme Court — against a decision of the District Court on an appeal under this Part.

### **PART 4—MICROBIAL CONTROL**

#### **Purpose of Part 4**

43. (1) The purpose of this Part is to regulate:

(a) the installation on premises of certain kinds of systems; and

(b) the operation and maintenance of those kinds of systems installed on premises, whether the installation took place before, or takes place after, the commencement of this Part,

in order to prevent or inhibit the growth in the systems of micro-organisms that are liable to cause Legionnaires' disease and other diseases.

(2) The systems comprise:

(a) air-handling systems; and

(b) evaporative cooling systems; and

(c) hot-water systems; and

(d) humidifying systems; and

- (e) warm-water systems; and
  - (f) water-cooling systems,
- and their associated equipment and fittings.

### **Definitions**

**44.** In this Part:

**“air-handling system”** means a system designed for the purpose of directing air in a positive and controlled manner to and from specific enclosures by means of air-handling plant, ducts, plenums, air-distribution devices and automatic controls;

**“authorised officer”**, in relation to any premises, means:

- (a) an environmental health officer employed by the local authority for the area in which the premises are situated; or
- (b) an environmental health officer of the Department of Health; or
- (c) a person authorised by the Minister or the Director-General to exercise the powers conferred by this Part on an authorised officer;

**“cooling-tower”** means:

- (a) a device for lowering the temperature of water or other liquid by evaporative cooling; or
- (b) an evaporative condenser which incorporates a device containing a refrigerant or heat exchanger,

**“evaporative cooling system”** means a system that effects a reduction of dry bulb temperature by evaporating water into the air being treated;

**“hot water system”** means a system designed to heat and deliver water at a temperature of at least 60°C at each outlet point;

**“humidifying system”** means a system for adding moisture to air in order to raise its humidity;

**“install”** includes construct;

**“maintain”** includes repair, inspect, carry out preventive servicing and clean;

**“prescribed installation requirements”** means requirements specified in the regulations with respect to the design and installation of a regulated system;

**“prescribed maintenance requirements”** means requirements specified in the regulations with respect to the maintenance of a regulated system;

**“prescribed operating requirements”** means requirements specified in the regulations with respect to the operation of a regulated system;

**“regulated premises”** means any premises other than premises declared by the regulations not to be regulated premises for the purposes of this Part;

**“regulated system”** means:

- (a) a system referred to in section 43; or
- (b) any system that is for the treatment of air or water and is declared by the regulations to be a regulated system for the purposes of this Part;

**“warm-water system”** means a system designed to heat and deliver water at a temperature of less than 60°C at each outlet point;

**“water-cooling system”** means a cooling tower and its associated equipment and pipe work.

### **Installation of system**

**45. (1)** The installation on regulated premises of a regulated system must be done in accordance with the prescribed installation requirements.

**(2)** If a regulated system is installed in contravention of this section, the installer of the system is guilty of an offence.

**(3)** If a regulated system is installed on regulated premises in contravention of this section, the occupier of the premises at the time of installation of the system is guilty of an offence unless the court is satisfied that the installation was carried out by a person or persons who might reasonably be expected to be competent to do so.

### **Operation and maintenance of system**

**46. (1)** If the occupier of regulated premises fails, while such an occupier, to ensure that the prescribed operating requirements, or the prescribed maintenance requirements, are complied with in relation to a regulated system installed on the premises, the occupier is guilty of an offence.

**(2)** It is a defence to proceedings for an offence under this section if the court is satisfied that:

- (a) the occupier engaged a person to carry out the requirements to which the proceedings relate; and
- (b) the person so engaged might reasonably have been expected to be competent to carry out the requirements.

**(3)** If a contractor:

- (a) is engaged by the occupier of regulated premises to operate a regulated system; and
- (b) fails to carry out the prescribed operating requirements for the system,

the contractor is guilty of an offence.

**(4)** If a contractor:

- (a) is engaged by the occupier of regulated premises to maintain a regulated system; and
- (b) fails to carry out the prescribed maintenance requirements for the system,

the contractor is guilty of an offence.

