
Consultation Draft

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New South Wales

Public Health Bill 2010

Explanatory note

Overview of Bill

The object of this Bill is to repeal and re-enact the *Public Health Act 1991* (the *existing Act*), consequent on the review of that Act by the Department of Health. The Bill also modifies the provisions contained in the existing Act as follows:

- (a) a statement of the responsibilities of local government authorities to promote, protect and improve public health is included,
- (b) the requirement for the Premier's approval before the Minister for Health (the *Minister*) may take action to deal with a risk to public health has been removed and the period for which a public health risk area declaration may be in force has been extended from 28 days to 90 days,
- (c) the Director-General of the Department of Health (the *Director-General*), rather than the Minister is to have the power to order the closure of premises in order to protect public health,
- (d) the requirement that the Minister must have reasonable grounds for suspecting that water is polluted before taking action against polluted drinking water or other polluted water that is likely to cause a risk to public health has been removed,

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- (e) the Chief Health Officer of the Department of Health (the *Chief Health Officer*) is to have the function of issuing boil water advices,
- (f) the Director-General is to have additional power to give directions relating to air-conditioning and other regulated systems if offences are committed in relation to such systems, including directions requiring training to be undertaken and prohibiting persons from carrying out functions relating to such systems,
- (g) public water utilities and their staff are to have protection from liability arising from the provision of information or advice concerning drinking water, if the advice is given in good faith for the purpose of executing the proposed Act,
- (h) provisions previously contained in regulations and relating to public swimming pools and spa pools have been incorporated in the proposed Act and the Director-General is to have additional power to give directions about pools that are or are likely to be a risk to public health,
- (i) provisions previously contained in regulations and relating to skin penetration procedures are incorporated in the proposed Act and the Director-General is to have additional power to give directions about persons found guilty of related offences,
- (j) a medical practitioner is required to report particulars of death from a scheduled condition if the medical practitioner suspects a death was caused by the condition (rather than if the practitioner believes on reasonable grounds that it was so caused),
- (k) the threshold for exercise of the Director-General's power to give mandatory directions relating to scheduled diseases and other conditions is lowered from a requirement to hold a reasonable belief that a person may have a certain disease or condition to a suspicion that the person has such a disease or condition and any such direction will be required to have regard to certain sensitivities of the person concerned,
- (l) the requirement that an authorised medical practitioner who makes a public health order in respect of a person must have reasonable grounds for being satisfied that the person has a scheduled medical condition before making the order has been removed,
- (m) a medical practitioner is required to provide a person with information concerning a sexually transmitted disease if the medical practitioner suspects that the person has the disease (rather than if the medical practitioner believes on reasonable grounds that the person has the disease),
- (n) a health practitioner must notify the chief executive officer of a hospital if the practitioner suspects that a patient or former patient at the hospital has or has had a notifiable disease (rather than if the practitioner believes on reasonable grounds that a patient has such a disease),

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- (o) the chief executive officer of a hospital must notify the Director-General if the officer suspects that a patient or former patient has or has had a notifiable disease (rather than if the officer believes on reasonable grounds that a patient or former patient has or has had such a disease),
- (p) deaths after the administration of an anaesthetic or sedative drug, after treatment in a hospital or outside a hospital, are to be notified to the Director-General,
- (q) powers of entry for enforcement powers have been expanded, consistent with powers contained in the *Smoke-free Environment Act 2000*, and consolidated,
- (r) public health inspectors will have the power to require persons to provide information and to request the name and address of persons suspected of contravening the proposed Act or regulations under that Act,
- (s) there is a new offence of impersonating a public health inspector,
- (t) offences, to be prescribed by the regulations, may be dealt with by the issue of penalty notices,
- (u) the cost of complying with certain public health directions under the proposed Act may be recovered as a debt owed to the Crown by any person subject to the direction who fails to comply with it,
- (v) maximum penalties for offences have been increased and continuing penalties have been imposed in appropriate cases,
- (w) existing medical officers of health are to be replaced by regional health officers having functions relating to regional public health and provision is made for the appointment of public health inspectors,
- (x) the State or an authority of the State is excluded from liability for negligence or breach of duty (including a statutory duty) arising from the exercise of or failure to exercise a function under the proposed Act,
- (y) provisions relating to the provision of certain health services have been omitted, as they will be the subject of other legislation.

The proposed Act also contains provisions of a savings and transitional nature, consequent on the repeal of the existing Act, and also makes consequential amendments to other Acts.

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New South Wales

Public Health Bill 2010

No. , 2010

A Bill for

An Act with respect to public health.

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Clause 1 Public Health Bill 2010
Chapter 1 Preliminary

The Legislature of New South Wales enacts:

Chapter 1 Preliminary

1 Name of Act

This Act is the *Public Health Act 2010*.

2 Commencement

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

3 Objects

- (1) The objects of this Act are as follows:
 - (a) to promote, protect and improve public health,
 - (b) to control the risks to public health,
 - (c) to promote the control of infectious diseases,
 - (d) to prevent the spread of infectious diseases,
 - (e) to recognise the role of local government in protecting public health.
- (2) The protection of the health and safety of the public is to be the paramount consideration in the exercise of functions under this Act.

4 Responsibilities of local government

- (1) A local government authority has, in relation to its area, the following responsibilities:
 - (a) to develop and implement strategies to promote, protect and improve public health,
 - (b) to promote appropriate standards of public health,
 - (c) to take appropriate measures to ensure compliance with the requirements of this Act in relation to public health.
- (2) In particular, a local government authority has the responsibility of appointing sufficient public health inspectors to enable it to exercise its functions under this Act and ensuring that its public health inspectors duly exercise their functions under this Act.

5 Definitions

- (1) In this Act:
approved form means a form approved for the time being by the Director-General.

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Public Health Bill 2010
Preliminary

Clause 5
Chapter 1

area means:

- (a) in relation to a council within the meaning of the *Local Government Act 1993*, the area for which the council is constituted under that Act, or
- (b) in relation to the Western Lands Commissioner, the unincorporated area of the Western Division, or
- (c) in relation to the Lord Howe Island Board, Lord Howe Island, or
- (d) in relation to an area health service, the area in respect of which the service is constituted under the *Health Services Act 1997*.

area health service has the same meaning as it has in the *Health Services Act 1997*.

chief executive officer of a hospital means the person responsible for the day to day administration of the affairs of the hospital.

Chief Health Officer means the Chief Health Officer of the Department.

Department means the Department of Health.

Departmental guidelines means guidelines referred to in section 120.

Director-General means the Director-General of the Department.

exercise a function includes perform a duty.

function includes a power, authority or duty.

health practitioner has the same meaning as it has in the *Health Care Complaints Act 1993*.

health service has the same meaning as it has in the *Health Care Complaints Act 1993*.

hospital means:

- (a) a public hospital within the meaning of the *Health Services Act 1997*, or
- (b) a declared mental health facility within the meaning of the *Mental Health Act 2007*, or
- (c) an establishment within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988*, or
- (d) a nursing home, or
- (e) any other institution declared by the regulations to be a hospital for the purposes of this definition.

International Statistical Classification of Diseases and Related Health Problems means the document published under that title by the World Health Organization, Geneva, as in force from time to time.

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Clause 5
Chapter 1

Public Health Bill 2010
Preliminary

local government authority means:

- (a) a council within the meaning of the *Local Government Act 1993*, or
- (b) the Western Lands Commissioner, or
- (c) the Lord Howe Island Board.

member of an area health service means a member of the NSW Health Service employed in connection with an area health service.

member of the NSW Health Service has the same meaning as it has in the *Health Services Act 1997*.

nursing home means a facility at which residential care (within the meaning of the *Aged Care Act 1997* of the Commonwealth) is provided, being:

- (a) a facility at which that care is provided in relation to an allocated place (within the meaning of that Act) that requires a high level of residential care (within the meaning of that Act), or
- (b) a facility that belongs to a class of facilities prescribed by the regulations.

occupier of premises or a part of premises (including premises that are vacant) means:

- (a) except as provided by paragraph (b), the owner of the premises or part, or
- (b) if any other person is entitled to occupy the premises or part to the exclusion of the owner, the person so entitled.

premises includes any vehicle or vessel.

public authority means an incorporated or unincorporated body constituted by or under an Act for a public purpose.

public health inspector means a person who is appointed to be a public health inspector pursuant to section 117.

public health order means a public health order referred to in section 59.

public health organisation has the same meaning as it has in the *Health Services Act 1997*.

public place means a place (including a place in any vehicle or vessel) that the public, or a section of the public, is entitled to use or that is open to, or is used by, the public or a section of the public (whether on payment of money, by virtue of membership of a club or other body, or otherwise).

public water utility means any of the following:

- (a) Sydney Water Corporation,
- (b) Hunter Water Corporation,

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Preliminary

Clause 5
Chapter 1

- (c) a water supply authority within the meaning of the *Water Management Act 2000*,
- (d) a local council or a county council exercising water supply functions under Division 2 of Part 3 of Chapter 6 of the *Local Government Act 1993*,
- (e) the Lord Howe Island Board constituted under the *Lord Howe Island Act 1953*,
- (f) a licensed network operator or a licensed retail supplier within the meaning of the *Water Industry Competition Act 2006*,
- (g) any person who treats or supplies water on behalf of a person referred to in any of the preceding paragraphs,
- (h) any person supplying drinking water in the course of a commercial undertaking (other than that of supplying bottled or packaged drinking water), being a person who has not received the water:
 - (i) from a person referred to in any of the preceding paragraphs, or
 - (ii) in the form of bottled or packaged water.

regional health officer means a regional health officer appointed under section 112.

skin penetration procedure means any procedure (whether medical or not) that involves skin penetration (such as acupuncture, tattooing, ear piercing or hair removal), and includes any procedure declared by the regulations to be a skin penetration procedure, but does not include:

- (a) any procedure carried out by a health practitioner in the course of providing a health service, or
 - (b) any procedure declared by the regulations not to be a skin penetration procedure.
- (2) Notes included in this Act do not form part of this Act.

Note. For the purposes of comparison, a number of provisions of this Act contain bracketed notes in headings, drawing attention (“cf”) to equivalent or comparable (though not necessarily identical) provisions of the previous public health legislation. Abbreviations used include 1991 Act (the *Public Health Act 1991*), Microbial Control Reg (the *Public Health (Microbial Control) Regulation 2000*), Swimming Pools Reg (the *Public Health (Swimming Pools and Spa Pools) Regulation 2000*), and Skin Penetration Reg (the *Public Health (Skin Penetration) Regulation 2000*).

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Clause 6 Public Health Bill 2010
Chapter 1 Preliminary

6 Act binds Crown (cf 1991 Act, s 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.

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Public Health Bill 2010
General public health
Control of risks to public health

Clause 7
Chapter 2
Part 2.1

Chapter 2 General public health

Part 2.1 Control of risks to public health

Division 1 Powers exercisable by Minister

- 7 Power to deal with public health risks generally** (cf 1991 Act, s 5)
- (1) This section applies if the Minister considers on reasonable grounds that a situation has arisen that is, or is likely to be, a risk to public health.
 - (2) In those circumstances, the Minister:
 - (a) may take such action, and
 - (b) may by order give such directions,as the Minister considers necessary to deal with the risk and its possible consequences.
 - (3) Without limiting subsection (2), an order may declare a specified area to be a public health risk area and, in that event, may contain such directions as the Minister considers necessary:
 - (a) to reduce or remove any risk to public health in the area, and
 - (b) to segregate or isolate inhabitants of the area, and
 - (c) to prevent, or conditionally permit, access to the area.
 - (4) An order must be published in the Gazette as soon as practicable after it is made, but failure to do so does not invalidate the order.
 - (5) Unless it is earlier revoked, an order expires at the end of 90 days after it was made or on such earlier date as may be specified in the order.
 - (6) Action may not be taken, and an order has no effect, in relation to any part of the State for which a state of emergency exists under the *State Emergency and Rescue Management Act 1989*.
 - (7) An application may be made to the Administrative Decisions Tribunal for a review of any of the following decisions:
 - (a) any action taken by the Minister under this section other than the giving of a direction by an order under this section, or
 - (b) any direction given by any such order.
- 8 Power to deal with public health risks during state of emergency**
(cf 1991 Act, s 4)
- (1) This section applies in relation to any part of the State for which a state of emergency exists under the *State Emergency and Rescue Management Act 1989* (*the 1989 Act*) if, after consultation with the

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Clause 9	Public Health Bill 2010
Chapter 2	General public health
Part 2.1	Control of risks to public health

Minister administering that Act, the Minister considers on reasonable grounds that the emergency is, or is likely to be, a risk to public health.

- (2) In these circumstances, the Minister, with the agreement of the Minister administering the 1989 Act:
 - (a) may take such action, and
 - (b) may by order give such directions,as the Minister considers necessary to deal with the risk and its possible consequences.
- (3) Without limiting subsection (2), an order may direct:
 - (a) all persons in a specified group, or
 - (b) all persons residing in a specified area,to submit themselves for medical examination in accordance with the order.
- (4) An order must be published in the Gazette as soon as practicable after it is made, but failure to do so does not invalidate the order.
- (5) Unless it is earlier revoked, an order expires when the relevant state of emergency ceases to have effect.
- (6) Action taken under this section has effect as if it had been taken in the execution of Division 4 of Part 2 of the 1989 Act.

Note. Consequently, it is an offence under that Act to obstruct or hinder the Minister administering that Act in the exercise of any such function (section 40), and no proceedings may be brought against any person (including the Crown) as a consequence of any damage, loss, death or injury arising from the exercise of any such function (section 41).

9 Power to deal with public health risks arising from conduct of public authorities (cf 1991 Act, s 9)

- (1) This section applies if the Minister considers that, because of the act or omission of a public authority, or of any person acting on behalf of a public authority, a situation has arisen that is, or is likely to be, a risk to public health.
- (2) In these circumstances, the Minister may, by order in writing served on the public authority, direct the public authority to take specified action to minimise or rectify any adverse consequences of the act or omission.
- (3) If a public authority considers that, for any reason, a situation has arisen that is, or is likely to be, a risk to public health, the public authority is to notify the Minister of that fact.

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Public Health Bill 2010
General public health
Control of risks to public health

Clause 10
Chapter 2
Part 2.1

10 Offence not to comply with Ministerial direction

A person who:

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

must not, without reasonable excuse, fail to comply with the direction.

Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.

