

# **PUBLIC HEALTH (AMENDMENT) ACT 1989 No. 86**

NEW SOUTH WALES



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**PUBLIC HEALTH (AMENDMENT) ACT 1989 No. 86**

NEW SOUTH WALES



**Act No. 86, 1989**

An Act to amend the Public Health Act 1902 for the purpose of regulating the installation of air-handling systems, hot-water systems and water-cooling systems, and the operation and maintenance of such systems, in order to prevent or mitigate the growth of micro-organisms liable to cause Legionnaires' disease and certain other bacterial diseases; and for other purposes. [Assented to 2 June 1989]

*Public Health (Amendment) 1989***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Public Health (Amendment) Act 1989.

**Commencement**

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

**Amendment of Public Health Act 1902 No. 30**

3. The Public Health Act 1902 is amended as set out in Schedule 1.

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

- (1) Part 6, Division 3—

After Division 2, insert:

**Division 3—Microbial control of air-handling systems, hot-water systems and water-cooling towers****Purpose of Division**

63AB. The purpose of this Division is to regulate the installation on premises of air-handling systems, hot-water systems and water-cooling systems, and their operation and maintenance, in order to prevent or mitigate the growth of micro-organisms that are liable to cause Legionnaires' disease and certain other bacterial diseases.

**Definitions**

63AC. In this Division—

“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;

“cooling tower” means a structure containing a device for lowering the temperature of water by evaporative cooling in which atmospheric air passes through sprayed water, thereby exchanging heat, and also means a structure containing a device for lowering the temperature of water which incorporates within it a refrigerant or water heat exchanger;

“hot-water system” means a system designed for heating water and distributing heated water to outlet points located either within or outside premises;

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SCHEDULE 1—AMENDMENTS—*continued*

- “install” includes construct;
- “maintain” includes repair, inspect, carry out preventive servicing and clean;
- “occupier”, in relation to premises on which a system to which this Division applies is or is being installed, means—
- (a) if the premises are occupied as a single entity—the occupier of the premises; or
  - (b) if the premises are separately occupied by different persons—the occupier of the part in which the air-handling plant, water-heating plant or cooling tower is located; or
  - (c) if the premises are designed for occupation as a single entity and are unoccupied—the owner of the premises or, where the premises are leased, the lessee of the premises; or
  - (d) if the premises are designed to be separately occupied but the part of the premises in which the air-handling plant, water-heating plant or cooling tower is located is unoccupied—the owner of that part or, where that part is leased, the lessee of that part;
- “premises” includes land, but does not include premises occupied as a separate dwelling or, in the case of unoccupied premises, constructed for occupation as a separate dwelling;
- “prescribed installation requirements” means requirements specified in the regulations with respect to the installation of a system to which this Division applies;
- “prescribed maintenance requirements” means requirements specified in the regulations with respect to the maintenance of a system to which this Division applies;
- “prescribed operating requirements” means requirements specified in the regulations with respect to the operation of a system to which this Division applies;
- “water-cooling system” means a cooling tower and its associated equipment.

**Application of Division**

- 63AD. This Division applies to—
- (a) air-handling systems;
  - (b) hot-water systems; and
  - (c) water-cooling systems.

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**SCHEDULE 1—AMENDMENTS—*continued*****Installation of systems**

63AE. (1) The installation on premises of a system to which this Division applies must comply with the prescribed installation requirements.

(2) If such a system is installed on premises in contravention of subsection (1), the installer of the system and the occupier of the premises are each guilty of an offence.

(3) In proceedings for an offence under subsection (2) brought against an occupier of premises, the occupier has a defence if it is established that a reputable installer was engaged to install the system.

(4) This section does not apply to the installation of a system begun before the commencement of this Division.

**Operation and maintenance of systems**

63AF. (1) The prescribed operating and maintenance requirements must be complied with in relation to a system to which this Division applies.

(2) If the occupier of premises on which such a system is installed fails to ensure that the prescribed operating and maintenance requirements are complied with in connection with the system, that occupier is guilty of an offence.

(3) In proceedings for an offence under subsection (2) relating to the operation or maintenance of a system, an occupier of the premises concerned has a defence if it is established that a reputable contractor was engaged to operate or maintain the system.

(4) If a contractor who is engaged by the occupier of premises to operate or maintain a system to which this Division applies fails to ensure that the prescribed operating or maintenance requirements are complied with in connection with the system, the contractor is guilty of an offence.

(5) This section applies to systems installed both before and after the commencement of this Division.

