

## PUBLIC HEALTH (AMENDMENT) BILL 1989

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the Public Health Act 1902 so as—

- (a) to regulate the installation on premises of air-handling systems, hot-water systems and water-cooling systems, and the operation and maintenance of such systems, in order to prevent or mitigate the growth of micro-organisms that are liable to cause Legionnaires' disease and certain other bacterial diseases; and
- (b) to provide for related matters.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the proposed Act to commence on a day or days to be appointed by proclamation.

**Clause 3** gives effect to the Schedule of amendments.

### SCHEDULE 1—AMENDMENTS

**Schedule 1 (1)** inserts a new Division 3 into Part 6 of the Principal Act. The proposed Division contains sections 63AB–63AK.

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

Proposed section 63AC defines certain expressions for the purposes of the proposed Division. Among the terms defined are "air-handling system" (which includes air conditioners), "cooling tower", "hot-water system", "install", "occupier", "premises" and "water-cooling system". "Premises" includes land but not premises that are occupied or constructed for occupation as separate dwellings.

Proposed section 63AD provides that the new Division will apply to air-handling systems, hot-water systems and water-cooling systems.

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Proposed section 63AE provides that the installation on premises of a system to which the proposed Division will apply must comply with the installation requirements to be specified in regulations. If the provision is contravened, the installer and the occupier of the premises will each commit an offence. However, the occupier of the premises will have a good defence in proceedings for such an offence if it is established that a reputable installer was engaged to install the system.

Proposed section 63AF provides that an occupier of premises on which such a system is installed must ensure that the operating and maintenance requirements to be specified in regulations are complied with. It will be an offence for such an occupier to contravene the provision. It will be a defence to a prosecution for such an offence to establish that a reputable contractor was engaged to operate or maintain the system. However, where such a contractor is engaged, the contractor will be required to ensure that the prescribed operating or maintenance requirements are complied with. A contractor who fails to comply with any of those requirements will commit an offence.

Proposed section 63AG confers on officers authorised by the Secretary of the Department of Health and on health surveyors power to enter premises for the purpose of inspecting and testing systems to which the proposed Division will apply. Those officers and surveyors will be able to require the production of records required to be kept in relation to the operation and maintenance of those systems.

Proposed section 63AH will enable the Secretary of the Department of Health or the relevant local authority to carry out a prescribed maintenance requirement relating to a system to which the proposed Division will apply if the Secretary or that local authority believes on reasonable grounds that the requirement is not being or has not been complied with. The proposed section will also enable the Secretary or that local authority to recover the cost of carrying out the necessary work from the occupier of the premises concerned. A notice directing the occupier of premises to carry out such a maintenance requirement may include a direction that the system must not be operated until the Secretary or that local authority is satisfied that the requirement has been complied with. It will be an offence for the occupier to fail to comply with such a direction.

Proposed section 63AI empowers the Governor-in-Council to make regulations for the purposes of the proposed Division.

Proposed section 63AJ provides for the proposed Division to bind the Crown.

Proposed section 63AK provides for offences against the proposed Division to be disposed of summarily before a Local Court or the Supreme Court. In proceedings for such an offence brought in a Local Court, a person convicted of the offence will be liable to a penalty of up to \$10,000 or to imprisonment for up to 12 months or both. In proceedings for such an offence brought in the Supreme Court, such a person will be liable to a penalty of up to \$50,000 or to imprisonment for up to 2 years or both.

Schedule 1 (2) substitutes section 96 of the Principal Act. The existing section 96 provides that a person who claims to exercise a right to enter premises must, if required, produce a properly authenticated document showing the right of the person to enter. The substituted section 96 imposes a similar restriction on entry by requiring production on request of a certificate of authority, but the operation of the section is being extended so as to ensure that it covers entry under the proposed Division 3 of Part 6. The substituted section 96 does not reproduce a provision similar to the existing section 96 (1) (b) since a refusal or failure to admit a person who is seeking to exercise such a power of entry would be an offence under the substituted section 97.

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**Schedule 1 (3)** substitutes section 97 of the Principal Act. The substituted section 97 provides that a person who hinders, obstructs or delays an officer, health surveyor or other person in the discharge of a duty or the exercise of a power under the Principal Act will be liable to a penalty of up to \$2,000. Under the existing section 97, the maximum penalty is \$200 and, in the case of a continuing offence, a penalty of \$20 for each day during which the offence continues. The substituted section 97 makes no provision for the imposition of a daily penalty.

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