

# UNHEALTHY BUILDING LAND ACT 1990 No. 122

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
  2. Commencement
  3. Definition
  4. Report on land unsuitable for building
  5. Unhealthy building land
  6. Erection of structure on unhealthy building land
  7. Subdivision of unhealthy building land
  8. Records and certificates
  9. Obstruction
  10. Service of notices and other documents
  11. Exclusion of personal liability
  12. Offences by corporations
  13. Proceedings for offences
  14. Transitional provisions
  15. Regulations
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# UNHEALTHY BUILDING LAND ACT 1990 No. 122

NEW SOUTH WALES



**Act No. 122, 1990**

An Act to provide for the declaration of certain land as unhealthy building land and for the effect of such a declaration; and for other purposes. [Assented to 20 December 1990]

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Unhealthy Building Land Act 1990.

**Commencement**

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

**Definition**

3. In this Act:

"**Commission**" means the State Pollution Control Commission.

**Report on land unsuitable for building**

4 (1) If the Commission, after due inquiry in relation to particular land, is of the opinion that it would be prejudicial to health if a building were to be erected on the land:

- (a) for any purpose or in any circumstances; or
- (b) for a particular purpose or in particular circumstances,

it is to prepare a report stating its opinion and the reasons for the opinion.

(2) In its report, the Commission may also specify:

- (a) any action that would need to be taken; and
- (b) any events that would need to occur; and
- (c) any conditions that would need to be complied with,

before it would consider revising its opinion.

(3) For the purposes of an inquiry under subsection (1), a person authorised by the Commission may:

- (a) enter, inspect and measure, and take samples from, the land the subject of the inquiry; and
- (b) dig holes on the land; and
- (c) remove the soil or rock dug from the holes.

(4) On completion of its report, the Commission is to provide the Minister with a copy and serve a copy on the owner of the land.

### **Unhealthy building land**

**5 (1)** After compliance with section 4 in relation to any land, the Commission may, by notice published in the Gazette:

- (a) describe the land, or part of the land; and
- (b) declare the land so described to be unhealthy building land; and
- (c) state all or any of the matters specified by the Commission in its report in relation to the land.

**(2)** If satisfied:

- (a) that events subsequent to the publication of a notice declaring land to be unhealthy building land have rendered the notice unnecessary as to the whole, or a part, of the land; or
- (b) that revocation of the notice as to the whole, or a part, of the land would be in the public interest,

the Commission is to publish a further notice in the Gazette describing the land or part, revoking the earlier notice in relation to the land described and declaring that the land described has ceased to be declared to be unhealthy building land.

**(3)** As soon as possible after the publication of a notice under this section, the Commission is to serve a copy of the notice on the owner of the land to which it relates.

### **Erection of structure on unhealthy building land**

**6 (1)** If erection of a structure on unhealthy building land is commenced or completed, the owner of the land is guilty of an offence unless the commencement or completion took place:

- (a) without the knowledge or consent of the owner; or
- (b) with the approval of the Commission and in compliance with any conditions to which the approval is subject.

Maximum penalty: 50 penalty units.

**(2)** An approval of the Commission required for the purposes of this section:

- (a) may be applied for by, or with the authority of, the owner of the land; and

- (b) is to be applied for in a form approved by the Commission; and
- (c) may be given conditionally or unconditionally.

(3) On application made by, or with the authority of, the owner for the time being of land the subject of an approval that is in force under this section, the Commission may vary any conditions to which the approval is subject.

(4) This section does not derogate from, or otherwise affect, the provisions of any other Act, or of any law, relating to the erection of structures on land.

### **Subdivision of unhealthy building land**

7. (1) A public authority that gives approval to a subdivision of unhealthy building land is to notify the Commission forthwith of the prescribed particulars relating to the subdivision.

(2) In this section, “**public authority**” means:

- (a) a public or local authority that is constituted by or under an Act, unless it is declared by the regulations not to be a public authority for the purposes of this Act; or
- (b) a person or body declared by the regulations to be a public authority for the purposes of this Act.

### **Records and certificates**

8. (1) The Commission is to:

- (a) keep at its office; and
- (b) make available for inspection during its ordinary business hours and on payment of the prescribed fee,

copies of the notices published under this Act.

(2) On application made as provided by the regulations and payment of the prescribed fee, the Commission is to cause to be issued a certificate as to whether or not land described in the certificate is the subject of a declaration as unhealthy building land.

(3) A certificate issued under this section is, in favour of the person who obtained it, conclusive evidence that, at the date of issue of the certificate, the matters certified were correct.

### **Obstruction**

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

Maximum penalty: 50 penalty units.

### **Service of notices and other documents**

**10. (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**

**11.** 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.

### **Offences by corporations**

**12. (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**

13. Proceedings for an offence under this Act are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

### **Transitional provisions**

14. On the commencement of this section:

- (a) a notice published in the Gazette under section 55 or 55D of the Public Health Act 1902 and in force immediately before that commencement takes effect as a notice published under section 5 of this Act; and
- (b) a certificate issued under section 55E of the Public Health Act 1902 before that commencement has effect as if it were a certificate under section 8 of this Act.

### **Regulations**

15. (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) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

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