**(5)** This section applies to a regulated system whether installed before or after the commencement of this Part.

#### **Powers of authorised officers**

**47. (1)** An authorised officer who believes on reasonable grounds that a regulated system has been, or is being, installed on any regulated premises may:

- (a) enter the premises at any reasonable time in order to find out whether or not a system on the premises is a regulated system; and
- (b) inspect and test any system on the premises; and
- (c) investigate whether or not the prescribed operating requirements, and the prescribed maintenance requirements, have been complied with in relation to any regulated system on the premises; and
- (d) require the production of, and inspect, any records required by the regulations to be kept in relation to the operation and maintenance of any regulated system on the premises.

**(2)** Section 72 (Powers of entry) applies in relation to the exercise of the powers conferred by this section.

#### **Directions to carry out maintenance requirements**

**48. (1)** The Director-General, or a local authority, may serve on the occupier of regulated premises in which a regulated system is installed a notice:

- (a) directing that a specified prescribed maintenance requirement for the system be complied with before a date stated in the notice; and

- (b) if appropriate, directing that the system not be operated until the Director-General, or the local authority, is satisfied that the requirement has been complied with.
- (2) A notice under this section may be served:
  - (a) only if the Director-General, or the local authority, believes on reasonable grounds that the requirement to which the notice relates is not being, or has not been, complied with; and
  - (b) in the case of a local authority, only if the premises are within the area for which it is the local authority.
- (3) Service of a notice under this section does not preclude proceedings for an offence under section 46.

**Failure to comply with directions**

**49. (1)** If the directions given in a notice served under section 48 are not complied with:

- (a) the Director-General, if the notice was served by the Director-General; or
- (b) the local authority that served the notice,

may make arrangements for the doing of such work as may be necessary in order to comply with the requirements of the notice other than the time required for compliance.

(2) An employee assigned, or contractor engaged, by the Director-General or a local authority to do any work on regulated premises in accordance with those arrangements may, at any reasonable time, enter the premises and do the work or have it done.

(3) An amount equal to the cost of carrying out work in accordance with those arrangements may be recovered from the occupier of the premises:

- (a) as a debt due to the Crown if the arrangements were made by the Director-General; or
- (b) as a debt due to the local authority if the arrangements were made by the local authority.

(4) An occupier of regulated premises is guilty of an offence if a regulated system on the premises is operated in contravention of a direction given in a notice served on the occupier under this section.

(5) Section 72 (Powers of entry) applies in relation to the exercise of the powers of entry on premises conferred by this section.



**Proceedings for offences under Part 4**

**50. (1)** Proceedings for an offence under this Part are to be disposed of summarily either:

- (a) before a Local Court constituted by a Magistrate sitting alone; or
- (b) before the Supreme Court in its summary jurisdiction.

**(2)** A person convicted by a Local Court of an offence under this Part is liable to a penalty not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months, or both.

**(3)** A person convicted by the Supreme Court of an offence under this Part is liable to a penalty not exceeding 500 penalty units or imprisonment for a term not exceeding 2 years, or both.

**(4)** Proceedings in the Supreme Court for an offence under this Part may not be commenced later than 6 months after the time at which the offence is alleged to have been committed.

**PART 5—MORTUARIES AND CREMATORIES****Registration of mortuaries**

**51.** A local authority is not to:

- (a) register a mortuary; or
- (b) continue the registration of a mortuary,

unless the mortuary complies with the regulations in force in relation to mortuaries and is conducted in accordance with those regulations.

**Approval of equipment for crematory**

**52. (1)** A person who conducts a crematory is guilty of an offence if the equipment and apparatus used in, or in connection with, the crematory are not in accordance with the approval of the Minister given by a written order for the time being in force.

Maximum penalty: 50 penalty units.

**(2)** An application for an approval for the purposes of this section is to be made in the approved form.

**(3)** Such an approval may be conditional and security may be required for due compliance with any condition.

**(4)** If, otherwise than on the application of the person who conducts a crematory, it is proposed:

- (a) to revoke or vary an approval given for the purposes of this section or a condition of such an approval; or

(b) to impose such a condition,  
the Minister may not give effect to the proposal without first giving to the person who conducts the crematory reasonable notice of the proposal and giving due consideration to any resulting representations.