Division 2 Powers exercisable by Director-General

11 Power to close public premises on public health grounds (cf 1991 Act, s 8)

- (1) If the Director-General considers that access to any premises on which the public, or sections of the public, are required, permitted or accustomed to congregate should be restricted or prohibited in order to protect public health, the Director-General may, by order, direct that access to the premises be restricted or prohibited as specified in the order.
- (2) An order must be published in the Gazette as soon as practicable after it is made, but failure to do so does not invalidate the order.
- (3) In the case of premises that are not under the control of a Minister, any person who:
 - (a) controls, or is involved in the control of, the premises, and
 - (b) has notice of the direction,must take such reasonably practicable action as is necessary to comply with the direction.
Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.

12 Power to direct disinfection or destruction of noxious articles (cf 1991 Act, s 6)

- (1) If the Director-General suspects that there is a noxious article on any premises, the Director-General may, by order in writing, authorise any person to enter the premises, seize anything that appears to be a noxious article and, there or elsewhere, disinfect or destroy it.
- (2) A person must not:
 - (a) transfer possession of an article to another person, or
 - (b) expose an article to another person, or

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Clause 13	Public Health Bill 2010
Chapter 2	General public health
Part 2.2	Provision and promotion of health services

- (c) remove an article from any premises the subject of an order under subsection (1),
if the person knows it to be a noxious article.
Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.
- (3) 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.
- (4) A person who suffers damage as a result of the disinfection or destruction of an article is entitled to reasonable compensation unless the condition of the article that necessitated its disinfection or destruction was attributable to that person's act or default.
- (5) Any such compensation is payable out of money provided by Parliament.
- (6) In this section, *noxious article* means any article (including any animal) that:
- (a) has been in contact with a person who has an infectious disease that is transmissible by contact with the article, or
 - (b) is or is likely to be infested with vermin, or
 - (c) is or is likely to be a risk to health as a result of its having been in contact with any article (including any person or animal) that is infested with vermin.

Part 2.2 Provision and promotion of health services

Division 1 Advertising or promotion of health services

13 Advertisement or promotion of health services (cf 1991 Act, s 10AN)

A person must not advertise or otherwise promote the provision of a health service in a manner that:

- (a) is false, misleading or deceptive, or
- (b) is likely to mislead or deceive, or
- (c) creates, or is likely to create, an unjustified expectation of beneficial treatment.

Maximum penalty:

- (a) in the case of an individual—100 penalty units or 6 months imprisonment, or both, for a first offence or 200 penalty units or 6 months imprisonment, or both, for a second or subsequent offence, or

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Public Health Bill 2010
General public health
Provision and promotion of health services

Clause 14
Chapter 2
Part 2.2

- (b) in the case of a corporation—500 penalty units for a first offence or 1,000 penalty units for a second or subsequent offence.

Division 2 Provision of health services for which no registration required

14 Codes of conduct for unregistered health practitioners (cf 1991 Act, s 10AM)

- (1) The regulations may prescribe codes of conduct for the provision of health services by:
 - (a) health practitioners who are not required to be registered under an Act (including deregistered health practitioners) and
 - (b) health practitioners who are registered under an Act for the provision of health services and who provide health services that are unrelated to their registration.
- (2) Before a code of conduct is prescribed, the Minister is to:
 - (a) give public notice of the code in a form and manner determined by the Minister, specifying where the code can be inspected and the time and manner in which submissions may be made, and
 - (b) place the code and an impact assessment statement for the code on public exhibition for not less than 21 days, and
 - (c) consider any submission received within 21 days (or such longer period as the Minister may determine) after the end of that exhibition period.

Note. Section 41A of the *Health Care Complaints Act 1993* permits the Health Care Complaints Commission to make a prohibition order in respect of a health practitioner if the Commission finds that the health practitioner has breached the code of conduct and poses a substantial risk to the health of members of the public. The Commission is also able to cause a public statement to be issued in such circumstances identifying and giving warnings about the health practitioner.

Division 3 Provision of health services by health practitioners who are deregistered or subject to prohibition orders

15 Definitions (cf 1991 Act, s 10AJ)

- (1) In this Division:
corresponding health registration legislation means legislation of another State or Territory that provides for the registration of health practitioners.

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Clause 16 Public Health Bill 2010
Chapter 2 General public health
Part 2.2 Provision and promotion of health services

deregistered health practitioner means a health practitioner whose registration as a health practitioner under an Act or corresponding health registration legislation has been cancelled, or is suspended, as a result of disciplinary proceedings.

prohibition order means a prohibition order made under an Act for the registration of health practitioners or under section 41A of the *Health Care Complaints Act 1993*.

- (2) For the purposes of this Division, a person's registration as a health practitioner under an Act or corresponding health registration legislation is cancelled if any of the following happen as a result of an action, decision, determination or order of a registration board, tribunal or court under that Act or legislation:
- (a) the person's registration is cancelled,
 - (b) the person is deregistered,
 - (c) the person's name is removed from, or struck off, a register or a roll,
 - (d) the person's practising certificate is cancelled.
- (3) For the purposes of this Division, a health practitioner is subject to a prohibition order if the health practitioner is, because of the order, subject to conditions when providing health services or is prohibited from providing some or all health services.

16 Provision of health services by persons who are deregistered or subject to prohibition orders (cf 1991 Act, s 10AK)

- (1) Before providing a health service, a deregistered health practitioner must ensure that:
- (a) the person to whom the health practitioner intends to provide the health service or, if that person is under 16 years of age or under guardianship, a parent or guardian of the person, and
 - (b) if the health service is to be provided by the health practitioner as an employee, the health practitioner's employer,
- are notified, in accordance with the regulations, that the health practitioner's registration under the relevant Act or corresponding health registration legislation has been cancelled, or is suspended, as the case may be.

Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.

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Public Health Bill 2010
General public health
Provision and promotion of health services

Clause 17
Chapter 2
Part 2.2

- (2) Before providing a health service, a health practitioner who is subject to a prohibition order must ensure that:
 - (a) the person to whom the health practitioner intends to provide the health service or, if that person is under 16 years of age or under guardianship, a parent or guardian of the person, and
 - (b) if the health service is to be provided by the health practitioner as an employee, the health practitioner's employer,are notified, in accordance with the regulations, that the health practitioner is subject to the order.
Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.
- (3) A person must not provide a health service in contravention of a prohibition order.
Maximum penalty: 1,000 penalty units, or imprisonment for 12 months, or both.

17 Advertising of health services if person is deregistered or subject to a prohibition order (cf 1991 Act, s 10AL)

- (1) A person must not advertise a health service that is to be provided by a deregistered health practitioner unless the advertisement specifies that the health practitioner's registration under the relevant Act or corresponding health registration legislation has been cancelled, or is suspended, as the case may be.
Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.
- (2) A person must not advertise a health service that is to be provided by a health practitioner who is subject to a prohibition order unless the advertisement specifies that the health practitioner is subject to the order.
Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.
- (3) A person is not guilty of an offence under this section if he or she did not know, and could not reasonably have known, that the health practitioner had been deregistered or was subject to a prohibition order.

Division 4 Nursing homes

18 Nursing homes to be staffed by registered nurses (cf 1991 Act, s 52)

- (1) A person who operates a nursing home must ensure that:
 - (a) a registered nurse is on duty in the nursing home at all times, and

Consultation Draft

Clause 18 Public Health Bill 2010
Chapter 2 General public health
Part 2.2 Provision and promotion of health services

(b) a registered nurse is appointed as a director of nursing of the nursing home, and

(c) any vacancy in the position of director of nursing of the nursing home is filled within 7 days.

Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.

(2) The regulations may prescribe the minimum qualifications for appointment as director of nursing at a nursing home.

(3) In this section, *director of nursing* of a nursing home means the person responsible for the overall care of the residents of the nursing home.

Consultation Draft

Public Health Bill 2010
Environmental health
Safety measures for public water supplies

Clause 19
Chapter 3
Part 3.1

Chapter 3 Environmental health

Part 3.1 Safety measures for public water supplies

Division 1 Preliminary

19 Definitions (cf 1991 Act, s 10A)

In this Part:

boil water advice for drinking water means advice to the effect that the water should not be used for human consumption (or for purposes connected with human consumption) until after it has been boiled or otherwise treated.

drinking water means water that is intended, or likely, to be used for human consumption, or for purposes connected with human consumption, such as:

- (a) the washing or cooling of food, or
- (b) the making of ice for consumption, or for the preservation of unpackaged food,

whether or not the water is used for other purposes.

treatment of water means any process or technique used to improve the quality of water.

20 Evidentiary provision (cf 1991 Act, s 10K)

A certificate that is issued by the Minister, the Director-General or the Chief Health Officer and that states that, on a specified day, he or she gave a specified direction under this Part to a specified person is admissible in any legal proceedings as evidence of the fact or facts so stated.

Division 2 Functions exercisable by Minister

21 Power to take action with respect to polluted water (cf 1991 Act, s 10I)

- (1) The Minister may take such action, and by order give such directions, as the Minister considers necessary:
 - (a) to restrict or prevent the use of polluted water, and
 - (b) to bring polluted water to such a condition that it is no longer polluted water.
- (2) Before giving a direction to a public water utility, the Minister is to consult with the Minister responsible for the Act under which the public water utility is constituted.

Consultation Draft

Clause 22	Public Health Bill 2010
Chapter 3	Environmental health
Part 3.1	Safety measures for public water supplies

- (3) In this section, *polluted water* means:
- (a) drinking water that the Minister suspects to be unfit for human consumption, or
 - (b) any other water that the Minister suspects is, or is likely to be, a risk to public health.

22 Offence not to comply with Ministerial direction

- (1) A person who:
- (a) is subject to a direction under this Division, and
 - (b) has notice of the direction,
- must not, without reasonable excuse, fail to comply with the direction.
Maximum penalty: 10,000 penalty units, or imprisonment for 2 years, or both.
- (2) If a direction under this Division is not complied with, the Minister may take the action referred to in the direction and:
- (a) unless the person represents the Crown, may recover an amount equal to the cost of doing so as a debt owed by the person to the Crown, or
 - (b) if the person represents the Crown, may require the person to pay to the Director-General an amount equal to the cost of doing so.

Division 3 Functions exercisable by Director-General

23 Power to direct testing of drinking water (cf 1991 Act, s 10G)

- (1) The Director-General may, by notice in writing, direct a public water utility to carry out such tests on the drinking water that it has available for supply, or on any substance used in or produced by the treatment of any such water, as the Director-General considers appropriate.
- (2) Any such direction may specify that the test to be carried out on water is to be carried out in any one or more of the following ways:
- (a) on the water in its raw state,
 - (b) while the water is undergoing treatment,
 - (c) after the water has been treated or partly treated.

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Public Health Bill 2010
Environmental health
Safety measures for public water supplies

Clause 24
Chapter 3
Part 3.1

24 Power to direct production of information (cf 1991 Act, s 10H)

- (1) The Director-General may, by notice in writing, direct a public water utility to produce to the Director-General such information as the Director-General may specify concerning:
 - (a) the quality of the drinking water that the public water utility has available for supply, and
 - (b) the methods by which the water is treated.
- (2) The information to be produced may include (but is not limited to) the following:
 - (a) copies of relevant records of the public water utility,
 - (b) the results of any tests required under section 23.
- (3) The information is to be provided in such form and manner as the Director-General may direct.

25 Offence not to comply with Director-General's direction

- (1) A public water utility to which a direction is given under this Division must not, without reasonable excuse, fail to comply with the direction.
Maximum penalty: 10,000 penalty units.
- (2) If a direction under this Division is not complied with, the Director-General may take the action referred to in the direction and:
 - (a) unless the public water utility represents the Crown, may recover an amount equal to the cost of doing so as a debt owed by the public water utility to the Crown, or
 - (b) if the public water utility represents the Crown, may require the public water utility to pay to the Director-General an amount equal to the cost of doing so.

Division 4 Functions exercisable by Chief Health Officer

26 Chief Health Officer responsible for determining necessity for boil water advices (cf 1991 Act, s 10E)

The Chief Health Officer may from time to time decide, in relation to any public water utility:

- (a) whether or not it should issue a boil water advice for the drinking water it supplies or has available for supply, and
- (b) whether or not it should provide additional information to the public in connection with any boil water advice it issues, and
- (c) whether or not a boil water advice is to be retracted or corrected.

Consultation Draft

Clause 27	Public Health Bill 2010
Chapter 3	Environmental health
Part 3.1	Safety measures for public water supplies

27 Advice to public (cf 1991 Act, s 10B)

- (1) The Chief Health Officer may from time to time prepare advice, for the benefit of the public, concerning the safety of available drinking water (or drinking water available from a particular public water utility) and any possible risks to health involved in the consumption of that water.
- (2) The advice may include a boil water advice.
- (3) The Chief Health Officer is to provide the advice to the relevant public water utility.
- (4) The public water utility to whom the advice is provided must issue the advice to the public in such form and manner as the Chief Health Officer may direct by notice in writing.
Maximum penalty: 10,000 penalty units.
- (5) Nothing in subsection (3) or (4) prevents the Chief Health Officer from also issuing the advice to the public as the Chief Health Officer sees fit.

28 Correction of misleading information (cf 1991 Act, s 10C)

- (1) The Chief Health Officer may, by notice in writing, direct a public water utility to retract or correct any information or advice issued, by or on behalf of the public water utility, to the public in relation to the safety of the public water utility's drinking water if the Chief Health Officer is of the opinion that the information or advice is inaccurate, incomplete or otherwise misleading.
- (2) The Chief Health Officer may specify any one or more of the form, content and manner of the retraction or correction and of its publication.
- (3) A public water utility to which a direction is given under this section must not, without reasonable excuse, fail to comply with the direction.
Maximum penalty: 10,000 penalty units.
- (4) If a direction given to a public water utility is not complied with, the Chief Health Officer may take the action referred to in the direction and:
 - (a) unless the public water utility represents the Crown, may recover an amount equal to the cost of doing so as a debt owed by the person to the Crown, or
 - (b) if the public water utility represents the Crown, may require the person to pay to the Director-General an amount equal to the cost of doing so.

