Agreement in Principle

Dr ANDREW McDONALD (Macquarie Fields—Parliamentary Secretary) [11.44 a.m.]: I move:

That this bill be now agreed to in principle.

I am pleased to bring before the House the Public Health Bill 2010. The bill revises and updates the public health legislation in New South Wales and follows on from an extensive review of public health legislation. The current Public Health Act was introduced in 1991. The Act deals with a range of public health matters and includes broad powers to deal with public health emergencies, functions and powers relating to disease control and notification, and powers to control and limit public health risks associated with certain industries and practices. While the current Act operates effectively, the Department of Health's review recommended a range of legislative amendments to modernise and improve the Act. The changes will also ensure that the legislation continues to provide a sound basis to enable public health authorities to effectively protect and promote public health in New South Wales.

In February this year the Department of Health released the consultation draft Public Health Bill for public consultation. The consultation draft was released for a two-month period of general consultation followed by a further month of specific consultation with local government authorities. Specific consultation with local government was essential due to the key role that local government plays in the field of public health. Over 90 written submissions were received on the consultation draft. The issues and concerns raised, and the solutions proposed, in those submissions and in local government consultation forums, have informed the redrafting of the bill. The bill introduced today is the culmination of this valuable consultation process.

The bill carries over many of the existing provisions of the current Public Health Act but also includes a range of new and amended provisions that will continue to protect and promote public health in New South Wales. Part 1 of the bill deals with preliminary matters and includes, for the first time, an objectives clause setting out the objects of the legislation. The stated objects of the legislation are to protect, promote and improve public health; to control the risks to public health; to promote the control of infectious diseases; to prevent the spread of infectious diseases; and to recognise the role of local government in protecting public health.

The express recognition in the objects of the role local government plays in the field of public health is of particular significance. Local government, with its close community focus and understanding of conditions in its local area, is perfectly placed to offer a professional, effective and responsive public health resource. Local government is to take a primary role in the day-to-day regulation of environmental health premises, such as premises containing regulated systems, public swimming pools, and premises conducting skin penetration procedures. I am pleased that the bill expressly recognises the important role of local government, and I extend the Government's thanks to the mayors, councillors, general managers and other local government employees who have given of their time and expertise in the development of this legislation.

Part 2 of the bill generally corresponds to part 2 of the current Act, and is primarily concerned with ensuring that an effective and rapid response occurs when serious public health threats arise. Part 2 of the current Act grants the Minister for Health emergency powers to make orders dealing with public health risk that arise during a declared state of emergency and more generally. However, the current provisions contain a number of administrative requirements that impede the ability of the Minister to respond effectively to emergency situations. For example, sections 4 and 5 of the current Act require that any order of the Minister dealing with a public health risk must be published in the *Government Gazette* before it takes effect. In addition, section 5 of the current Act, which relates to the power of the Minister to make orders to deal with a public health emergency that is not a declared state of emergency, requires the Minister to consult with the Premier before such orders are made and limits the application of such orders to 28 days.

The review of the Public Health Act recognised that a number of the current administrative requirements associated with making emergency orders do not deliver greater clarity or accountability to any subsequent emergency action, whilst having the potential to slow the response and therefore the effectiveness of that response. Amendment of the relevant provisions therefore is warranted to improve flexibility while ensuring that the appropriate balance is struck with protecting ordinary liberties and freedoms, including freedom of movement and assembly. For example, the requirement that an order be published in the *Government Gazette* before it takes effect may result in unnecessary delays in responding to public health emergencies, such as the outbreak of a pandemic. In addition, the limitation of orders to 28 days may be inappropriately short, particularly when dealing with a serious infectious disease outbreak.

In order to ensure that the Minister can respond immediately to a public health emergency, clauses 7 and 8 of the bill require that an order is to be published in the *Government Gazette* as soon as practicable after it is made. The provisions in the bill also allow for an order relating to a public health emergency that is not a state of emergency to be made for up to 90 days, rather than the 28 days provided for by the current Act. The

Administrative Decisions Tribunal will, of course, continue to be able to review the making of such an order. Where a state of emergency has been declared, any order by the Minister that relies on the state of emergency has effect for the duration of the state of emergency unless earlier revoked. The updated provisions in part 2 of the bill will assist the Minister and public health authorities in ensuring that public health emergencies can be responded to rapidly and effectively in order to mitigate risks to the community. I can advise the House that the emergency powers under the current Public Health Act have only rarely been used, with two orders having been made in the past decade: one relating to severe acute respiratory syndrome [SARS] and the other relating to H1N1 influenza [swine flu].