## **PART 6—TOBACCO PRODUCTS**

### **Division 1—Preliminary**

#### **Definitions**

**53.** In this Part:

“**pack**” includes cause, permit or suffer to be packed;

“**package**” includes:

(a) a box, carton, cylinder, packet, pouch and tin; and

(b) a wrapping other than a transparent outer wrapping;

“**sell**” includes:

(a) offer for sale; and

(b) keep, or have in possession, for sale;

“**tobacco product**” means cigarettes and:

(a) a mixture that contains tobacco and is intended for smoking;  
and

(b) any other product that is prepared from or with tobacco and is intended for smoking,

but does not include a cigar or plug tobacco;

“**word**” includes symbol.

### **Division 2—Tobacco products**

#### **Sale of unpackaged tobacco products prohibited**

**54.** A person who sells a tobacco product that is not in a package is guilty of an offence.

Maximum penalty: 50 penalty units.

#### **Packing of tobacco product without health warning prohibited**

**55.** A person who packs a tobacco product into a package in which the product is to be sold is guilty of an offence unless the package is marked with a health warning that complies with Schedule 2.

Maximum penalty: 50 penalty units.

**Sale of tobacco product without health warning prohibited**

**56.** A person who sells a tobacco product is guilty of an offence unless the package in which the product is sold is marked with a health warning that complies with Schedule 2.

Maximum penalty: 50 penalty units.

**Prohibited words**

**57. (1)** A person who:

- (a) packs a tobacco product into a package in which the product is to be sold; or
- (b) sells a tobacco product in a package,

is guilty of an offence if the package is marked with, or accompanied by, any material that contains any prohibited words.

Maximum penalty: 50 penalty units.

**(2)** For the purposes of this section, the prohibited words are:

- (a) “**non-injurious**”, “**non-hazardous**” and “**harmlessman**”; and
- (b) words of similar import to those specified in paragraph (a); and
- (c) words that directly or by implication contradict, qualify or modify a health warning that complies with Schedule 2 and is marked on the package.

**Division 3—Juvenile smoking****Definition**

**58.** In this Division:

“**tobacco**” means tobacco prepared for use, whether in the form of a cigarette or cigar or as part of a mixture intended for smoking.

**Sale of tobacco to person under 18 prohibited**

**59. (1)** A person who sells tobacco to a person who is under the age of 18 years is guilty of an offence.

Maximum penalty: 50 penalty units.

**(2)** It is a defence to a prosecution for an offence under this section if the court is satisfied that, at the time of the sale, the person to whom the tobacco was sold was, on reasonable grounds, believed by the defendant to be at least 18 years of age.

**Notification of certain offences**

**60.** The court that convicts a person of an offence under section 59 committed by:

- (a) the holder of a tobacco retailer's licence under the Business Franchise Licences (Tobacco) Act 1987; or
- (b) a member of a group in respect of which a group tobacco retailer's licence under that Act is held,

is to notify the Chief Commissioner for Business Franchise Licences (Tobacco) of the conviction.

**Regulations**

**61.** The Governor may, make regulations for or with respect to:

- (a) the form and content of signs relating to the provisions of this Division; and
- (b) the display of the signs at places where tobacco is sold.

**PART 7—ADMINISTRATION****Division 1—Medical officers of health****Nomination of medical officers of health**

**62. (1)** The Governor may nominate a medical practitioner to be a medical officer of health at such remuneration, if any, as is determined by the Governor.

**(2)** Part 2 of the Public Sector Management Act 1988 does not apply to the nomination of a medical officer of health and a medical officer of health is not subject to that Part of that Act.

**(3)** The regulations may confer or impose functions on a medical officer of health..

**Medical districts**

**63. (1)** The Governor may, by order published in the Gazette:

- (a) describe a medical district (which may include a specified river, lake or harbour, or any specified coastal water or other water); and
- (b) nominate a specified medical practitioner as the medical officer of health for the medical district on and from a date stated in the order.

