



New South Wales

Public Health Amendment (Review) Bill 2017

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Public Health Act 2010* as a result of the statutory review of that Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Public Health Act 2010 No 127

Miscellaneous

Schedule 1 [1] amends section 3 of the Act to insert an object of the Act relating to the monitoring of diseases and conditions affecting public health.

Schedule 1 [2] extends the responsibilities of local government authorities to include taking appropriate measures, in relation to their areas, to ensure compliance with the requirements of the Act in relation to private water suppliers and water carters. **Schedule 1 [3]** inserts definitions of *private water supplier* and *water carter*.

Schedule 1 [5] amends the definition of *occupier* of premises to include, for the purposes of provisions relating to legionella control, the owners corporation of premises under a strata scheme, but only if an air-handling system or a water-cooling system is installed on the premises.

Schedule 1 [4] makes a consequential amendment.

Schedule 1 [6] amends the definition of *skin penetration procedure* to include procedures that penetrate a mucous membrane.

Schedule 1 [7] amends section 25 of the Act to create an offence (with a maximum penalty of \$5,500 for an individual or \$27,500 for a corporation) for a supplier of drinking water not to have a quality assurance program. **Schedule 1 [8]** creates an offence (with a maximum penalty of \$5,500 for an individual or \$27,500 for a corporation) for a supplier of drinking water not to comply with the supplier's quality assurance program and an offence (with a maximum penalty of \$2,750 for an individual or \$13,750 for a corporation) for a supplier of drinking water not to provide the Secretary with a copy of the supplier's quality assurance program. **Schedule 1 [9]** enables the regulations to prescribe matters that are to be included in a quality assurance program.

Schedule 1 [10]–[12] amend the definitions of *public swimming pool or spa pool* and *swimming pool* to include a pool situated on private residential premises (but only if that pool is used for commercial purposes), a water play park, an interactive water feature or fountain, and any other pool or spa pool declared by the regulations to be a public swimming pool or spa pool.

Schedule 1 [13] inserts proposed section 39A to make it an offence (with a maximum penalty of \$11,000 or imprisonment for 6 months, or both) for any person other than a medical practitioner or a person, or a person belonging to a class of persons, prescribed by the regulations to carry out eyeball tattooing.

Schedule 1 [32] substitutes section 79 of the Act to create an offence (with a maximum penalty of \$11,000 or imprisonment for 6 months, or both) if a person who knows that he or she has a notifiable disease, or a scheduled medical condition, that is sexually transmissible fails to take reasonable precautions against spreading the disease or condition. The proposed amendment also increases the maximum penalty (from \$5,500 to \$11,000 or imprisonment for 6 months, or both) for the existing offence of an owner or occupier of a building or place knowingly permitting another person to have sexual intercourse that contravenes section 79 at the building or place for the purpose of prostitution.

Schedule 1 [55] inserts proposed section 130A to provide that the Secretary and any person who, on behalf of the Secretary, holds information that has been provided to the Secretary under Part 4 or 5 of the Act cannot be compelled in any proceedings (other than proceedings under the Act) to produce or to give evidence in relation to that information. However, the Secretary may consent to the disclosure of that information for the purpose of any legal proceedings.

Schedule 1 [57] amends section 134 of the Act to insert a power to make regulations requiring the payment of specified fees in relation to the exercise by local government authorities and authorised officers of functions under the Act.

Provision of medical information to Secretary

Schedule 1 [16] amends section 54 of the Act to require any medical practitioner involved in the treatment of a person in relation to a Category 1 or 2 condition to provide the Secretary, at the Secretary's request, with such information as is necessary to complete or correct a certificate provided under that section, as well as such other information concerning the person's medical condition and transmission and risk factors as is available to the medical practitioner. **Schedule 1 [17]** makes a consequential amendment.

Schedule 1 [18] amends section 55 of the Act to enable the regulations to prescribe classes of persons who may request the carrying out of a pathology test to determine whether a person has a Category 3 condition.

Schedule 1 [19] amends section 55 of the Act to enable the Secretary to request certain information from any medical practitioner involved in the treatment of a person with a Category 3 condition at any time, rather than only after receiving a report that appears to be incomplete or incorrect. It also creates an offence (with a maximum penalty of \$5,500) for a registered medical practitioner to fail to comply with such a request without reasonable excuse.

Schedule 1 [20] amends section 56 of the Act to make it clear that a medical practitioner must not include a patient's name or address in a certificate or information provided under section 54 or 55 if the condition to which the certificate or information relates is a Category 5 condition.