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Public Health Bill 2010
Environmental health
Safety measures for public water supplies

Clause 29
Chapter 3
Part 3.1

29 Protection from liability (cf 1991 Act, s 10J)

- (1) The provision of any information or advice concerning drinking water by the Chief Health Officer exercising any function under this Division, or by a public water utility pursuant to a direction under this Division, in good faith for the purpose of executing this Act does not subject:
 - (a) the State, or
 - (b) a Minister of the Crown in right of New South Wales, or
 - (c) a member of staff of the Department, or
 - (d) a member of the NSW Health Service, or
 - (e) the public water utility or any of its staff,to any action, liability, claim or demand.
- (2) A reference in this section to the exercise by the Chief Health Officer of a function includes a reference to a decision by the Chief Health Officer not to exercise that function.

Division 5 Obligations of public water utilities

30 Quality assurance programs (cf 1991 Act, s 10M)

- (1) A public water utility must establish, and adhere to, a quality assurance program that complies with guidelines approved by the Chief Health Officer.
- (2) The regulations may make provision for or with respect to any of the following:
 - (a) the tests on water and other substances to be carried out by a public water utility pursuant to section 23,
 - (b) the records to be maintained by a public water utility.
- (3) The Chief Health Officer may, by notice in writing, exempt a public water utility from subsection (1) if the Chief Health Officer is satisfied that the utility is subject to other appropriate licensing or other regulatory requirements.

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Clause 31 Public Health Bill 2010
Chapter 3 Environmental health
Part 3.2 Control of air-conditioning and other systems

Part 3.2 Control of air-conditioning and other systems

Division 1 Preliminary

31 Definitions (cf 1991 Act, s 44)

In this Part:

duly qualified, in relation to a person who installs, maintains or operates a regulated system, means a person who might reasonably be expected to be competent to do so.

install includes construct.

maintain includes repair, inspect, carry out preventive servicing and clean.

prescribed installation requirements means requirements prescribed by the regulations with respect to the design and installation of a regulated system.

prescribed maintenance requirements means requirements prescribed by the regulations with respect to the maintenance of a regulated system.

prescribed operating requirements means requirements prescribed by the regulations with respect to the operation of a regulated system.

regulated system means any of the following:

- (a) an **air-handling system**, being 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,
- (b) a **hot water system**, being a system designed to heat and deliver water at a temperature of at least 60°C at each outlet point,
- (c) a **humidifying system**, being a system for adding moisture to air in order to raise its humidity,
- (d) a **warm-water system**, being a system designed to heat and deliver water at a temperature of less than 60°C at each outlet point,
- (e) a **water-cooling system**, being:
 - (i) a device for lowering the temperature of water or other liquid by evaporative cooling, or
 - (ii) an evaporative condenser that incorporates a device containing a refrigerant or heat exchanger,together with its associated equipment and pipe work,

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Public Health Bill 2010
Environmental health
Control of air-conditioning and other systems

Clause 32
Chapter 3
Part 3.2

- (f) any other system for the treatment of air or water that is declared by the regulations to be a regulated system for the purposes of this Part.

32 Exemption of certain premises

This Part does not apply to or in respect of any regulated system installed on premises that is declared by the regulations to be exempt from the operation of this Part.

Division 2 Installation, operation and maintenance of regulated systems

33 Installation of regulated systems (cf 1991 Act, s 45)

- (1) If a regulated system is installed on any premises otherwise than in accordance with the prescribed installation requirements, the occupier of the premises at the time the system is installed is guilty of an offence.
Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both.
- (2) It is a defence to proceedings for an offence under subsection (1) if the occupier satisfies the court that the regulated system was installed by a duly qualified person.
- (3) If a duly qualified person:
- (a) is engaged by the occupier of any premises to install a regulated system on the premises, and
 - (b) fails to ensure that the prescribed installation requirements are complied with,
- that person is guilty of an offence.
Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both.

34 Operation of regulated systems (cf 1991 Act, s 46)

- (1) If an occupier of any premises on which a regulated system is installed fails to ensure that the prescribed operating requirements are complied with, the occupier is guilty of an offence.
Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both.
- (2) It is a defence to proceedings for an offence under subsection (1) if the occupier satisfies the court that a duly qualified person was engaged to operate the regulated system.

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Clause 35 Public Health Bill 2010
Chapter 3 Environmental health
Part 3.2 Control of air-conditioning and other systems

- (3) If a duly qualified person:
- (a) is engaged by the occupier of any premises to operate a regulated system, and
 - (b) fails to ensure that the prescribed operating requirements are complied with,
- that person is guilty of an offence.
Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both.

35 Maintenance of regulated systems (cf 1991 Act, s 46)

- (1) If an occupier of any premises on which a regulated system is installed fails to ensure that the prescribed maintenance requirements are complied with, the occupier is guilty of an offence.
Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both.
- (2) It is a defence to proceedings for an offence under subsection (1) if the occupier satisfies the court that a duly qualified person was engaged to maintain the regulated system.
- (3) If a duly qualified person:
- (a) is engaged by the occupier of any premises to maintain a regulated system, and
 - (b) fails to ensure that the prescribed maintenance requirements are complied with,
- that person is guilty of an offence.
Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both.

36 Local government authority to be notified of premises where water-cooling or warm-water systems are installed (cf Microbial Control Reg, cl 15)

The occupier of premises at which a water-cooling system or warm-water system is installed must cause notice of that fact to be given to the relevant local government authority, in a form approved by that authority:

- (a) if the system is installed before he or she becomes the occupier, within one month after he or she becomes the occupier, or
- (b) if the system is installed after he or she becomes the occupier, within one month after the system is installed.

Maximum penalty: 10 penalty units.

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Public Health Bill 2010
Environmental health
Control of air-conditioning and other systems

Clause 37
Chapter 3
Part 3.2

37 Register of premises where water-cooling or warm-water systems are installed (cf Microbial Control Reg, cl 15)

- (1) Each local government authority must maintain a register of premises in its area at which water-cooling systems or warm-water systems are installed.
- (2) The register must show the following for each of the premises at which any water-cooling system or warm-water system is installed:
 - (a) the address of the premises,
 - (b) the type of system installed at the premises,
 - (c) the name of the occupier of the premises and, if the occupier is not the owner, the name of the owner of the premises,
 - (d) the residential and business addresses of each person so named,
 - (e) the telephone numbers at which each person so named may be contacted, both during and after business hours,
 - (f) details of any inspections of the premises carried out by the local government authority for the purposes of this Act,
 - (g) such other information as the regulations may require.
- (3) The register is to be made available to the public at no charge at the head office of the local government authority, during the business hours of that head office.

Division 3 Enforcement provisions

38 Director-General may give maintenance and other directions (cf 1991 Act, s 48)

- (1) The Director-General, or the relevant local government authority, may serve on the occupier of any premises on 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 government authority, is satisfied that the requirement has been complied with.
- (2) Such a notice may not be served unless the Director-General or local government authority suspects that the requirement to which the notice relates is not being, or has not been, complied with.

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Clause 39 Public Health Bill 2010
Chapter 3 Environmental health
Part 3.2 Control of air-conditioning and other systems

- (3) The Director-General may serve on a person found guilty of an offence under section 33 (3), 34 (3) or 35 (3) a notice:
- (a) directing that the person undertake specified training, and
 - (b) prohibiting the person from carrying out specified functions relating to a regulated system until the training is completed.

39 Investigation of outbreaks of Legionnaires' disease (cf Microbial Control Reg, cl 14)

- (1) Any investigation of an outbreak of Legionnaires' disease is to be carried out in accordance with any Departmental guidelines established for the purposes of this section.
- (2) A public health inspector investigating an occurrence of Legionnaires' disease may, by order served on the occupier of premises described in the order, direct that a regulated system that is on the premises and is described in the order be maintained as directed by the order while it is in force.
- (3) Any such direction is a prescribed maintenance requirement for the purposes of this Part, and prevails to the extent of any inconsistency with any other prescribed maintenance requirement.

40 Offence not to comply with Director-General's or local government authority's direction

- (1) A person who:
 - (a) is subject to a direction under this Division, and
 - (b) has notice of the direction,must not, without reasonable excuse, fail to comply with the direction.
Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both, and, in the case of a continuing offence, a further 100 penalty units for each day the offence continues.
- (2) If a direction under section 38 (1) or 39 (2) is not complied with, the Director-General or local government authority may take the action referred to in the direction and:
 - (a) unless the person represents the Crown, may recover an amount equal to the cost of doing so as a debt owed by the person to the Crown or to the local government authority, as the case may be, or
 - (b) if the person represents the Crown, may require the person to pay to the Director-General or to the local government authority an amount equal to the cost of doing so.

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Public Health Bill 2010
Environmental health
Control of public swimming pools and spa pools

Clause 41
Chapter 3
Part 3.3

Part 3.3 Control of public swimming pools and spa pools

41 Definitions (cf Swimming Pools Reg, cl 4)

In this Part:

public swimming pool or spa pool means a swimming pool or spa pool to which the public is admitted, whether free of charge, on payment of a fee or otherwise, including:

- (a) a pool to which the public is admitted as an entitlement of membership of a club, or
 - (b) a pool provided at a workplace for the use of employees, or
 - (c) a pool provided at a hotel, motel or guest house or at holiday units, or similar facility, for the use of guests, or
 - (d) a pool provided at a school or hospital,
- but not including a pool situated at private residential premises.

spa pool includes any structure (other than a swimming pool) that:

- (a) holds more than 680 litres of water, and
- (b) is used or intended to be used for human bathing, and
- (c) has facilities for injecting jets of water or air into the water.

swimming pool includes any structure that is used or intended to be used for human bathing, swimming or diving, and includes a water slide or similar aquatic recreational structure.

42 Local government authority to be notified of premises where public pools are situated

The occupier of premises at which a public swimming pool or spa pool is situated must not allow a person to use the pool unless he or she has caused notice of the pool's existence to be given to the relevant local government authority, in a form approved by that authority.

Maximum penalty: 10 penalty units.

43 Register of premises where public pools are situated

- (1) Each local government authority must maintain a register of premises in its area at which public swimming pools or spa pools are situated.
- (2) The register must show the following for each of the premises at which any such pool is situated:
 - (a) the address of the premises,
 - (b) the name of the occupier of the premises and, if the occupier is not the owner, the name of the owner of the premises,

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Clause 44 Public Health Bill 2010
Chapter 3 Environmental health
Part 3.3 Control of public swimming pools and spa pools

- (c) the residential and business addresses of each person so named,
 - (d) the telephone numbers at which each person so named may be contacted, both during and after business hours,
 - (e) details of any inspections of the premises carried out by the local government authority for the purposes of this Act,
 - (f) such other information as the regulations may require.
- (3) The register is to be made available to the public at no charge at the head office of the local government authority, during the business hours of that head office.

44 Disinfection and cleaning of public pools (cf Swimming Pools Reg, cl 5, 6 and 9)

- (1) The occupier of premises at which a public swimming pool or spa pool is situated must not allow a person to use the pool unless the water in the pool is disinfected in such a way as to minimise the transmission of disease to the other users of the pool.
Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.
- (2) The occupier of premises at which a public swimming pool or spa pool is situated must ensure that the pool surrounds, including any toilets or change rooms, are kept clean and in such condition as to minimise the transmission of disease.
Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.
- (3) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court that the public swimming pool or spa pool was maintained in accordance with any Departmental guidelines established for the purposes of this section.

45 Closure of public pools (cf Swimming Pools Reg, cl 8)

- (1) On being satisfied that a public swimming pool or spa pool is, or is likely to be, a risk to public health, the Director-General may, by notice in writing served on the occupier of the premises at which the pool is situated:
- (a) direct the pool to be closed for use by members of the public until the direction is revoked, or
 - (b) direct that specified maintenance or other action be taken, within the period specified in the notice, for the purpose of minimising or removing the risk to public health.
- (2) A notice may include provisions ancillary to, or consequential on, the giving of the notice.

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Public Health Bill 2010
Environmental health
Control of skin penetration procedures

Clause 46
Chapter 3
Part 3.4

- (3) A person who:
- (a) is subject to a direction under this section, and
 - (b) has notice of the direction,
- must not, without reasonable excuse, fail to comply with the direction.
Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both, and, in the case of a continuing offence, a further 100 penalty units for each day the offence continues.
- (4) A notice must be accompanied by a statement in writing of the reasons for the giving of the notice.
- (5) The occupier of premises to which a notice relates must display a copy of the notice in a conspicuous place at or near each entrance to the public swimming pool or spa pool concerned.
Maximum penalty: 10 penalty units.
- (6) On being satisfied that a public swimming pool or spa pool to which a notice under this section relates is no longer a risk to public health, the Director-General must revoke the direction and immediately give notice in writing of the revocation to the occupier of the premises concerned.

Part 3.4 Control of skin penetration procedures

46 Local government authority to be notified of premises where skin penetration procedures are carried out (cf Skin Penetration Reg, cl 12)

A person must not carry out a skin penetration procedure at any premises or temporary structure unless each local government authority within whose area those procedures are to be carried out has been notified of that fact, in a form approved by that authority.

Maximum penalty: 10 penalty units.

47 Register of premises where skin penetration procedures are conducted (cf Skin Penetration Reg, cl 13)

- (1) Each local government authority must maintain a register of premises or temporary structures in its area at which skin penetration procedures are carried out.
- (2) The register must show:
- (a) the name of the person by or on whose behalf such procedures are to be carried out, and
 - (b) the address of that person's principal place of business, and
 - (c) the type of procedures to be carried out.

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Clause 48 Public Health Bill 2010
Chapter 3 Environmental health
Part 3.4 Control of skin penetration procedures

- (3) The register must also show the following for each of the premises (not being a vehicle, vessel or temporary structure) at which such procedures are carried out:
 - (a) the address of the premises,
 - (b) the name of the occupier of the premises and, if the occupier is not the owner, the name of the owner of the premises,
 - (c) the residential and business addresses of each person so named,
 - (d) the telephone numbers at which each person so named may be contacted, both during and after business hours,
 - (e) details of any inspections of the premises carried out by the local government authority for the purposes of this Act,
 - (f) such other information as the regulations may require.
- (4) The register is to be made available to the public at no charge at the head office of the local government authority, during the business hours of that head office.