**Powers of Departmental officers and health surveyors**

63AG. (1) In this section—

“authorised officer” means—

- (a) in relation to premises within a local government area—  
a health surveyor employed by the local authority for that area; and

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- (b) in relation to any premises (including premises within a local government area)—an officer authorised by the Secretary to exercise the powers conferred by this section or a health surveyor of the Department.
- (2) If an authorised officer believes on reasonable grounds that a system to which this Division applies has been installed or is being installed on premises, the officer may—
- (a) enter the premises at all reasonable times for the purpose of ascertaining whether or not the prescribed installation, operating or maintenance requirements are being or have been complied with in respect of any such system; and
  - (b) inspect and test any such system; and
  - (c) require the production of, and inspect, all records required by the regulations to be kept in relation to the operation and maintenance of any such system.

**Secretary or local authority may carry out maintenance requirements**

63AH. (1) If, in relation to a system to which this Division applies, the Secretary or the local authority for the local government area concerned believes on reasonable grounds that a prescribed maintenance requirement is not being or has not been complied with, the Secretary or local authority may serve on the occupier of the premises on which the system is located a notice—

- (a) directing that the requirement be complied with within a period specified in the notice; and
- (b) if appropriate, directing that the system not be operated until the Secretary or that local authority is satisfied that the requirement has been complied with.

(2) If, after being served with such a notice directing compliance with a requirement within a specified period, the occupier of the premises concerned fails to comply with the requirement within that period, the Secretary or local authority may make arrangements for such work to be done as may be necessary to ensure that the requirement is complied with.

(3) Any employee or contractor assigned or engaged by the Secretary or by a local authority to undertake work in accordance with arrangements made under subsection (2) may, at any reasonable time, enter the premises concerned and carry out that work.

SCHEDULE 1—AMENDMENTS—*continued*

(4) The Secretary or the local authority concerned may, by proceedings before a court of competent jurisdiction, recover as a debt due to the Crown or the local authority an amount equal to the cost of carrying out work in accordance with subsection (3).

(5) If—

(a) a notice served on the occupier of premises in accordance with subsection (1) contains a direction under paragraph (b) of that subsection; and

(b) that occupier fails to comply with the direction, that occupier is guilty of an offence.

(6) The service of a notice under subsection (1) does not preclude the bringing of proceedings for an offence under section 63AF.

**Regulations**

63AI. (1) The Governor may make regulations, not inconsistent with this Division, for or with respect to any matter that is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Division.

(2) In particular, regulations under subsection (1) may require occupiers of premises on which systems to which this Division applies are installed to keep specified records with respect to the operation and maintenance of those systems.

(3) A regulation made for the purpose of this Division may create an offence punishable by a penalty not exceeding \$2,000.

**Crown to be bound by this Division**

63AJ. (1) This Division binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, binds the Crown in all its other capacities.

(2) In cases where the Crown is the occupier of premises in which systems to which this Division applies are installed or are being installed, the occupiers of those premises for the purposes of this Division shall, if regulations made under section 63AI so provide, be taken to be the holders of such public offices or classes of public offices as are specified in those regulations.

**Proceedings and penalties for certain offences against this Division**

63AK. (1) Proceedings for an offence against section 63AE, 63AF or 63AH shall be disposed of summarily either—

(a) before a Local Court constituted by a Magistrate sitting alone; or

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SCHEDULE 1—AMENDMENTS—*continued*

(b) before the Supreme Court in its summary jurisdiction.

(2) In proceedings for such an offence brought in the Local Court, a person convicted of the offence is liable to a penalty not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months, or both.

(3) In proceedings for such an offence brought in the Supreme Court, a person convicted of the offence is liable to a penalty not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years, or both.

(4) Proceedings in the Supreme Court in its summary jurisdiction in respect of any such offence may be commenced only within 6 months after the offence was alleged to have been committed.

(5) This section has effect irrespective of any other provision of this Act.

(2) Section 96—

Omit the section, insert instead:

**Restriction on examining or entering premises**

96. (1) Whenever an officer, health surveyor or other person who is empowered by a provision of this Act, or by any regulation or by-law made under this Act, to examine or enter premises seeks to exercise that power, the officer, health surveyor or person must, if requested to do so by a person apparently in occupation of the premises concerned, produce for inspection a certificate of authority.

(2) If such a request is made and the request is not complied with, the exercise of the power is unlawful.

(3) In subsection (1), the reference to a certificate of authority is a reference to a certificate of authority issued—

- (a) in the case of an officer—by the Minister or the Secretary;  
or
- (b) in the case of a health surveyor employed in the Department—by the Secretary; or
- (c) in the case of a health surveyor employed by a local authority—by the local authority; or
- (d) in the case of any other person—by the Minister, Secretary or local authority concerned.



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SCHEDULE 1—AMENDMENTS—*continued*

(3) Section 97—

Omit the section, insert instead:

**Obstruction of officers etc.**

97. Any person who intentionally hinders, obstructs or delays an officer, health surveyor or other person acting in the discharge of a duty imposed, or a power conferred, by or under this Act is guilty of an offence.

Maximum penalty: \$2,000.

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[*Minister's second reading speech made in—  
Legislative Assembly on 10 May 1989  
Legislative Council on 23 May 1989*]