(2) An order under this section may describe a group of medical districts and nominate the same medical practitioner as the medical officer of health for each of them.

(3) The medical officer of health nominated for a medical district may exercise his or her functions under this Act only:

- (a) within that medical district; or
- (b) with the authority of the Director-General, within any other medical district during the absence, or a vacancy in the office, of its medical officer of health.

(4) With the authority of the Director-General, a medical practitioner who is an officer of the Department of Health and has the prescribed qualifications may, in any medical district, exercise any of the functions of the medical officer of health for the medical district.

#### **Inspection of, and extracts from, certain registers**

**64. (1)** A medical officer of health may, at any reasonable time, inspect the registers kept under the Registration of Births, Deaths and Marriages Act 1973.

(2) With the authority of the Director-General, an officer of the Department of Health may, at any reasonable time, inspect those registers.

(3) The Principal Registrar of Births, Deaths and Marriages is to make such arrangements as may be necessary for an extract from, or a copy of an entry in, a register to be supplied if required by a medical officer of health, or an officer of the Department of Health, entitled under this section to inspect the register.

#### **Inspection of premises**

**65. (1)** For the purpose of giving effect to this Act, a medical officer of health may, at any reasonable time, enter and inspect any premises.

(2) Section 72 (Powers of entry) applies in relation to the power of entry and inspection conferred by this section.

#### **Reports by medical officers of health**

**66. (1)** If:

- (a) a matter affecting the health of the public in a medical district comes to the notice of the medical officer of health for the district; or
- (b) the Director-General requests the medical officer of health for a medical district to provide a report on a specified matter affecting the health of the public in the district,

the medical officer of health is to provide the Director-General with a report on the matter as soon as possible.

(2) If a matter in respect of which a medical officer of health provides a report under this section is a matter in respect of which a local authority may, or must, exercise a function, the medical officer of health is to send a copy of the report to the local authority.

### **Exercise by medical officer of health of functions of environmental health officer**

67. A medical officer of health may exercise any functions of an environmental health officer employed by a local authority.

## **Division 2—Notifications by hospitals**

### **Definitions**

68. In this Division:

“**chief executive officer**”, in relation to a hospital, means the person responsible for the day to day administration of the affairs of the hospital;

“**hospital**” means:

- (a) a hospital or separate institution specified in the Second, Third or Fifth Schedule to the Public Hospitals Act 1929; or
- (b) a hospital or separate institution under the control of an area health service constituted under the Area Health Services Act 1986; or
- (c) a hospital, or a health care agency, within the meaning of the Mental Health Act 1990; or
- (d) an establishment within the meaning of the Private Hospitals and Day Procedure Centres Act 1988; or
- (e) a nursing home within the meaning of the Nursing Homes Act 1988; or
- (f) any other institution prescribed by the regulations as a hospital for the purposes of this Division;

“**notifiable disease**” means a medical condition listed in Schedule 3.

### **Particulars of notifiable diseases to be provided**

69. The chief executive officer of a hospital has a duty to provide the Director-General, in accordance with the regulations, with information concerning persons suffering from a notifiable disease who are, or have been, patients at the hospital.

**Division 3—Inspections and inquiries****Inspection of records**

**70.** (1) The Minister may, at any reasonable time, inspect any written records of a public authority that relate to public health.

(2) It is the duty of a public authority to make available any written record required for inspection in accordance with this section.

(3) If:

- (a) a record kept by a public authority is not a written record; and
- (b) it could have been inspected under this section if it had been a written record; and
- (c) the Minister requires the public authority to produce, and make available for inspection under this section, a written copy of the record,

the public authority has a duty to comply with the requirement.

(4) Section 72 (Powers of entry) applies in relation to an inspection under this section.

**Inquiries by Director-General**

**71.** (1) The Director-General may inquire into:

- (a) any matter relating to the health of the public; or
- (b) any matter that, under this Act, authorises a direction by, or that requires the approval or consent of, the Minister or the Director-General.