48 Orders and directions relating to skin penetration procedures

- (1) If the Local Court finds a person guilty in respect of the commission at any premises:
 - (a) of an offence against this Part, or
 - (b) of an offence against the regulations in relation to the conduct of a skin penetration procedure,it may make an order prohibiting the person from carrying out any such procedure at those premises.
- (2) A person against whom such an order is made must not contravene the order.
Maximum penalty: 10 penalty units.
- (3) The Director-General may serve on a person found guilty of an offence in relation to the conduct of a skin penetration procedure a notice:
 - (a) directing that the person undertake specified training, and
 - (b) prohibiting the person from carrying out specified skin penetration procedures until the training is completed.
- (4) The Director-General may, if a person is found guilty of any such offence at any premises, serve on the occupier of the premises a notice:
 - (a) directing that a specified prescribed requirement be carried out within the period specified in the notice, and

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Control of skin penetration procedures

Clause 48
Chapter 3
Part 3.4

- (b) if appropriate, directing that the skin penetration procedures specified in the notice not be carried out at the premises until the Director-General is satisfied that the requirement has been complied with.
- (5) A person who:
- (a) is subject to a direction under this section, and
 - (b) has notice of the direction,
- must not, without reasonable excuse, fail to comply with the direction.
Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both.

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Clause 49 Public Health Bill 2010
Chapter 4 Disease control and notifications
Part 4.1 Scheduled medical conditions

Chapter 4 Disease control and notifications

Part 4.1 Scheduled medical conditions

Division 1 Preliminary

49 Definitions (cf 1991 Act, s 3)

(1) In this Part:

Category 1 condition means a medical condition listed under Category 1 in Schedule 1.

Category 2 condition means a medical condition listed under Category 2 in Schedule 1.

Category 3 condition means a medical condition listed under Category 3 in Schedule 1.

Category 4 condition means a medical condition listed under Category 4 in Schedule 1.

Category 5 condition means a medical condition listed under Category 5 in Schedule 1.

scheduled medical condition means any medical condition listed in Schedule 1.

(2) The Minister may, by order published on the NSW legislation website, amend or substitute Schedule 1.

Division 2 General precautions

50 Precautions against spread of certain medical conditions (cf 1991 Act, s 11)

(1) A person who:

(a) has a Category 2, 3, 4 or 5 condition, and

(b) is in a public place,

must not fail to take reasonable precautions against spreading the condition.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

(2) It is a defence to proceedings for an offence under this section if the defendant satisfies the court that at the time of commission of the alleged offence, the defendant was not aware that he or she had the medical condition on which the prosecution is based.

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Public Health Bill 2010
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Clause 51
Chapter 4
Part 4.1

51 Notification of death arising from scheduled medical condition (cf 1991 Act, s 20)

Immediately after registering the death of a person where the apparent cause of death involves a scheduled medical condition, the Registrar of Births, Deaths and Marriages is to arrange to have sent to the Director-General, in the approved form, a notice of the death stating:

- (a) the name, address and age of the deceased, and
- (b) the name of the scheduled medical condition, and
- (c) the name of the person who certified the cause of death, and
- (d) such other particulars as may be prescribed by the regulations.

Division 3 Notification and treatment of Category 1, 2 and 3 conditions

52 Medical practitioner to notify Director-General of Category 1 and 2 conditions (cf 1991 Act, ss 14 and 15)

- (1) This section applies if a registered medical practitioner:
 - (a) attends a person in connection with a Category 1 condition, or
 - (b) while attending a person in connection with any medical condition, suspects that the person has a Category 2 condition, or
 - (c) as a result of conducting a post-mortem examination, suspects that a person's cause of death involves a Category 1 or 2 condition.
- (2) In these circumstances, the registered medical practitioner must, as soon as practicable:
 - (a) record such particulars concerning the person's medical condition as may be prescribed by the regulations, and
 - (b) send to the Director-General a certificate, in the approved form, of the particulars so recorded.
- (3) The registered medical practitioner:
 - (a) must keep any such particulars for the period prescribed by the regulations, and
 - (b) subject to section 54, must provide the Director-General with such further information concerning the person's medical condition and transmission and risk factors as is available to the medical practitioner and as the Director-General may request.

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- (4) A registered medical practitioner who attends a person as a patient at a hospital is not required to comply with this section if:
 - (a) the Category 1 or 2 condition concerned is a notifiable disease within the meaning of Part 4.3, and
 - (b) the medical practitioner believes on reasonable grounds that the Director-General has been notified of the disease in accordance with Part 4.3.
- (5) A registered medical practitioner must not, without reasonable excuse, fail to comply with the requirements of this section.
Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.
- (6) It is a defence to proceedings for an offence under this section if the defendant satisfies the court:
 - (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 registered medical practitioner.
- (7) This section applies to a person engaged in an occupation prescribed by the regulations in the same way as it applies to a registered medical practitioner.

53 Pathology laboratories to notify Director-General of Category 3 conditions (cf 1991 Act, s 16)

- (1) This section applies if:
 - (a) a pathology test is carried out at the request of a registered medical practitioner (*the requesting practitioner*) for the purpose of determining whether a person has a Category 3 condition, and
 - (b) the test has a positive result.
- (2) In these circumstances, the person who certifies the test results (*the certifier*) must send to the Director-General a report, in the approved form, as to those results.
Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.
- (3) If the certifier so requests, the requesting practitioner must provide the certifier, within 72 hours after the request is made, with sufficient information to enable the report to be completed.
Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

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Public Health Bill 2010
Disease control and notifications
Scheduled medical conditions

Clause 54
Chapter 4
Part 4.1

- (4) On receiving a report that appears to be incomplete or incorrect, the Director-General may ask any medical practitioner involved in the treatment of the person concerned to provide:
 - (a) such information as is necessary to complete or correct the report, and
 - (b) such other information concerning the person's medical condition and transmission and risk factors as is available to the medical practitioner.
- (5) A medical practitioner who is asked to provide such information is authorised to do so, subject to section 54 but despite any other Act or law.

54 Protection of patient's identity (cf 1991 Act, s 17)

- (1) A registered medical practitioner must not include a patient's name or address:
 - (a) in a certificate under section 52, if the condition to which the certificate relates is a Category 5 condition, or
 - (b) in a written or oral communication made by the medical practitioner for the purpose of arranging a test to determine whether the patient has a Category 5 condition.
- (2) Subsection (1) (b) does not apply if the patient concerned:
 - (a) is receiving hospital services or other health services, within the meaning of the *Health Services Act 1997*, provided by a hospital, or
 - (b) consents to the disclosure of his or her name and address in the relevant communication.
- (3) A person who, in the course of providing a service, including the conduct of a pathology test under section 53, acquires information that another person (*the person concerned*):
 - (a) has been, is to be or is required to be tested for a Category 5 condition, or
 - (b) is, or has had, a Category 5 condition,must take all reasonable steps to prevent that information from being disclosed to any other person.
- (4) Subsection (3) does not apply to the disclosure of such information:
 - (a) with the consent of the person concerned, or
 - (b) to a person who is involved in the provision of care, treatment or counselling to the person concerned so long as the information is relevant to the provision of such care, treatment or counselling, or

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- (c) if the Director-General suspects that failure to disclose the information would be likely to be a risk to public health, or
 - (d) in connection with the administration of this Act or the regulations, or
 - (e) for the purposes of any legal proceedings arising out of this Act or the regulations, or of any report of any such proceedings, or
 - (f) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
 - (g) with other lawful excuse.
- (5) A registered medical practitioner or other person must not, without reasonable excuse, fail to comply with the requirements of this section.
Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

55 Director-General may require disclosure of patient's name and address

- (1) The Director-General may, by notice in writing, direct:
- (a) a registered medical practitioner who has sent a certificate to the Director-General under section 52, or
 - (b) a registered medical practitioner who has requested a pathology test to which a report under section 53 relates,
- to provide the Director-General, within a specified time, with the name and address of the person to whom the certificate or report relates.
- (2) A direction under this section may be given only if the Director-General considers that:
- (a) the person concerned has a Category 5 condition, and
 - (b) identification of the person is necessary in order to safeguard public health.
- (3) A registered medical practitioner must not, without reasonable excuse, fail to comply with such a direction.
Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both.

56 Proceedings for offences (cf 1991 Act, s 37)

Proceedings for an offence under this Division are to be heard and determined in the absence of the public.

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Disease control and notifications
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Clause 57
Chapter 4
Part 4.1

Division 4 Public health orders for Category 4 and 5 conditions

57 Definitions (cf 1991 Act, s 21)

- (1) In this Division:
 - authorised medical practitioner* means:
 - (a) the Chief Health Officer, or
 - (b) a registered medical practitioner authorised by the Director-General to exercise the functions of an authorised medical practitioner under this Division.
 - public health detainee* means a subject person who is detained pursuant to a requirement of a public health order of a kind referred to in section 59 (4) or (5).
- (2) The Administrative Decisions Tribunal's power to *vary* a public health order under this Division is a power:
 - (a) to omit a requirement from the order, or
 - (b) to include in the order a requirement that could have been included in the order when it was made, or
 - (c) to substitute a requirement that could have been included in the order when it was made for any one or more of the requirements already included in the order.

58 Director-General may direct persons to undergo medical examination

(cf 1991 Act, s 22)

- (1) This section applies if the Director-General:
 - (a) reasonably suspects that a person may have a Category 4 or 5 condition and may, on that account, be a risk to public health, and
 - (b) considers that the nature of the suspected condition is such as to warrant medical examination.
- (2) In these circumstances, the Director-General may, by notice in writing, direct the person concerned to undergo, within a specified period, a specified kind of medical examination and associated tests:
 - (a) by a registered medical practitioner in general practice, or
 - (b) by a registered medical practitioner practising in a specified field.
- (3) If the person fails to comply with a direction under subsection (2), the Director-General may, by further notice in writing, direct the person to undergo the specified kind of medical examination, at a specified time and place, by a specified registered medical practitioner.

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- (4) A person must not, without reasonable excuse, fail to comply with a direction under subsection (3).

Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both.

- (5) A direction under subsection (2) or (3) must have due regard to the sensitivities of the person concerned in relation to the gender, ethnicity and cultural background of the registered medical practitioner by whom the examination is to be carried out.

59 Authorised medical practitioner may make public health order (cf 1991 Act, s 23)

- (1) An authorised medical practitioner may make a public health order in respect of a person if satisfied that the person:

- (a) has a Category 4 or 5 condition, and
- (b) because of the way the person behaves may, as a consequence of that condition, be a risk to public health.

- (2) A public health order:

- (a) must be in writing, and
- (b) must name the person subject to the order, and
- (c) must state the grounds on which it is made, and
- (d) must state that, unless sooner revoked, it expires at the end of a specified period (not exceeding 28 days) after it is served on the person subject to the order.

- (3) A public health order may require the person subject to the order to do any one or more of the following:

- (a) to refrain from specified conduct,
- (b) to undergo specified treatment,
- (c) to undergo counselling by one or more specified persons or by one or more persons belonging to a specified class of persons,
- (d) to submit to the supervision of one or more specified persons or of one or more persons belonging to a specified class of persons,
- (e) to undergo specified treatment at a specified place.

- (4) A public health order based on a Category 4 condition, being an order that requires the person to undergo specified treatment at a specified place, may authorise the person subject to the order to be detained at that place while undergoing the treatment.

- (5) A public health order based on a Category 5 condition may authorise the person subject to the order to be detained at a specified place for the duration of the order.

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Clause 60
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- (6) In deciding whether or not to make a public health order, the authorised medical practitioner must take into account:
 - (a) the principle that any restriction on the liberty of a person should be imposed only if it is the most effective way to prevent any risk to public health, and
 - (b) any Departmental guidelines established for the purposes of this section.
- (7) A public health order may include provisions ancillary to, or consequential on, the matters included in the order.
- (8) A public health order does not take effect until it is served personally on the person subject to the order.

60 Duration of public health order (cf 1991 Act, s 24)

- (1) Unless sooner revoked, a public health order based on a Category 4 or 5 condition expires at the end of the period specified in the order.
- (2) Despite subsection (1), a public health order based on a Category 5 condition expires at the end of 3 business days after the person subject to the order is served with the order unless, before it expires, the person is served with a copy of an application for its confirmation under section 61.
- (3) In this section, *business day* means any day that is not a Saturday, Sunday or public holiday.

61 ADT may confirm public health orders relating to Category 5 conditions

(cf 1991 Act, s 25)

- (1) An application may be made to the Administrative Decisions Tribunal for confirmation of a public health order based on a Category 5 condition.

Note. The confirmation of any such order is a *decision* for the purposes of the *Administrative Decisions Tribunal Act 1997*.
- (2) As soon as practicable after such an application is made, the Administrative Decisions Tribunal is to inquire into the circumstances surrounding the making of the public health order.
- (3) Following its inquiry, the Administrative Decisions Tribunal:
 - (a) may confirm the public health order, or
 - (b) may vary the order and confirm it as varied, or
 - (c) may revoke the order.
- (4) An inquiry under this section may not be adjourned for more than 7 days at a time.

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Clause 62	Public Health Bill 2010
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- (5) For the purposes of an inquiry under this section, the Administrative Decisions Tribunal:
- (a) may obtain the assistance of any person having medical or other qualifications relevant to the subject-matter of the inquiry, and
 - (b) may take into account any advice given by such a person.
- (6) A decision of the Administrative Decisions Tribunal under this section is an appealable decision for the purposes of Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997*.

62 ADT may continue public health order (cf 1991 Act, s 26)

- (1) At any time before the expiration of:
- (a) a public health order based on a Category 4 condition, or
 - (b) a public health order based on a Category 5 condition and confirmed under section 61,
- an authorised medical practitioner may apply to the Administrative Decisions Tribunal for continuation of the order.
- (2) An application may be made only if the applicant is satisfied that the subject person would continue to be a risk to public health, as a consequence of a Category 4 or 5 condition, if not subject to a public health order.
- (3) If such an application is made and the person subject to the order notifies the Administrative Decisions Tribunal that continuation of the order is not opposed, the Tribunal may, without inquiry, continue the order for a period not exceeding 6 months.
- (4) Unless the order is continued under subsection (3), the Administrative Decisions Tribunal is to make such inquiries as it thinks fit in relation to the application and:
- (a) may continue the order, with or without variation, for a period not exceeding 6 months from the date of the Tribunal's decision, or
 - (b) may refuse to continue the order, or
 - (c) may revoke the order.
- Note.** If the Administrative Decisions Tribunal refuses to continue the order, it will continue to have effect for the period specified in the order. If the Tribunal revokes the order, it will cease to have effect on revocation.
- (5) For the purposes of an inquiry under this section, the Administrative Decisions Tribunal:
- (a) may obtain the assistance of any person having medical or other qualifications relevant to the subject-matter of the inquiry, and
 - (b) may take into account any advice given by such a person.