Division 1 of part 3 of the bill relates to safety measures for drinking water, and generally corresponds to the provisions of part 2B of the current Act. However, the bill strengthens provisions relating to the safe supply of drinking water. Under section 10M of the current Act regulations could be made requiring a supplier of drinking water to establish and adhere to a quality assurance program designed to ensure that the drinking water it supplies is consistently safe to drink. However, the bill, at clause 25, instead requires suppliers of drinking water to establish and adhere to a quality assurance program that complies with guidelines approved by the Chief Health Officer. The change to the Chief Health Officer's guidelines will provide for a more flexible and responsive approach to drinking water safety issues. The Chief Health Officer may exempt a supplier of drinking water from the requirement to develop a quality assurance program, and would do so if satisfied that the supplier is already subject to appropriate regulatory requirements in respect of quality assurance and does not need additional regulation in this area. However, members will universally acknowledge that all members of the community are entitled to expect that they will have access to safe drinking water. The provisions in the bill will assist in delivering on that expectation.

Access to clean and safe drinking water is no less important in the more isolated parts of the State than it is in metropolitan areas. Therefore, the bill includes water carriers in the definition of "supplier of drinking water". In this context, a water carrier is a person who delivers drinking water by the tanker load. In the interests of the health of the people receiving and using that drinking water, it is vital that the same regulatory controls can be applied to water carriers as to other suppliers. These regulatory controls ensure that the tankers used to transport water are fit for purpose, that water is tested for safety, and that proper records are kept so that recipients of water may be contacted in the event that the water they have received is identified as the source of a public health risk. Compliance with the required regulatory controls will not be onerous either in resources or time, and the New South Wales Department of Health will be available to assist water carriers by providing template documentation that can be adapted to suit individual circumstances.

Part 3 of the bill also contains provisions streamlining the enforcement powers of authorised officers in relation to environmental health premises: being premises containing regulated systems, public swimming pools and spa pools, and premises in which skin penetration procedures are undertaken. Under the bill authorised officers will be empowered to issue improvement notices requiring occupiers of environmental health premises to comply with prescribed requirements. The ability to issue an improvement notice will ensure that risks to public health can be proactively managed before they pose a serious threat to public health. However, in situations where premises or the activities undertaken on those premises pose a serious risk to public health, the Director General of Health or the general manager of a local government authority will be able to issue a prohibition order. A prohibition order will prevent a regulated system from being operated, a public swimming pool or spa pool from being open to the public, or skin penetration procedures being performed at the premises until a clearance certificate has been issued. The powers to issue improvement notices and prohibition orders are similar to enforcement powers incorporated in the Food Act 2003, the Protection of the Environment Operations Act 1997 and the Occupational Health and Safety Act 2000.

Part 4 of the bill relates to disease control and notification, and generally corresponds to parts 3 and 7 of the current Act. This part contains provisions relating to the duty of medical practitioners, pathology laboratories and hospitals to notify the Director General of Health of instances of certain diseases and medical conditions. This part also contains provisions dealing with the power of authorised medical practitioners to make public health orders. It is important to note that section 62 (6) (a) of the bill provides that in making a public health order an authorised medical practitioner must take into account the principle that any restriction on the liberty of a person should be imposed only if it is the most effective way to prevent risk to public health. Members will note that the proposed wording differs from that in the current Act, which provides that a public health order may only be made if it is the only effective way to ensure that the health of the public is not endangered. However, notwithstanding the added flexibility that the proposed wording offers, the reality is that as a practical matter the use of public health orders is unlikely to change significantly.