(2) For the purposes of an inquiry under this section, a person authorised by the Director-General may enter any premises and:

- (a) require the occupier of the premises to make available for inspection any records that are in the possession, or under the control, of the occupier and relate to a matter in respect of which an inquiry is authorised by this section; and
- (b) inspect any records, whether or not made available under paragraph (a), that are on the premises and relate to such a matter; and
- (c) take samples for the purpose of analysis of a substance found on the premises.

(3) If:

- (a) a record kept on any premises is not a written record; and
- (b) a person authorised by the Director-General for the purposes of this section could have inspected the record if it had been a written record; and

- (c) a person so authorised requires the occupier of the premises to make available for inspection a written copy of the record; and
- (d) the occupier refuses or fails to comply with the requirement, the occupier is guilty of an offence.

Maximum penalty: 50 penalty units.

(4) Section 72 (Powers of entry) applies in relation to any entry on premises for the purposes of this section and to any inspection or other action that is authorised by this section.

## **PART 8—MISCELLANEOUS**

### **Powers of entry**

**72. (1)** A power conferred by this Act to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the person proposing to exercise the power:

- (a) is in possession of a certificate of authority; and
- (b) gives reasonable notice to the occupier of the premises of intention to exercise the power, unless the giving of notice would defeat the purpose for which it is intended to exercise the power; and
- (c) exercises the power at a reasonable time, unless it is being exercised in an emergency; and
- (d) produces the certificate of authority if required to do so by the occupier of the premises; and
- (e) uses no more force than is reasonably necessary to effect the entry or make the inspection.

**(2)** A certificate of authority must:

- (a) state that it is issued under the Public Health Act 1990; and
- (b) give the name of the person to whom it is issued; and
- (c) describe the nature of the powers conferred and the source of the powers; and
- (d) state the date, if any, on which it expires; and
- (e) describe the kind of premises to which the power extends; and
- (f) bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate.



(3) If damage is caused by a person exercising a power to enter premises, a reasonable amount of compensation is recoverable as a debt owed by the employer of the person to the owner of the premises unless the occupier obstructed the exercise of the power.

(4) If goods are taken from premises by a person who exercises a power to enter the premises, a person otherwise entitled to possession of the goods is, as far as is practicable, to be allowed access to the goods.

(5) This section does not apply to a power conferred by a search warrant issued under the Search Warrants Act 1985.

(6) In this section, “certificate of authority” means a certificate that, to enable a person to exercise a power conferred by this Act, is issued to the person:

- (a) by the Minister or the Director-General, unless the power is to be exercised on behalf of a local authority; or
- (b) by a local authority if the power is to be exercised OR behalf of the local authority.

### **Search warrants**

**73. (1)** In this section, “**authorised justice**” means:

- (a) a Magistrate; or
- (b) a justice of the peace employed in the Attorney General’s Department.

(2) A person who has the written authority of the Minister, the Director-General or a local authority to do so may apply to an authorised justice for a search warrant in relation to premises if admission to the premises has been refused, or an attempt to obtain admission has been, or is likely to be, unsuccessful, and:

- (a) there are reasonable grounds for believing that an offence under this Act or the regulations has been, or is being, committed on the premises; or
- (b) the search warrant is sought in order to exercise a power to enter or inspect conferred by this Act.

(3) An authorised justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a person named in the warrant to enter the premises.

(4) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

**Obstruction**

**74.** A person who wilfully obstructs or hinders another person exercising, or attempting to exercise, a function conferred or imposed on the other person by this Act is guilty of an offence.

Maximum penalty: 50 penalty units.

**Disclosure of information**

**75. (1)** A person who discloses information obtained in connection with the administration of this Act is guilty of an offence unless the court is satisfied that there was a lawful excuse for the disclosure.

Maximum penalty: 50 penalty units.

**(2)** The reference in this section to a lawful excuse for the disclosure of information includes a reference to disclosure of the information:

- (a) with the consent of the person to whom it relates; or
- (b) in connection with the administration or execution of this Act; or
- (c) for the purposes of legal proceedings arising out of this Act or of a report of any such legal proceedings; or
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974.

**Service of notices and other documents**

**76. (1)** The giving of notice to, or service of a notice or other document on, a person for the purposes of this Act may be effected by delivering it, or a true copy, to the residence of the person.