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Clause 63
Chapter 4
Part 4.1

63 ADT may review public health orders relating to Category 4 conditions

(cf 1991 Act, s 41)

An application may be made to the Administrative Decisions Tribunal for a review of a public health order based on a Category 4 condition by the person the subject of the order.

Note. The making of any such order is a *decision* for the purposes of the *Administrative Decisions Tribunal Act 1997*.

64 Revocation of public health order by authorised medical practitioner

(cf 1991 Act, s 31)

If the authorised medical practitioner by whom a public health order has been made considers that the person subject to the order is no longer a risk to public health, the medical practitioner is to revoke the order and immediately give notice in writing of the revocation to the subject person and the Administrative Decisions Tribunal.

65 Restriction on making of further public health order (cf 1991 Act, s 32)

If a public health order is revoked, a further public health order may not be made in respect of the same person unless the authorised medical practitioner proposing to make the further order is satisfied that, since the earlier order ceased to have effect, there has been a change in the person's health or behaviour that increases the risk to public health.

66 Inspection of medical records (cf 1991 Act, s 36)

- (1) Unless the Administrative Decisions Tribunal otherwise directs, a person subject to a public health order is entitled to inspect, and make copies of, the medical records kept by any other person in relation to the subject person.
- (2) If the medical records are not kept in a readable form, the person in charge of the records must provide a readable copy of them.

67 Offence not to comply with public health order (cf 1991 Act, s 28)

- (1) A person who:
 - (a) fails to comply with a requirement of a public health order, or
 - (b) being a public health detainee, evades, or attempts to evade, any supervision to which he or she is subject under section 71 (2),is guilty of an offence.
Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both.
- (2) Proceedings for an offence under this section may be commenced only by the Director-General or a police officer.

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Clause 68	Public Health Bill 2010
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Part 4.1	Scheduled medical conditions

- (3) Proceedings for an offence under this section do not preclude action from being taken under section 70 for the contravention on which the proceedings are based.

68 Arrest of persons who contravene public health orders (cf 1991 Act, s 29)

- (1) An authorised medical practitioner may issue a certificate to the effect that a named person is contravening a public health order.
- (2) A police officer may apply to an authorised officer for an arrest warrant in relation to the person named in a certificate issued under subsection (1).
- (3) The authorised officer may issue an arrest warrant in relation to the person so named if satisfied that there are reasonable grounds for doing so.
- (4) A warrant under this section is sufficient authority for any police officer to arrest the named person and to bring the named person before the Administrative Decisions Tribunal to be dealt with under section 70.
- (5) In this section, *authorised officer* has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

69 Arrest of escapee (cf 1991 Act, s 33)

- (1) A public health detainee or person arrested under section 68 who escapes from the place where he or she is detained may be arrested at any time:
- (a) by the person for the time being in charge of that place, or
 - (b) by an authorised medical practitioner, or
 - (c) by a police officer, or
 - (d) by any person assisting a person referred to in paragraphs (a)–(c).
- (2) On being arrested, the escapee must be returned to the place from which he or she has escaped.

70 Action following arrest or surrender (cf 1991 Act, s 30)

- (1) If a person in respect of whom an authorised medical practitioner has issued a certificate under section 68 (1) for an alleged contravention of a public health order is brought or otherwise appears before the Administrative Decisions Tribunal, the Tribunal is to conduct an inquiry into the allegation.
- (2) Following its inquiry, the Administrative Decisions Tribunal:
- (a) may confirm the order, or

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Chapter 4
Part 4.1

- (b) may vary the order and confirm it as varied, or
 - (c) may caution the person and take no further action in the matter.
- (3) A person may be dealt with under this section for an alleged contravention of a public health order whether or not the person has been charged with an offence in relation to the same contravention.

71 Conditions applicable if person detained pursuant to public health order

(cf 1991 Act, s 27)

- (1) A public health detainee is to be detained in accordance with the conditions specified in the relevant public health order with respect to the person's security.
- (2) Despite subsection (1), a public health detainee may, with the approval of an authorised medical practitioner, be permitted to leave the place of detention, but only under the constant personal supervision of a person, or one of a number of persons, nominated by the medical practitioner.
- (3) A public health detainee who evades any supervision to which he or she is subject under subsection (2) is to be taken to have contravened the relevant public health order.

72 Unlawful release from detention (cf 1991 Act, s 34)

- (1) A person who, without lawful authority, releases, or attempts to release a public health detainee or a person arrested under this Division is guilty of an offence.
Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both.
- (2) It is a defence to proceedings for an offence under this section if the defendant satisfies the court that the defendant's action was not a risk to public health and that the defendant knew this to be so.

73 Restrictions on publication of proceedings (cf 1991 Act, s 35)

- (1) The Administrative Decisions Tribunal may make orders prohibiting or restricting the publication of matters relating to proceedings under this Division or to a person in respect of whom such proceedings have been commenced.
- (2) The orders that the Administrative Decisions Tribunal may make include orders prohibiting or restricting publication of any one or more of the following:
 - (a) any report of the proceedings,
 - (b) any information that tends to identify the person in respect of whom the proceedings have been commenced,

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Clause 74	Public Health Bill 2010
Chapter 4	Disease control and notifications
Part 4.2	Sexually transmitted diseases

- (c) any information that tends to identify any other person in respect of whom a public health order is being, or has at any time been, sought or made, whether or not in the proceedings.
- (3) An order under this section may be made by the Administrative Decisions Tribunal of its own motion or on the application of a party to the proceedings.
- (4) If an application for an order 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 under this section does not apply to the reporting of the proceedings in an official report of the proceedings of the Administrative Decisions Tribunal so long as the report does not disclose the identity of the person in respect of whom the proceedings were commenced.
- (6) A person who contravenes an order under this section (whether aware of the order or not) is guilty of an offence.
Maximum penalty: 100 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 the proceedings, but a person may not be both dealt with for a contempt and prosecuted for an offence.

Part 4.2 Sexually transmitted diseases

74 Definitions

In this Part:

sexual intercourse means:

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

sexually transmitted disease means any scheduled medical condition that is transmissible by means of sexual intercourse.

75 Medical practitioners to provide information to patients with sexually transmitted diseases (cf 1991 Act, s 12)

- (1) A registered medical practitioner who suspects that a person receiving attention from the medical practitioner has a sexually transmitted disease must, as soon as practicable, provide the person with such information concerning the disease as is prescribed by the regulations.

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Sexually transmitted diseases

Clause 76
Chapter 4
Part 4.2

- (2) A registered medical practitioner must not, without reasonable excuse, fail to comply with this section.
Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.
- (3) It is a defence to proceedings for an offence under this section if the defendant satisfies the court that he or she believed that the relevant information had previously been supplied to the patient by some other registered medical practitioner.

76 Persons with sexually transmitted diseases to inform sexual partners

(cf 1991 Act, s 13)

- (1) A person who knows that he or she has a sexually transmitted disease 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 transmitted disease from the defendant, and
 - (b) has voluntarily agreed to accept the risk.Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.
- (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: 100 penalty units or imprisonment for 6 months, or both.
- (3) For the purposes of this section, a person is not presumed incapable of having sexual intercourse by reason only of the person's age.

77 Proceedings for offences to be heard in closed court (cf 1991 Act, s 37)

Proceedings for offences under this Part are to be heard and determined in the absence of the public.

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Clause 78 Public Health Bill 2010
Chapter 4 Disease control and notifications
Part 4.3 Notifiable diseases

Part 4.3 Notifiable diseases

78 Definitions (cf 1991 Act, s 68)

- (1) In this Part:
 notifiable disease means a medical condition listed in Schedule 2.
- (2) The Minister may, by order published on the NSW legislation website, amend or substitute Schedule 2.

79 Health practitioners to make hospital CEO aware of notifiable diseases

(cf 1991 Act, s 69)

A health practitioner who is providing professional care or treatment at a hospital and who suspects that:

- (a) a patient at the hospital has a notifiable disease, or
- (b) a former patient has had a notifiable disease while a patient at the hospital,

has a duty, and is authorised, to ensure that the chief executive officer of the hospital is made aware of that fact.

80 Hospital CEO to notify Director-General of notifiable diseases (cf 1991 Act, s 69)

- (1) If the chief executive officer of a hospital suspects that:
 - (a) a patient at the hospital has a notifiable disease, or
 - (b) a former patient has had a notifiable disease while a patient at the hospital,the chief executive officer must immediately provide the Director-General with such information as may be prescribed by the regulations in relation to the patient or former patient.
Maximum penalty: 10,000 penalty units or imprisonment for 2 years, or both.
- (2) The chief executive officer of the hospital must provide the Director-General with such additional information as the Director-General may request in a particular case.
Maximum penalty: 10,000 penalty units or imprisonment for 2 years, or both.
- (3) It is a defence to proceedings for an offence under this section if the chief executive officer satisfies the court that he or she believed that the relevant information had previously been provided to the Director-General.

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Disease control and notifications
Notification of certain deaths

Clause 81
Chapter 4
Part 4.4

Part 4.4 Notification of certain deaths

81 Notification of deaths arising after anaesthesia or sedation

- (1) This section applies if a patient or former patient dies while under, or as a result of, or within 24 hours after, the administration of an anaesthetic or a sedative drug, administered in the course of a medical, surgical or dental operation or procedure or other health operation or procedure, other than a local anaesthetic or sedative drug administered solely for the purpose of facilitating a procedure for resuscitation from apparent or impending death.
- (2) The health practitioner who administered the anaesthetic or sedative drug must immediately:
 - (a) if it was administered at a hospital, ensure that the chief executive officer is notified of the death, or
 - (b) if it was not administered at a hospital, ensure that the Director-General is given notice in writing of the death in the approved form.
- (3) The chief executive officer of a hospital who is notified under this section of a death or otherwise becomes aware that a death of a patient or former patient of the hospital to which this section applies has occurred, must immediately ensure that the Director-General is given notice in writing of the death in the approved form.
- (4) The chief executive officer, and any health practitioner who administered the anaesthetic or sedative drug, must provide the Director-General with such additional information as the Director-General may request in a particular case.
- (5) It is a defence to proceedings for an offence under this section if the chief executive officer or health practitioner satisfies the court that he or she believed that the relevant information had previously been provided to the Director-General.

Maximum penalty: 10,000 penalty units or imprisonment for 2 years, or both.

Part 4.5 Vaccine preventable diseases

82 Definitions (cf 1991 Act, s 42A)

- (1) In this Part:
child means a child of a class (such as children of a specified age group) prescribed by the regulations.

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Clause 82	Public Health Bill 2010
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Part 4.5	Vaccine preventable diseases

child at risk, in relation to a vaccine preventable disease, means a child enrolled at a primary school or child care facility for whom no immunisation certificate or evidence of immunisation has been lodged or produced to the principal of the school or facility to show that the child has been immunised against, or has acquired immunity by infection from, the disease.

child care facility means:

- (a) a child care service to which Part 3 of Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* applies, or
- (b) a service or facility of a class declared by the regulations to be a child care facility for the purposes of this Part.

immunisation means the process of administering to a person, either orally or parenterally, a substance registered as a vaccine in the part of the Australian Register of Therapeutic Goods maintained under section 9A of the *Therapeutic Goods Act 1989* of the Commonwealth relating to registered goods.

immunisation certificate means a certificate in the approved form in which a registered medical practitioner, or a person of a class specified by the Director-General, certifies the immunisation status of a child, and includes a photocopy or a duplicate of such a certificate.

immunisation status of a child means whether or not the child has been immunised against, or has acquired immunity by infection from, all or specified vaccine preventable diseases.

parent of a child means a person having parental responsibility for the child within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*.

primary school means:

- (a) a government school established under the *Education Act 1990*, or
- (b) a non-government school registered under that Act, being a school that provides primary education under Division 1 of Part 3 of that Act.

principal, in relation to a primary school or child care facility, means the person in charge of the school or facility.

vaccine preventable disease means a disease listed in Schedule 3.

- (2) The Minister may, by order published on the NSW legislation website, amend or substitute Schedule 3.

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Disease control and notifications
Vaccine preventable diseases

Clause 83
Chapter 4
Part 4.5

83 Responsibilities of principals of primary schools with respect to immunisation (cf 1991 Act, s 42B)

- (1) When a child is enrolled at a primary school, and on such other occasions as may be prescribed by the regulations, the principal of the school must ask a parent of the child to lodge with the principal an immunisation certificate for the child, unless satisfied that the certificate can be obtained under subsection (2).
- (2) If a child's immunisation certificate has been lodged with the principal and the child subsequently becomes enrolled at another primary school, the principal must, on being asked to do so by a parent of the child or the principal of the other school, forward the certificate to the principal of the other school.
- (3) The principal of a primary school must record in the approved form the immunisation status of each child enrolled at the school, as indicated by the child's immunisation certificate, and, for that purpose, a child for whom no immunisation certificate has been lodged is taken not to have been immunised against any of the vaccine preventable diseases.
- (4) The principal of a primary school must retain an immunisation certificate lodged with the principal in safe custody for such period as may be prescribed by the regulations and must produce it for inspection on request by the regional health officer.

84 Responsibilities of principals of child care facilities with respect to immunisation (cf 1991 Act, s 42C)

- (1) When a child is enrolled at a child care facility, and on such subsequent occasions as may be prescribed by the regulations, the principal of the facility must ask a parent of the child to produce to the principal evidence in the approved form as to the child's immunisation status, unless satisfied that such evidence can be obtained under subsection (2).
- (2) If the principal of a child care facility has recorded the immunisation status of the child and the child subsequently becomes enrolled at another child care facility, the principal must, on being asked to do so by a parent of the child or the principal of the other child care facility, provide that other principal with a copy of the record relating to the immunisation status of the child.
- (3) The principal of a child care facility must record in a register, kept in the approved form, the immunisation status of each child enrolled at the facility, as indicated by the evidence produced to the principal in respect of the child, and, for that purpose, a child for whom no such evidence is produced is taken not to have been immunised against any of the vaccine preventable diseases.

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Clause 85	Public Health Bill 2010
Chapter 4	Disease control and notifications
Part 4.5	Vaccine preventable diseases

- (4) The principal of a child care facility must retain an entry in the register for such period as may be prescribed by the regulations and must produce the register for inspection on request by the regional health officer.