Strategies that seek the voluntary cooperation of individuals will always be preferred to coercive measures, as voluntary action will be the most sustainable. This is especially important where the nature of the illness requires personal behavioural change over a lifetime. Escalation of public health action to the more interventionist approaches, including the use of public health orders, will not generally be considered unless less restrictive alternatives have been tried or step by step escalation will be insufficient or too slow to appropriately address the public health risk. As these are sensitive matters requiring careful balancing, the bill provides for the development of regulations that will allow further articulation of these important principles and will provide guidance in the management of public health risk.

Part 5 of the bill carries over provisions from the current Act relating to sexually-transmitted infections, vaccine-preventable diseases and diseases notifiable by hospital chief executive officers. The main change to these provisions relates to the offence provisions concerning sexually-transmitted infections. The current Act provides in section 13 that it is an offence for a person who has a sexually-transmitted infection to have sexual intercourse with another person unless the second person has been informed of the risk of contracting the infection and has voluntarily agreed to the risk. The bill before the House provides in clause 79 (3) that a person charged with such an offence has a defence if he or she satisfies a court that he or she took reasonable precautions to prevent the transmission of the sexually-transmitted infection.

The availability of this defence is an important inclusion. It is important to encourage individuals to take reasonable precautions. Under the Act "reasonable" will be measured on an objective standard and will include safe-sex practices, protecting the people using them from liability just as it will protect them and their partners from disease transmission. It is essential to recognise that this type of positive physical and behavioural precaution is far more effective in protecting public health than the verbal disclosure of an infection. However, where there is a malicious or criminal intent associated with the transmission of a sexually-transmitted infection there are provisions in the Crimes Act that allow for criminal prosecution.

Part 5 of the bill also contains new provisions relating to the reporting of deaths associated with anaesthesia or sedation. Prior to the commencement of the Coroners Act 2009 all such deaths were reported to the Coroner, and subsequently notified by the Coroner to the Special Committee Investigating Deaths Under Anaesthesia [SCIDUA]. However, changes to the reporting of deaths to the Coroner under the Coroners Act 2009 mean that not all deaths occurring while under or as a result of or within 24 hours after the administration of sedation of anaesthesia will be reported to the Coroner and therefore notified to the Special Committee Investigating Deaths Under Anaesthesia.

The safety and reliability of the drugs and techniques used in anaesthesia and sedation have vastly improved over recent decades. This is due to a variety of factors, including the work of SCIDUA which plays a vital role in reviewing anaesthesia-related deaths and assisting in ensuring that policies and practices are in place to help decrease the number of such deaths occurring in the future. It is vital that there is a mechanism under which SCIDUA will be notified of all such anaesthesia- and sedation-related deaths. Accordingly, the bill includes provisions in division 3 of part 5 requiring health practitioners to notify the Director-General when they become aware that a patient has died while under, as a result of or within 24 hours after the administration of sedation or anaesthesia. It is expected that the Director-General's role in this regard will be delegated to SCIDUA. This will ensure that SCIDUA can continue its vital function of reviewing anaesthesia- and sedation-related deaths. This situation has been in place for the past 12 months by way of regulation under the current Act.

Part 6 carries over provisions dealing with public health registers, the most widely recognised of which is the Pap Test Register. Part 6 also will include new provisions allowing public health registers to be established for a range of public health purposes, such as facilitating care and treatment and follow-up of persons who have been exposed to diseases, identifying sources of infection and monitoring the outcomes of population health interventions. The information on these registers will be anonymous unless the individual concerned gives consent to the inclusion of identifying details. The Office of the Privacy Commissioner has reviewed the provisions and the Department of Health's planned use of them and has indicated its support.

Part 7 of the bill relates to miscellaneous health services, such as health services provided by unregistered health practitioners, and generally carries over provisions currently found in part 2A of the current Act. Part 8 of the bill relates to enforcement and has consolidated and modernised the powers of authorised officers to undertake inspections and compliance activities. Part 9 of the bill relates to general administration of the Act and other miscellaneous provisions and includes provisions relating to the appointment of authorised officers and public health officers who will be responsible for coordinating activities in relation to public health within particular areas. The development of the Public Health Bill has taken a substantial amount of time. I thank all stakeholders for their patience and forbearance. However, I believe that the time has been well spent and that the bill before the House will provide an appropriate legislative platform to take public health activity forward over the coming years. I commend the bill to the House.