**(2)** The giving of notice to, or service of a notice or other document on, the owner or occupier of premises in that capacity may be effected for the purposes of this Act:

- (a) by delivering it to a person on the premises; or
- (b) if there is no person on the premises to whom it can be delivered — by fixing it to some conspicuous part of the premises.

**(3)** Instead of giving a notice, or serving a notice or other document, as is otherwise provided by this section, it may be served by post.

**Exclusion of personal liability**

**77. (1)** A person who exercises a function under this Act in good faith and for the purpose of executing this Act is not to be subjected personally to any action, liability, claim or demand based on the exercise of the function.

(2) Without affecting the generality of subsection (1), a person is not to be subjected personally to any legal proceedings, civil or criminal, for sending, giving or serving, in good faith, without negligence and for the purposes of this Act, a certificate, notice or other communication.

### **Offences by corporations**

**78.** (1) If a corporation commits an offence under this Act or the regulations, each person who is a director of the corporation, or who is concerned in the management of the corporation, is to be taken to have committed the same offence if the person knowingly authorised or permitted the act or omission constituting the offence.

(2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

### **Proceedings for offences**

**79.** (1) Proceedings for an offence under this Act are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

(2) This section does not affect the operation of section 50 in relation to proceedings under Part 4 before the Supreme Court in its summary jurisdiction.

### **Amendment of Schedules**

**80.** (1) The regulations may amend Schedule 1:

- (a) by inserting the name of a medical condition in Category 1, 2, 3, 4 or 5 in the Schedule; or
- (b) by omitting the name of a medical condition from Category 1, 2, 3, 4 or 5 in the Schedule.

(2) The regulations may amend or substitute Schedule 2.

(3) The regulations may amend Schedule 3 by inserting or omitting the name of a notifiable disease or a reference by means of which a notifiable disease may be identified.

**Act binds the Crown**

**81. (1)** This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

**(2)** Nothing in this Act renders the Crown liable to be prosecuted for an offence.

**Regulations**

**82. (1)** The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

**(2)** In particular, the regulations may make provision for or with respect to any of the following:

- (a) the prevention, mitigation and eradication of scheduled medical conditions;
- (b) the making and determination of an application to a Local Court for confirmation of a public health order;
- (c) the places at which, and the conditions subject to which, a person may be detained under a public health order;
- (d) the installation, operation, maintenance and inspection of a regulated system within the meaning of Part 4;
- (e) the functions (including powers of entry and inspection) of local authorities and authorised officers in relation to a regulated system within the meaning of Part 4;
- (f) the directions that, in relation to a regulated system within the meaning of Part 4, may be given by a local authority or an authorised officer during, or as a result of, an investigation of an occurrence of Legionnaires' disease;
- (g) compliance with directions referred to in paragraph (f);
- (h) the provision of information by the owner or occupier of premises in relation to a regulated system within the meaning of Part 4 which is installed on the premises;
- (i) the provision and keeping of operation manuals, and maintenance manuals, for a regulated system within the meaning of Part 4;
- (j) the keeping of records, and the making of reports, in relation to a regulated system within the meaning of Part 4;

- (k) the preparation rooms, equipment and apparatus in mortuaries and any other matter relating to mortuaries that is for the protection of the health of the public;
  - (l) the inspection of mortuaries and of premises that may reasonably be suspected of being mortuaries;
  - (m) the inspection of equipment and apparatus contained in crematories;
  - (n) the cases in which, the manner in which, and the conditions under which, cremations of human remains may take place;
  - (o) matters preliminary to, and consequential upon, cremations of human remains;
  - (p) the fees that may be charged for the cremation of human remains, for the preservation or disposal of the ashes and for related services;
  - (q) the registration of cremations and (with any necessary modifications) the application to the registration of cremations of the provisions of any other Act, or of any law, in force in relation to the registration of a burial of the body of a deceased person;
  - (r) the embalming, interment, disposal and exhumation of the bodies of deceased persons;
  - (s) the payment of specified fees in relation to applications made, approvals given, and other matters arising, under this Act.
- (3) Section 72 (Powers of entry) applies in relation to any entry on, or inspection of or on, premises in accordance with a regulation.
- (4) A regulation may apply, adopt or incorporate a publication as in force for the time being.
- (5) The regulations may create offences punishable by a penalty not exceeding 20 penalty units.