85 Responsibilities of principals during outbreaks of vaccine preventable disease (cf 1991 Act, s 42D)

- (1) On becoming aware that a child enrolled at a primary school or child care facility has a vaccine preventable disease, the principal of the school or facility must inform the regional health officer.
- (2) On being informed that a child has a vaccine preventable disease, the regional health officer may direct the principal of the primary school or child care facility to do either or both of the following, both in respect of the child that has the disease and any other child enrolled at the school or facility who is a child at risk:
- (a) to give to a parent of each such child a notice to the effect that, unless specified requirements are complied with in respect of the child within a specified period, the child is not to attend the school or facility for the duration of the outbreak of the disease,
- (b) to take other specified action with respect to each such child.
- (3) In giving any such direction, the regional health officer must not fail to comply with any Departmental guidelines established for the purposes of this section.
- (4) On receiving any such direction, the principal of the primary school or child care facility must not, without reasonable excuse, fail to comply with the direction.
- (5) A principal who has given a notice referred to in subsection (2) (a) in respect of a child must ensure that the child is excluded from the primary school or child care facility concerned for the duration of the outbreak of the disease unless the requirements specified in the notice have been duly complied with.
- (6) Subsections (1) and (2) do not apply while the primary school or child care facility is closed for a public holiday or vacation, unless the school or facility would reopen before the end of the duration of the outbreak of the disease.
- (7) For the purposes of this section, the duration of an outbreak of a vaccine preventable disease is to be as determined by the regional health officer.
- (8) Except as provided by this section, a member of the staff of a primary school or child care facility must not subject a child who attends or seeks to attend the school or facility to any detriment because of the child's immunisation status.

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Disease control and notifications
Pap Test Register

Clause 86
Chapter 4
Part 4.6

Part 4.6 Pap Test Register

Division 1 Preliminary

86 Definitions (cf 1991 Act, s 42E)

In this Part:

cervical cancer means a malignant growth of human tissue in the cervix of the uterus that is likely to spread to tissue beyond its site of origin.

cervical cancer test means a test carried out to determine whether or not a woman has cervical cancer or any of its precursors, being:

- (a) a pathological examination of a specimen of any kind taken from the woman, or
- (b) a test prescribed by the regulations for the purposes of this paragraph.

identifying particulars of a woman means the woman's:

- (a) full name (and any previous name), and
- (b) residential or postal address.

Pap Test Register—see section 87.

Pap Test Registrar means the Director-General or, if arrangements are in force for the maintenance of the Pap Test Register by some other person, that other person.

pathology request form means a form submitted to a pathology laboratory by or on behalf of a health practitioner requesting the laboratory to carry out a pathological or cytological examination of a specimen.

vaginal cancer test means a cytology test carried out to determine whether or not a woman has vaginal cancer or any of its precursors, being:

- (a) a cytological examination of a specimen of any kind taken from the woman, or
- (b) a test prescribed by the regulations for the purposes of this paragraph.

Division 2 The Pap Test Register

87 The Pap Test Register (cf 1991 Act, ss 42F and 42H)

- (1) The Director-General must maintain, or arrange for the maintenance of, the Pap Test Register.
- (2) The Director-General may enter into an agreement or arrangement with any other person for the maintenance of the Pap Test Register.

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Clause 87 Public Health Bill 2010
Chapter 4 Disease control and notifications
Part 4.6 Pap Test Register

- (3) The object of the Pap Test Register is to reduce the incidence of, and mortality from, preventable cervical cancer or of vaginal cancer by using the Register for the purposes specified in section 88.
- (4) Subject to Division 3, the Pap Test Register is to contain the following information in relation to a cervical cancer test or vaginal cancer test:
- (a) the identifying particulars of the woman who had the test,
 - (b) her date of birth,
 - (c) the date of the test,
 - (d) the result of the test,
 - (e) an indication of whether the test was carried out:
 - (i) because the woman had symptoms that warranted investigation, or
 - (ii) as a routine measure only,
 - (f) the identification number of the test,
 - (g) if the test consisted of a pathological or cytological examination of a specimen taken from the woman:
 - (i) the name, address and identification code of the health practitioner by or on whose behalf the relevant pathology request form was submitted, and
 - (ii) the identification code of the laboratory that examined the specimen,
 - (h) if the test was a test, or a test of a class, prescribed by the regulations:
 - (i) the name, address and identification code of the health practitioner who carried out the test, and
 - (ii) such clinical information as the regulations may prescribe.
- (5) In this section:
- identification code** of a health practitioner or laboratory, means a code used to identify the health practitioner or laboratory for the purposes of the Register.
- identification number** of a cervical cancer test or vaginal cancer test, means the number allocated uniquely to the test:
- (a) by the laboratory that carried out the test (in the case of a test consisting of a pathological or cytological examination of a specimen taken from a woman), or
 - (b) by the health practitioner (in any other case).

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Pap Test Register

Clause 88
Chapter 4
Part 4.6

88 Use of information in Pap Test Register (cf 1991 Act, s 421)

- (1) The information in the Pap Test Register may be used for the following purposes:
 - (a) to remind any woman who does not have a further cervical cancer test (or other appropriate investigation or treatment) within a reasonable time after a cervical cancer test that a further test (or investigation or treatment) is recommended,
 - (b) to remind any woman who does not have a further vaginal cancer test (or other appropriate investigation or treatment) within a reasonable time after an abnormal vaginal cancer test result that a further test (or investigation or treatment) is recommended,
 - (c) to provide a record of test results of cervical cancer tests and vaginal cancer tests that links each woman tested with her health practitioner and any laboratory that produces her test results,
 - (d) to monitor rates and patterns of cervical cancer tests and vaginal cancer tests to assist in the planning and evaluation of test programs,
 - (e) to provide information (being information that does not include any woman's identifying particulars):
 - (i) to the public—so as to increase public awareness of the Register and its objects, and
 - (ii) to health practitioners and laboratories—to assist them to monitor their quality control procedures in relation to cervical cancer tests and vaginal cancer tests, and
 - (iii) to the Department, and
 - (iv) to the Commonwealth,
 - (f) to maintain a database (being a database that does not contain any woman's identifying particulars) for use in research into the prevention and treatment of cervical cancer and vaginal cancer.
- (2) A person acting for the purposes of this Division does not, if acting in good faith, incur any liability because of any notice or advice to a woman, or any failure to notify or advise a woman, in relation to any matter included in or otherwise concerning the Pap Test Register.
- (3) In this section, *test results* means the results of a cervical cancer or vaginal cancer test.

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Clause 89 Public Health Bill 2010
Chapter 4 Disease control and notifications
Part 4.6 Pap Test Register

89 Circumstances in which identifying particulars may be disclosed

(cf 1991 Act, s 42J)

- (1) A person must not disclose the identifying particulars of a woman who has had a cervical cancer test or vaginal cancer test, in conjunction with the result of the test, otherwise than:
 - (a) to the woman concerned, or
 - (b) with the written consent of the woman, or
 - (c) to the woman's health practitioner, or
 - (d) to the person in charge of a laboratory that is, or has previously been, engaged on the woman's behalf to make a pathological or cytological examination of a specimen taken from her, or
 - (e) for a purpose specified in section 88 (1) (a), (b) or (c), or
 - (f) if permitted or required to do so under the terms of an order of a court or the provisions of an Act, or
 - (g) in accordance with the regulations.
- (2) The regulations may prescribe either or both of the following:
 - (a) the persons, or class of persons, to whom the identifying particulars of a woman who has had a cervical cancer test or vaginal cancer test may be disclosed in conjunction with the result of the test,
 - (b) the circumstances in which such a disclosure may be made.

90 Provision of information for inclusion in Pap Test Register (cf 1991 Act, s 42K)

- (1) Within 30 days after a cervical cancer test or vaginal cancer test is carried out in a pathology laboratory, the person in charge of the laboratory must provide a report to the Pap Test Registrar, in the approved form, on the result of the test.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.
- (2) Within 30 days after carrying out a cervical cancer test or vaginal cancer test prescribed by the regulations (other than a test carried out in a pathology laboratory), a health practitioner must provide a report to the Pap Test Registrar, in the approved form, on the result of the test.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.
- (3) The person in charge of a laboratory does not commit an offence against subsection (1) merely because the report concerned did not include information that it was not in the power of the laboratory to provide.

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Part 4.6

- (4) It is the duty of a health practitioner who takes a specimen from a woman for the purposes of a cervical cancer test or vaginal cancer test to ensure that the relevant pathology request form contains as much of the information required by this section to be included in a report from a laboratory as it is in the power of the health practitioner to provide.
- (5) This section is subject to Division 3.

Division 3 Right to anonymity

91 Woman may elect not to be identified in Pap Test Register (cf 1991 Act, ss 42M and 42N)

- (1) A woman who has a cervical cancer test or vaginal cancer test may elect to have her identifying particulars withheld from the Pap Test Register by advising the health practitioner carrying out the test, or taking the specimen for the purposes of the test, that she does not want to be identified in the Register.
- (2) A woman may at any time request the Director-General, in writing, to remove her identifying particulars from the Pap Test Register.
- (3) The Director-General is to cause any such request to be complied with as soon as practicable after receiving it.

92 Woman may elect to have identifying particulars withheld from Pap Test Register (cf 1991 Act, s 42O)

- (1) If a woman elects to have her identifying particulars withheld from the Pap Test Register, the health practitioner to whom she makes the election:
 - (a) must note any relevant pathology request form accordingly, and
 - (b) must not provide those particulars to any person for the purpose of their inclusion in the Register.Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.
- (2) A person in charge of a laboratory that receives a pathology request form noted as referred to in subsection (1) must ensure that the laboratory does not provide the identifying particulars of the woman to whom the form relates to any person for the purpose of their inclusion in the Pap Test Register.
Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.
- (3) A person who suspects that a woman has elected to have her identifying particulars withheld from the Pap Test Register is not to include those particulars in the Register.

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Clause 93 Public Health Bill 2010
Chapter 4 Disease control and notifications
Part 4.7 Other public health and disease registers

93 Health practitioner to provide information about Pap Test Register

(cf 1991 Act, s 42P)

- (1) Before carrying out a cervical cancer test or vaginal cancer test, or taking a specimen from a woman for the purposes of any such test, the health practitioner who is to carry out the test or take the specimen must advise the woman as to the following:
 - (a) the object of the Pap Test Register,
 - (b) the information that is recorded in the Pap Test Register,
 - (c) the purposes for which information in the Pap Test Register may be used,
 - (d) the way in which the confidentiality of the Pap Test Register is protected.
- (2) If the health practitioner's records do not indicate that the woman has previously been provided with the advice referred to in subsection (1), the health practitioner must also advise the woman:
 - (a) that she may elect to have her identifying particulars withheld from the Pap Test Register, and
 - (b) that if she does not so elect, she may have those particulars removed from the Pap Test Register at any time after they are recorded in it.
- (3) This section does not apply if the health practitioner's records indicate that the woman has previously been provided with the advice referred to in this section. In that case the health practitioner is merely to remind the woman of her right to have her identifying particulars removed from the Register.

Part 4.7 Other public health and disease registers

94 Registers that may be established

- (1) A public health or disease register may be established and maintained under this Part for any of the following purposes:
 - (a) to facilitate care and treatment and the follow up of persons who have diseases or have been exposed to diseases,
 - (b) to facilitate the identification of sources of infection and the control of outbreaks of diseases,
 - (c) to facilitate the identification and monitoring of risk factors for diseases or conditions that have a substantial adverse impact on the population,

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Part 4.7

- (d) to facilitate the measurement and monitoring of outcomes of specified population health interventions,
 - (e) to facilitate the identification and monitoring of exposure to chemicals or other environmental factors that impact, or may impact, adversely on the health of individuals.
- (2) The Minister may, by order published in the Gazette, specify public health or disease registers that may be established and maintained under this Part.
 - (3) The order may specify the following:
 - (a) the information that a specified register may contain,
 - (b) the objects or purposes of a specified register.

95 Public health and disease registers

- (1) The Director-General may establish and maintain, or arrange for the establishment and maintenance of, a register of a kind specified by an order under this Part.
- (2) The Director-General may enter into an agreement or arrangement with any other person for the establishment or maintenance, or both, of any such register.
- (3) The Director-General may enter into an agreement or arrangement with any other person, local government authority or government or non-government agency for the provision and use of information for the purposes of any such register.
- (4) A public health organisation must, if directed to do so in writing by the Director-General, provide information for the purposes of any such register.
- (5) A register must not contain identifying particulars of a person, except with the consent of the person or in the circumstances specified by the regulations.
- (6) The regulations may make provision for or with respect to the following:
 - (a) the purposes for which information contained in a register may be used,
 - (b) the disclosure of information contained in a register,
 - (c) the rights of persons about whom information is, or may be, contained in a register.
- (7) In this section:
identifying particulars has the same meaning as it has in Part 4.6.

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Clause 96	Public Health Bill 2010
Chapter 5	Enforcement of Act
Part 5.1	General inspections and inquiries

Chapter 5 Enforcement of Act

Part 5.1 General inspections and inquiries

96 Inspection of documents (cf 1991 Act, s 70)

- (1) The Director-General may inspect a public authority's documents in relation to public health and, for that purpose, may direct the public authority:
 - (a) to make any such document available for inspection, or
 - (b) in the case of a document that is not in writing but is capable of being reduced to writing, to produce, and make available for inspection, a written copy of the document.
- (2) The Director-General may make copies of, or take extracts from, any documents made available under this section.

97 Inquiries by Director-General (cf 1991 Act, s 71)

- (1) The Director-General may inquire into:
 - (a) any matter relating to public health, or
 - (b) any matter that, under this Act, authorises a direction by, or that requires the approval or consent of, the Minister, the Director-General or the Chief Health Officer.
- (2) The Director-General may authorise a person in writing to exercise the functions specified by the authority for the purposes of assisting the inquiry.
- (3) The person's authority may authorise the person to exercise any of the functions of a public health inspector under this Chapter that are specified in the authority.
- (4) For the purposes of an inquiry, the Director-General may obtain, use and disclose any information obtained by the Director-General under this Act, if the Director-General is of the opinion that it is necessary to do so in all the circumstances of the case.
- (5) This section has effect despite any law.

98 Inspection of, and extracts from, births, deaths and marriages registers

(cf 1991 Act, s 64)

- (1) A public health inspector may, at any reasonable time, inspect the registers kept under the *Births, Deaths and Marriages Registration Act 1995*.

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Enforcement of Act
General inspections and inquiries

Clause 99
Chapter 5
Part 5.1

- (2) The Registrar of Births, Deaths and Marriages is to make such arrangements as are necessary for the supply of an extract from, or a copy of an entry in, a register if required by a public health inspector.