### **Repeal of Public Health (Amendment) Act 1989 No. 86**

**83.** The Public Health (Amendment) Act 1989 is repealed on the day on which Part 4 of this Act commences.

### **Savings and transitional provisions**

**84.** Schedule 4 has effect.

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**SCHEDULE 1—SCHEDULED MEDICAL CONDITIONS**

(Sec. 3)

**CATEGORY 1**

Birth  
Perinatal Death  
Sudden Infant Death Syndrome

**CATEGORY 2****TO BE NOTIFIED BY MEDICAL PRACTITIONERS**

Acquired Immune Deficiency Syndrome  
Acute viral hepatitis  
Cholera  
Diphtheria  
Foodborne illness (if there are 2 or more apparently related cases)  
Gastroenteritis (including Necrotising Enterocolitis) if it occurs in an institution among persons of any age  
Haemophilus influenzae:  
--epiglottis  
—meningitis  
--septicaemia  
Human Immunodeficiency Virus infection  
Legionnaires' disease  
Measles  
Meningococcal disease:  
—meningitis  
-septicaemia  
Mycobacterial infections  
Paratyphoid  
Plague  
Poliomyelitis  
Syphilis  
Typhoid  
Typhus (epidemic)  
Viral haemorrhagic fevers  
Whooping cough  
Yellow fever

SCHEDULE 1—SCHEDULED MEDICAL CONDITIONS—*continued***CATEGORY 3****TO BE NOTIFIED BY LABORATORIES**

Arboviral infections  
Brucellosis  
Cholera  
Diphtheria  
Gonorrhoea  
Haemophilus influenzae:  
    -epiglottis (blood or cerebrospinal fluid)  
    — meningitis (blood or cerebrospinal fluid)  
    — septicaemia (blood or cerebrospinal fluid)  
Hepatitis A  
Hepatitis B  
Hepatitis C  
Hepatitis Delta  
Human Immunodeficiency Virus infection  
Legionnaires' disease  
Leptospirosis  
Listeriosis  
Malaria  
Meningococcal disease:  
    — meningitis (blood or cerebrospinal fluid)  
    — septicaemia (blood or cerebrospinal fluid)  
Mumps  
Mycobacterial infections  
Plague  
Q fever  
Rubella  
Salmonella infections  
syphilis  
Typhus (epidemic)  
Viral haemorrhagic fevers  
whooping cough  
Yellow fever

*Public Health 1991*SCHEDULE 14—SCHEDULED MEDICAL CONDITIONS—*continued***CATEGORY 4**

Leprosy  
Tuberculosis

**CATEGORY 5**

Acquired Immune Deficiency Syndrome  
Human Immunodeficiency Virus infection

**SCHEDULE 2—HEALTH WARNINGS (TOBACCO)**

(Secs. 55, 56)

**Definitions**

1. In this Schedule:

“**marked**”, in relation to a package, means printed on the package or affixed to the package by means of an adhesive label;

“**package**” means a package containing a tobacco product, and includes a box, carton, cylinder, packet, pouch, tin and wrapping, but does not include a transparent outer wrapping.

**Health warning**

2.(1) The health warning must consist of one of the following warnings:

SMOKING CAUSES LUNG CANCER  
SMOKING CAUSES HEART DISEASE  
SMOKING DAMAGES YOUR LUNGS  
SMOKING REDUCES YOUR FITNESS

and the attribution “Health Authority Warning” which must appear below the warning.

(2) The warning must be marked on a package in one line of letters in upper case of not less than 14 point (or the nearest practicable point size) in Univers 57 Medium Condensed Roman typeface.

(3) The attribution must be marked on a package in one line of letters in upper and lower case which are one-half of the point size of those in which the warning is printed, in Univers 55 Medium Roman typeface.