99 Powers of inspectors to enter premises

- (1) For the purposes of this Act, a public health inspector:
- (a) may enter and inspect any premises, either alone or together with such other persons as the inspector considers necessary, and
 - (b) may inspect any documents that are on the premises and, for that purpose, may direct the occupier of the premises:
 - (i) to make available for inspection any documents that are in the possession, or under the control, of the occupier, or
 - (ii) in the case of a document that is not in writing but is capable of being reduced to writing, to produce, and make available for inspection, a written copy of the document, and
 - (c) may make copies of, or take extracts from, any such documents, and
 - (d) may, for the purpose of analysis, take samples of any substance found on the premises, and
 - (e) may examine and inspect any apparatus or equipment in any premises, and
 - (f) may take such photographs, films and audio, video and other recordings as the inspector considers necessary, and
 - (g) may, for the purpose of collecting evidence of a contravention of this Act or the regulations, take samples of any substance or take possession of any thing that the inspector believes may constitute such evidence.
- (2) A public health inspector may not exercise the powers conferred by subsection (1) unless he or she is in possession of a search warrant or a certificate that identifies him or her as a public health inspector.
- (3) This section does not authorise entry into any part of premises that is used solely for residential purposes, except:
- (a) with the consent of the occupier of the premises, or
 - (b) under the authority of a search warrant.
- (4) A public health inspector who enters any premises in pursuance of this section may do so without paying any admission fee.

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Clause 100 Public Health Bill 2010
Chapter 5 Enforcement of Act
Part 5.2 Power to demand information

100 Search warrants

- (1) A public health inspector may apply to an authorised officer for a search warrant if the inspector suspects that a provision of this Act or the regulations has been or is being contravened on premises.
- (2) An authorised officer 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 the inspector named in the warrant, when accompanied by a police officer, and such other person (if any) as is named in the warrant:
 - (a) to enter the premises concerned, and
 - (b) to search the premises for evidence of a contravention of this Act or the regulations.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section, **authorised officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

Part 5.2 Power to demand information

101 Power of public health inspectors to require answers

- (1) A public health inspector may, by notice in writing, direct a person whom the inspector suspects to have knowledge of matters about which he or she requires information in connection with the exercise of his or her functions:
 - (a) to answer questions in relation to those matters, and
 - (b) if a meeting with the inspector is reasonably necessary to enable questions in relation to those matters to be properly asked and answered, to meet with the inspector to answer such questions.
- (2) The Director-General or the relevant local government authority may, by notice in writing, direct a corporation to nominate, in writing and within a specified time, a director or officer of the corporation to represent the corporation for the purpose of answering any such questions.
- (3) Answers given by the nominated person bind the corporation.

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Power to demand information

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Part 5.2

- (4) The place and time at which a person may be required to attend under subsection (1) (b) is to be:
 - (a) a place or time nominated by the person, or
 - (b) if the place and time so nominated is unreasonable in the circumstances or if the person fails to nominate a place and time, a place and time nominated by the public health inspector.
- (5) A public health inspector may record any questions and answers under this section if the person to be questioned has been informed that the record is to be made.
- (6) A record may be made by any method, including sound or video recording.
- (7) A copy of any such record must be provided to the person who is questioned as soon as practicable after the record is made.

102 Requirement to provide information and documents

- (1) A public health inspector may, by notice in writing, direct a person to furnish to the inspector such information or documents as the inspector requires in connection with the exercise of his or her functions.
- (2) A notice under this section must specify the manner in which, and the time by which, the information or documents to which the notice relates must be furnished.
- (3) A notice under this section may only require a person to furnish existing documents that are in the person's possession or that are within the person's power to obtain lawfully.
- (4) The person to whom a document is furnished under this section may take copies of it.
- (5) If any document required to be furnished under this section is in electronic, mechanical or other form, the notice requires the document to be furnished in written form, unless the notice otherwise provides.

103 Power of public health inspectors to request name and address

- (1) A public health inspector may request a person whom the inspector suspects to have contravened or to be contravening:
 - (a) this Act or the regulations, or
 - (b) an Act providing for the registration of health practitioners or the regulations under any such Act,to state his or her full name and residential address.
- (2) Failure to comply with the request does not constitute an offence.

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Clause 104 Public Health Bill 2010
Chapter 5 Enforcement of Act
Part 5.3 Offences

Part 5.3 Offences

104 Offence not to comply with direction

- (1) A person must not, without reasonable excuse, fail to comply with a direction under this Chapter.
Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both.
- (2) A person who furnishes any information or does any other thing in purported compliance with a direction under this Chapter, knowing that it is false or misleading in a material respect, is guilty of an offence.
Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both.

105 Offence to impersonate public health inspector

A person who impersonates a public health inspector is guilty of an offence.
Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both.

106 Offence to obstruct or assault persons exercising their functions

(cf 1991 Act, ss 10F (2) and 74)

- (1) A person who intimidates or wilfully obstructs or hinders another person exercising, or attempting to exercise, a function under this Act or the regulations is guilty of an offence.
Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both.
- (2) A person who assaults a public health inspector exercising, or attempting to exercise, a function under this Act or the regulations is guilty of an offence.
Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both.

107 Provisions relating to requirements to furnish documents, information or answer questions

- (1) A person is not guilty of an offence of failing to comply with a direction under this Chapter to furnish documents or information, or to answer a question, unless the person was warned on that occasion that a failure to comply is an offence.
- (2) A person is not excused from a direction under this Chapter to furnish documents or information, or to answer a question, on the ground that

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Chapter 5
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the document, information or answer might incriminate the person or make the person liable to a penalty.

- (3) However, any information furnished or answer given by a natural person in compliance with a direction under this Chapter is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under section 104 (2)) if:
 - (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
 - (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.
- (4) Any document furnished by a person in compliance with a direction under this Chapter is not inadmissible in evidence against the person in criminal proceedings by reason only that the document incriminates the person.
- (5) Further information obtained as a result of a document or information furnished, or of an answer given, in compliance with a direction under this Chapter is not inadmissible by reason only:
 - (a) that the document or information had to be furnished or the answer had to be given, or
 - (b) that the document or information furnished or answer given incriminates the person.
- (6) This section extends to a request under this Chapter to state a person's name and address.

108 Proceedings for offences

- (1) Proceedings for an offence under a provision of this Act or the regulations may be disposed of in a summary manner before the Local Court or before the Supreme Court in its summary jurisdiction.
- (2) Subject to subsection (3), proceedings for an offence under such a provision may be commenced at any time within 12 months after the offence was allegedly committed.
- (3) Proceedings for an offence under a provision of Part 3.2 or section 80 or 81 may be commenced at any time within 2 years after the date on which the offence was allegedly committed.
- (4) The maximum monetary penalty that may be imposed by the Local Court for an offence under a provision referred to in subsection (1) is 100 penalty units or the maximum monetary penalty elsewhere provided in the provision concerned, whichever is the lesser.

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Clause 109 Public Health Bill 2010
Chapter 5 Enforcement of Act
Part 5.3 Offences

109 Penalty notices

- (1) A public health inspector may serve a penalty notice on a person if it appears to the inspector that the person has committed an offence against a provision of this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The regulations:
 - (a) may prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) may prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) may prescribe different amounts of penalties for different offences or classes of offences.
- (8) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

110 Offences by corporations (cf 1991 Act, s 78)

- (1) If a corporation commits an offence under a provision of 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.

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- (2) A person may be proceeded against and convicted under such a provision 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 such a provision.

111 Continuing offences

- (1) A person who is guilty of an offence because the person contravenes a requirement made by or under this Act or the regulations (whether the requirement is imposed by a notice or otherwise) to do or cease to do something (whether or not within a specified period or before a particular time):
 - (a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and
 - (b) is guilty of a continuing offence for each day the contravention continues.
- (2) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.
- (3) This section does not apply to the extent that a requirement of a notice is revoked.

Consultation Draft

Clause 112 Public Health Bill 2010
Chapter 6 Administration
Part 6.1 Regional health officers

Chapter 6 Administration

Part 6.1 Regional health officers

112 Appointment of regional health officers

- (1) The Director-General may appoint any member of an area health service to be the regional health officer for the area.
- (2) Such an appointment must be made with due regard to the cultural characteristics of the area concerned.

113 Functions of regional health officers

- (1) The regional health officer for an area health service has the following functions:
 - (a) to investigate, and furnish reports to the Director-General on, matters affecting public health in the area, if directed to do so by the Director-General,
 - (b) to co-ordinate the activities of area health services and local government authorities in relation to the elimination or reduction of any risks to public health in the area,
 - (c) to co-ordinate the activities of public health inspectors in relation to the enforcement of this Act within the area,
 - (d) such other functions as are conferred or imposed on the regional health officer by or under this Act.
- (2) In the exercise of any such function, the regional health officer for an area health service is subject to the control and direction of the Director-General.
- (3) The regional health officer for an area health service may not exercise any such function except in relation to matters concerning, or arising within, the area for the service.

114 Regional health officers may give certain orders under Local Government Act 1993

- (1) For the purpose of protecting public health, the regional health officer for an area health service may exercise the functions of a local government authority to give orders Nos 7, 15, 16, 17, 18, 21, 22, 22A and 25 under the Table to section 124 of the *Local Government Act 1993*.

Consultation Draft

Public Health Bill 2010
Administration
Public health inspectors

Clause 115
Chapter 6
Part 6.2

- (2) The *Local Government Act 1993* applies to and in respect of the exercise of such a function by a regional health officer in the same way as it applies to and in respect of the exercise of such a function by a local government authority.

115 Exercise by regional health officers of functions of public health inspectors

The regional health officer for an area health service may exercise any of the functions of a public health inspector.

116 Delegation of regional health officer's functions

The regional health officer for an area health service may delegate to any other member of the service any of the regional health officer's functions, other than this power of delegation.

Part 6.2 Public health inspectors

117 Appointment of public health inspectors

- (1) The Director-General may appoint any:
- (a) member of staff of the Department, or
 - (b) member of the NSW Health Service, or
 - (c) member, or member of staff, of a body prescribed by the regulations,
- to be a public health inspector, either generally or in relation to any particular function exercisable by public health inspectors under this or any other Act.
- (2) A local government authority may appoint any member of its staff to be a public health inspector, either generally or in relation to any particular function exercisable by public health inspectors under this Act or the *Local Government Act 1993*.

118 Functions of public health inspectors

- (1) Subject to the terms of his or her appointment, a public health inspector has such functions as are conferred or imposed on a public health inspector by or under this or any other Act.
- (2) A public health inspector appointed by a local government authority may not exercise any such function except in relation to matters concerning, or arising within, the authority's area.

Consultation Draft

Clause 119 Public Health Bill 2010
Chapter 7 Miscellaneous
Part 6.2 Public health inspectors

Chapter 7 Miscellaneous

119 Delegation of Chief Health Officer's functions

The Chief Health Officer may delegate any of the Chief Health Officer's functions under this Act, other than this power of delegation, to any person.

120 Departmental guidelines

The Director-General may, by order published in the Gazette, establish guidelines for the purposes of any provision of this Act that refers to Departmental guidelines.

121 Revocation or variation of notices or directions

- (1) A notice or direction under this Act may be revoked or varied by a subsequent notice or notices or direction or directions.
- (2) A notice or direction may be varied by modification of, or addition to, its terms and specifications.
- (3) Without limiting the above, a notice or direction may be varied by extending the time for complying with the notice or direction.
- (4) A notice or direction may only be revoked or varied by the authority or person that gave it and in the manner required for the giving of the notice or direction.

122 Disclosure of information

A person who discloses any information obtained in connection with the administration or execution of this Act is guilty of an offence unless the disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act or the regulations, or
- (c) for the purposes of any legal proceedings arising out of this Act or the regulations, or of any report of any such proceedings, or
- (d) in other prescribed circumstances, or
- (e) with other lawful excuse.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

Consultation Draft

Public Health Bill 2010
Miscellaneous
Public health inspectors

Clause 123
Chapter 7
Part 6.2

123 Service of documents

- (1) A notice or other document referred to in this Act or the regulations may be served on any person:
 - (a) in the case of a natural person:
 - (i) by delivering it to the person personally, or
 - (ii) by sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
 - (iii) by sending it by facsimile transmission to the facsimile number of the person, or
 - (b) in the case of a body corporate:
 - (i) by leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
 - (ii) by sending it by facsimile transmission to the facsimile number of the body corporate.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising or requiring a document to be served on a person in any other manner.

124 Exclusion of liability of the State and others

- (1) This section applies to civil proceedings for damages or other compensation brought against the State or any authority of the State.
- (2) Damages or other compensation is not payable in any such civil proceedings to the extent that the claim is based on alleged negligence or other breach of duty (including statutory duty) arising because of the exercise of, or the failure to exercise, any function under this Act.
- (3) This section does not affect any entitlement to compensation expressly conferred by this Act.

125 Exclusion of personal liability (cf 1991 Act, s 77)

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

Consultation Draft

Clause 126 Public Health Bill 2010
Chapter 7 Miscellaneous
Part 6.2 Public health inspectors

- (2) Without affecting the generality of subsection (1), a person is not subject 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.

126 Regulations (cf 1991 Act, s 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.

Note. Section 14 requires a code of conduct prescribed by the regulations under that section to have undergone public consultation before the regulation is made.

- (2) In particular, the regulations may make provision for or with respect to any of the following:
- (a) the prevention, mitigation and eradication of risks to public health,
 - (b) the places at which, and the conditions subject to which, a person may be detained under a public health order,
 - (c) regulating public health standards for public swimming pools and spa pools and premises where skin penetration procedures are carried out, including standards for cleanliness, hygiene and infection control,
 - (d) the closure of public swimming pools and spa pools for any period during which they are a risk to public health,
 - (e) the installation, operation, maintenance and inspection of a regulated system within the meaning of Part 3.2,
 - (f) the functions (including powers of entry and inspection) of local government authorities and public health inspectors in relation to a regulated system within the meaning of Part 3.2,
 - (g) the directions that, in relation to a regulated system within the meaning of Part 3.2, may be given by a local government authority or a public health inspector during, or as a result of, an investigation of an occurrence of Legionnaires' disease,
 - (h) compliance with directions referred to in paragraph (g),
 - (i) the provision of information by the owner or occupier of premises in relation to a regulated system within the meaning of Part 3.2 which is installed on the premises,
 - (j) the provision and keeping of operation manuals, and maintenance manuals, for a regulated system within the meaning of Part 3.2,

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Public Health Bill 2010
Miscellaneous
Public health inspectors

Clause 127
Chapter 7
Part 6.2

- (k) the keeping of records, and the making of reports, in relation to a regulated system within the meaning of Part 3.2,
 - (l) the cases in which, the manner in which, and the conditions under which, cremations of human remains may take place,
 - (m) matters preliminary to, and consequential on, cremations of human remains,
 - (n) other public health matters relating to the disposal and handling of human remains,
 - (o) the registration of cremations and burials 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,
 - (p) the exhumation of the bodies of deceased persons,
 - (q) the payment of specified fees in relation to applications made, approvals given, and other matters arising, under this Act.
- (3) A regulation may apply, adopt or incorporate a publication as in force for the time being.
- (4) The regulations may create offences punishable by a penalty not exceeding 20 penalty units.