**SCHEDULE 2—HEALTH WARNINGS (TOBACCO)—*continued*****Rotation of health warnings**

3. (1) As far as is reasonably practicable, each health warning must be marked on packages containing a tobacco product manufactured in Australia:

- (a) until immediately before 1 July next succeeding the date of commencement of this Schedule—as it was required to be marked under the Public Health Act 1902 immediately before that commencement; and
- (b) after that, with equal frequency during each successive 12 month period commencing on that 1 July.

(2) As far as is practicable, each health warning must be marked on packages containing a tobacco product manufactured outside Australia:

- (a) until immediately before 1 September next succeeding the date of commencement of this Schedule—as it was required to be marked under the Public Health Act 1902 immediately before that commencement; and
- (b) after that, with equal frequency during each successive 12 month period commencing on that 1 September.

**Position and prominence of health warning**

4. The health warning:

- (a) must, in the case of each packet containing a tobacco product, be marked at the base of the front and back of the packet; and
- (b) must, in the case of each pouch, tin or cylinder, be marked on each face on which the brand name appears; and
- (c) must, in the case of all other packages, be marked on not fewer than 2 faces of the package; and
- (d) must be printed in such colour or colours as will afford a distinct colour contrast to the background on which it appears.

**SCHEDULE 3—NOTIFIABLE DISEASES**

(Sec. 68)

Cancer

Category 2 medical conditions

Category 3 medical conditions

**SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 84)

**Part 1—Preliminary****Regulations**

1. (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the repeal of the Public Health Act 1902 or later.

(3) To the extent that a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the date of publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before that date of publication.

**Part 2—Provisions consequent on enactment of this Act****Definitions**

2. In this Part:

“**appointed day**” means the day appointed for the repeal of the Public Health Act 1902;

“**former Act**” means the Public Health Act 1902 as in force immediately before the commencement of this Part.

**Effect of proclamation under former Act**

3. If a proclamation in force under the former Act immediately before the appointed day had an effect that could be achieved under this Act by an order, the proclamation continues on that day to have effect as if it were such an order.

**SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS**  
*continued***Medical districts and medical officers of health**

4. (1) A notification of a district in force under section 16 of the former Act immediately before the appointed day continues to have effect as if it were an order published on that day under section 63 of this Act.

(2) The appointment under section 18 of the former Act of a medical officer of health holding office immediately before the appointed day for a district continues to have effect as if it were a nomination made on that day under section 62 of this Act for that medical district.

**Failure of local authority to exercise power**

5. (1) If, immediately before the appointed day, the Director-General was entitled under section 24 or 26A of the former Act to exercise a power, or to recover the cost of exercising a power, following a failure on the part of a local authority to comply with a requirement under that section to exercise the power, the failure to comply with the requirement has effect as a failure on the appointed day to comply with the same requirement made in a notice under section 10 of this Act given to the local authority.

(2) If, immediately before the appointed day, the time for compliance with a requirement made under section 24 or 26A of the former Act had not expired, the requirement has effect on the appointed day as if it were a requirement of a notice under section 10 of this Act to be complied with no later than the latest time for compliance fixed by the former Act.

**School closure**

6. If, immediately before the appointed day, a school or college was still closed in accordance with a notice published under section 41 of the former Act, the notice has effect on the appointed day as an order in force under section 8 of this Act.

**Public health orders**

7. A public health order in force immediately before the appointed day under Division 3A of Part 3B of the former Act continues to have effect as if it were a public health order:

- (a) made on the appointed day under Division 6 of Part 3 of this Act;
- and

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SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS—  
*continued*

- (b) expiring when it would have expired if the former Act had not been repealed.

**Approval relating to crematory**

8. An approval in force immediately before the appointed day under section 51(3) or (4) of the former Act takes effect on the appointed day as if it had been made on that day under section 52 of this Act.

**Closure of water supply**

9. If, immediately before the appointed day, a well, dam, tank, stream or other source of water supply was still closed in accordance with a direction given in a notification published under section 72 of the former Act, the notification has effect on that day as an order in force under section 7 of this Act.

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*[Minister's second reading speech made in—  
Legislative Assembly on 22 November 1990  
Legislative Council on 4 December 1990]*