127 Repeals

The *Public Health Act 1991* and the regulations under that Act are repealed.

128 Savings, transitional and other provisions

Schedule 5 contains savings, transitional and other provisions.

129 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Consultation Draft

Public Health Bill 2010

Schedule 1 Scheduled medical conditions

Schedule 1 Scheduled medical conditions

(Section 48)

Definitions

In this Schedule and Schedule 2:

birth means the birth of a child who has breathed after delivery.

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.

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.

still-birth means the birth of a child that exhibits no sign of respiration or heartbeat, or other sign of life, after delivery and that:

- (a) is of at least 20 weeks' gestation, or
- (b) if it cannot be reliably established whether the period of gestation is more or less than 20 weeks, has a body mass of at least 400 grams at birth.

Category 1

Birth

Congenital malformation (as described in the *International Statistical Classification of Diseases and Related Health Problems*) in a child under the age of one year

Cystic fibrosis in a child under the age of one year

Hypothyroidism in a child under the age of one year

Perinatal death

Phenylketonuria in a child under the age of one year

Pregnancy with a child having a congenital malformation (as described in the *International Statistical Classification of Diseases and Related Health Problems*), cystic fibrosis, hypothyroidism, thalassaemia major or phenylketonuria

Sudden Infant Death Syndrome

Thalassaemia major in a child under the age of one year

Category 2

Acquired Immune Deficiency Syndrome (AIDS)

Acute viral hepatitis

Adverse event following immunisation

Avian influenza in humans

Creutzfeldt-Jakob disease (CJD) and variant Creutzfeldt-Jakob disease (vCJD)

Consultation Draft

Public Health Bill 2010

Scheduled medical conditions

Schedule 1

Foodborne illness in two or more related cases
Gastroenteritis among people of any age in an institution (for example, among persons in educational or residential institutions)
Leprosy
Measles
Pertussis (whooping cough)
Severe Acute Respiratory Syndrome
Smallpox
Swine influenza in humans
Syphilis
Tuberculosis

Category 3

Anthrax
Arboviral infections
Avian influenza in humans
Botulism
Brucellosis
Cancer
Chancroid
Chlamydia
Cholera
Congenital malformation (as described in the *International Statistical Classification of Diseases and Related Health Problems*)
Creutzfeldt-Jakob disease (CJD) and variant Creutzfeldt-Jakob disease (vCJD)
Cryptosporidiosis
Cystic fibrosis
Diphtheria
Donovanosis
Giardiasis
Gonorrhoea
Haemophilus influenzae type b
Hepatitis A
Hepatitis B
Hepatitis C
Hepatitis D (delta)
Hepatitis E

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Public Health Bill 2010

Schedule 1 Scheduled medical conditions

Human Immunodeficiency Virus (HIV) infection
Hypothyroidism
Influenza
Invasive pneumococcal infection
Lead poisoning (as defined by a blood lead level of or above 15µg/dL)
Legionella infections
Leptospirosis
Listeriosis
Lymphogranuloma venereum
Lyssavirus
Malaria
Measles
Meningococcal infections
Mumps
Pertussis (whooping cough)
Phenylketonuria
Plague
Poliomyelitis
Pregnancy with a child having a congenital malformation (as described in the *International Statistical Classification of Diseases and Related Health Problems*), cystic fibrosis, hypothyroidism, thalassaemia major or phenylketonuria
Psittacosis
Q fever
Rabies
Rubella
Salmonella infections
Severe Acute Respiratory Syndrome
Shigellosis
Smallpox
Swine influenza in humans
Syphilis
Thalassaemia major
Tuberculosis
Tularaemia
Typhus (epidemic)
Verotoxin-producing *Escherichia coli* infection

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Public Health Bill 2010

Scheduled medical conditions

Schedule 1

Viral haemorrhagic fevers

Yellow fever

Category 4

Avian influenza in humans

Severe Acute Respiratory Syndrome

Swine influenza in humans

Tuberculosis

Typhoid

Category 5

Acquired Immune Deficiency Syndrome (AIDS)

Human Immunodeficiency Virus (HIV) infection

Consultation Draft

Public Health Bill 2010

Schedule 2 Notifiable diseases

Schedule 2 Notifiable diseases

(Section 77)

Acquired Immune Deficiency Syndrome (AIDS)
Acute viral hepatitis
Adverse event following immunisation
Avian influenza in humans
Botulism
Cancer
Cholera
Congenital malformation (as described in the *International Statistical Classification of Diseases and Related Health Problems*) in a child under the age of one year
Creutzfeldt-Jakob disease (CJD) and variant Creutzfeldt-Jakob disease (vCJD)
Cystic fibrosis in a child under the age of one year
Diphtheria
Foodborne illness in two or more related cases
Gastroenteritis among people of any age, in an institution (for example, among persons in educational or residential institutions)
Haemolytic Uraemic Syndrome
Haemophilus influenzae type b
Hypothyroidism in a child under the age of one year
Legionnaires' disease
Leprosy
Lyssavirus
Measles
Meningococcal disease
Paratyphoid
Pertussis (whooping cough)
Phenylketonuria in a child under the age of one year
Plague
Poliomyelitis

Consultation Draft

Public Health Bill 2010

Notifiable diseases

Schedule 2

Pregnancy with a child having a congenital malformation (as described in the *International Statistical Classification of Diseases and Related Health Problems*), cystic fibrosis, hypothyroidism, thalassaemia major or phenylketonuria

Rabies

Severe Acute Respiratory Syndrome

Smallpox

Swine influenza in humans

Syphilis

Tetanus

Thalassaemia major in a child under the age of one year

Tuberculosis

Typhoid

Typhus (epidemic)

Viral haemorrhagic fevers

Yellow fever

Consultation Draft

Public Health Bill 2010

Schedule 3 Vaccine preventable diseases

Schedule 3 Vaccine preventable diseases

(Section 81)

Diphtheria

Haemophilus influenzae type b

Measles

Meningococcal type C

Mumps

Pertussis (whooping cough)

Poliomyelitis

Rubella

Tetanus

Whooping cough

Consultation Draft

Public Health Bill 2010

Amendment of Acts

Schedule 4

Schedule 4 Amendment of Acts

4.1 Administrative Decisions Tribunal Act 1997 No 76

[1] Schedule 2 Composition and functions of Divisions

Omit “*Public Health Act 1991*” from clause 2 (1) of Division 2 of Part 4.
Insert instead “*Public Health Act 2010*”.

[2] Schedule 2, Part 4, Division 3, clause 6

Omit the clause. Insert instead:

6 Public Health Act 2010 (Review decisions and other matters)

- (1) Applications made under section 60 of the *Public Health Act 2010* are to be determined by one Division member of the General Division of the Tribunal who is a judicial member.
- (2) Applications made under section 7, 61 or 62 of that Act are to be determined by the Tribunal constituted by the following members:
 - (a) 1 presidential judicial member who is a Division member,
 - (b) 1 other judicial member (whether or not the member is a Division member),
 - (c) 1 non-judicial member who is a Division member and who is a registered medical practitioner with experience in public health matters.

4.2 Fair Trading Act 1987 No 68

Schedule 1 Paramount legislation

Omit “*Public Health Act 1991*”. Insert instead “*Public Health Act 2010*”.

4.3 Fisheries Management Act 1994 No 38

[1] Section 195 Consent required for declarations

Omit “*Public Health Act 1991*” from section 195 (3) (a) (ii).
Insert instead “*Public Health Act 2010*”.

[2] Section 223 Minister may acquire land

Omit “*Public Health Act 1991*” from section 223 (3) (a) (ii).
Insert instead “*Public Health Act 2010*”.

Consultation Draft

Public Health Bill 2010

Schedule 4 Amendment of Acts

4.4 Food Act 2003 No 43

Section 136A Certain information may be provided to and by Food Authority

Omit “*Public Health Act 1991*” from section 136A (1) (a).

Insert instead “*Public Health Act 2010*”.

4.5 Guardianship Act 1987 No 257

Section 3 Definitions

Omit “*Public Health Act 1991*” from paragraph (a) (ii) of the definition of *exempt premises* in section 3 (1).

Insert instead “*Public Health Act 2010*”.

4.6 Health Care Complaints Act 1993 No 105

[1] Section 25 Notification of certain complaints to Director-General

Omit the dot paragraph that refers to the *Public Health Act 1991* from section 25 (1).

Insert instead:

- *Public Health Act 2010*

[2] Section 25A Reference of complaints to be dealt with under inquiry powers of Director-General

Omit “section 71 of the *Public Health Act 1991*” from section 25A (1).

Insert instead “section 96 of the *Public Health Act 2010*”.

[3] Section 41A Prohibition orders and public statements

Omit the definition of *code of conduct for unregistered health practitioners* from section 41A (5).

4.7 Health Services Act 1997 No 154

Dictionary

Omit “*Public Health Act 1991*” from the definition of *nursing home* in Part 1.

Insert instead “*Public Health Act 2010*”.

Consultation Draft

Public Health Bill 2010

Amendment of Acts

Schedule 4

4.8 Hunter Water Act 1991 No 53

Section 4C Role of certain Ministers

Omit “*Public Health Act 1991*” from section 4C (1) (b).

Insert instead “*Public Health Act 2010*”.

4.9 Inclosed Lands Protection Act 1901 No 33

Section 3 Definitions

Omit “*Public Health Act 1991*” from paragraph (d) of the definition of *prescribed premises* in section 3 (1).

Insert instead “*Public Health Act 2010*”.

4.10 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 Search warrants under other Acts

Omit the matter relating to the *Public Health Act 1991*. Insert instead:

Public Health Act 2010, section 99

4.11 Liquor Act 2007 No 90

Section 6 Exemptions from Act

Omit “*Public Health Act 1991*” from section 6 (1) (j) (i).

Insert instead “*Public Health Act 2010*”.

4.12 Local Government Act 1993 No 30

[1] Section 22 Other functions

Omit the matter relating to the *Public Health Act 1991* from the note to the section.

Insert instead:

Public Health Act 2010

fluoridation of public water supplies
inspection of systems for purposes of microbial control

Consultation Draft

Public Health Bill 2010

Schedule 4 Amendment of Acts

[2] Section 124 Orders

Omit the matter relating to the *Public Health Act 1991* from the note to the section.

Insert instead:

Public Health Act 2010 direction concerning maintenance or use of
certain regulated systems

[3] Section 124, Table

Omit “, in the opinion of an environmental health officer (within the meaning of the *Public Health Act 1991*),” from the matter relating to order no 22A in Column 2 of the Table.

[4] Section 154 The Minister may exercise any function concerning an order that a council may exercise

Omit “*Public Health Act 1991*” from section 154 (3).

Insert instead “*Public Health Act 2010*”.

4.13 Private Health Facilities Act 2007 No 9

Section 4 Definitions

Omit “*Public Health Act 1991*” from paragraph (c) of the definition of *private health facility* in section 4 (1).

Insert instead “*Public Health Act 2010*”.

4.14 Retirement Villages Act 1999 No 81

Section 5 Meaning of “retirement village”

Omit “*Public Health Act 1991*” from section 5 (3) (b).

Insert instead “*Public Health Act 2010*”.

4.15 Summary Offences Act 1988 No 25

Section 3 Definitions

Omit “*Public Health Act 1991*” from paragraph (c) of the definition of *hospital* in section 3 (1).

Insert instead “*Public Health Act 2010*”.

Consultation Draft

Public Health Bill 2010

Amendment of Acts

Schedule 4

4.16 Sydney Water Act 1994 No 88

Section 6 Role of certain Ministers

Omit “*Public Health Act 1991*” from section 6 (1) (b).

Insert instead “*Public Health Act 2010*”.

4.17 Water Industry Competition Act 2006 No 104

Section 9 Consideration of applications by IPART

Omit “*Public Health Act 1991*” from section 9 (1) (b) (i).

Insert instead “*Public Health Act 2010*”.

Consultation Draft

Public Health Bill 2010

Schedule 5 Savings, transitional and other provisions

Schedule 5 Savings, transitional and other provisions

(Section 128)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (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 its 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 the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part:

appointed day, in its application to any act, matter, thing or circumstance arising under this Part, means:

- (a) in relation to a provision of the 1991 Act that is repealed by this Act, the day on which the provision is repealed, or
- (b) in relation to a provision of this Act, the day on which the provision commences.

the 1991 Act means the *Public Health Act 1991*.

Consultation Draft

Public Health Bill 2010

Savings, transitional and other provisions

Schedule 5

3 Construction of other references

Subject to this Schedule and the regulations, in any Act or instrument:

- (a) a reference to a provision of the 1991 Act for which there is a corresponding provision in this Act extends to the corresponding provision of this Act, and
- (b) a reference to any act, matter or thing referred to in a provision of the 1991 Act for which there is a corresponding provision in this Act extends to the corresponding act, matter or thing referred to in the corresponding provision of this Act.

4 General saving

Subject to this Schedule and the regulations:

- (a) anything begun before the appointed day under a provision of the 1991 Act for which there is a corresponding provision in this Act may be continued and completed under the 1991 Act as if this Act had not been enacted, and
- (b) subject to paragraph (a), anything done under a provision of the 1991 Act for which there is a corresponding provision in this Act (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of this Act.

5 Pap Test Register

The New South Wales Pap Test Register under the 1991 Act is taken to be the Pap Test Register under this Act.

6 Delegations

Any delegation that was in force immediately before the appointed day under a provision of the 1991 Act for which there is a corresponding provision in this Act is taken to be a delegation in force under the corresponding provision of this Act.