Schedule 1 [21] amends section 56 of the Act to make it clear that a person may disclose certain Category 5 condition information to another person who is involved in the provision of care, treatment or counselling to the person to whom the information relates. **Schedule 1 [22]** inserts a note referring to the limitation on the use and disclosure of health information under the *Health Records and Information Privacy Act 2002*.

Schedule 1 [23] inserts proposed section 61 (6) to make it an offence (with a maximum penalty of \$5,500) for a medical practitioner to fail to provide the Secretary with a report of an examination of a person under section 61 of the Act in relation to a Category 4 or 5 condition.

Schedule 1 [33] amends section 83 of the Act to require any medical practitioner involved in the treatment of a person in relation to a notifiable disease to provide the Secretary, at the Secretary's request, with such information as is necessary to complete or correct information provided under that section, as well as such other information concerning the person's medical condition and transmission and risk factors as is available to the medical practitioner. The proposed amendment also makes it an offence (with a maximum penalty of \$5,500) for a registered medical practitioner to fail to comply with the requirements of that section without reasonable excuse.

Public health orders

Schedule 1 [24] amends section 62 of the Act to enable an authorised medical practitioner to make a public health order (a *contact order*) in respect of a person if satisfied, on reasonable grounds, that the person has been exposed to a contact order condition, is at risk of developing the condition and, because of the way the person behaves, may be a risk to public health. **Schedule 1 [14]** inserts a definition of *contact order condition* in section 51 of the Act to mean a medical condition listed in Schedule 1A to the Act. **Schedule 1 [58]** inserts proposed Schedule 1A to specify the contact order conditions and their corresponding expiry periods. **Schedule 1 [15]** enables the Minister to amend or substitute proposed Schedule 1A by the making of an order.

Schedule 1 [25] provides that a contact order expires at the end of the period specified for the relevant condition after it is served on the person. **Schedule 1 [29] and [30]** amend sections 63 and 64 of the Act, respectively, to extend those provisions to contact orders, with the effect that such an order expires after 3 business days unless, before it expires, the person is served with a copy of an application for its confirmation under section 64 of the Act.

Schedule 1 [26] and [27] amend section 62 (3) of the Act to provide that a public health order may require the person subject to the order to undergo specified treatment at a specified place or otherwise; to notify the Secretary of other persons with whom the person has been in contact within a specified period; to notify the Secretary if the person displays any specified signs or symptoms; and, in relation to a person subject to a contact order, to undergo specified testing for the condition.

Schedule 1 [28] substitutes section 62 (4) and (5) of the Act to enable a public health order to be made that authorises the person subject to the order to be detained at a specified place for the duration of the order or, in relation to a person subject to an order that requires the person to undergo specified treatment at a specified place, to be detained at that place while undergoing the treatment.

Schedule 1 [31] amends section 68 of the Act to provide that a further public health order may be made in respect of a person subject to a revoked contact order.

Schedule 1 [56] inserts proposed section 131A, which requires the Secretary to include the number of public health orders made under section 62 of the Act in the annual report of the Ministry of Health under the *Annual Reports (Departments) Act 1985*.

Vaccine preventable diseases

Schedule 1 [38] and [39] amend section 87 of the Act to provide that the principal of a child care facility must not enrol, or permit to be enrolled, an unvaccinated child at the facility if the only reason provided for failure to vaccinate the child is that the parent of the child has a conscientious belief that the child should not be vaccinated in respect of specified vaccine preventable diseases. The proposed amendments also make it an offence (with a maximum penalty of \$5,500) for the principal of a child care facility to enrol a child at the facility if the principal has not been provided

with a vaccination certificate or a medical certificate and to fail to retain information in that register in accordance with the regulations. **Schedule 1 [41]** makes a consequential amendment.

Schedule 1 [40] substitutes section 87 (2) to make it an offence (with a maximum penalty of \$5,500) for a person to forge or falsify a certificate that is required to be provided under section 87.

Schedule 1 [37] and [44] apply sections 86 and 88 of the Act, respectively, to principals of high schools as well as primary schools. Those provisions place certain requirements on principals in relation to the immunisation status of children enrolled at schools and during an outbreak of a vaccine preventable disease at the principals' school. **Schedule 1 [34]–[36]** make consequential amendments.

Schedule 1 [42] substitutes section 88 (1) of the Act to require the principal of a school or child care facility to notify the public health officer in the approved form if the principal becomes aware that a child enrolled at the school or facility has a vaccine preventable disease or if the principal reasonably suspects that a child enrolled at the school or facility, for whom no immunisation certificate has been provided, has come into contact with a person who has a vaccine preventable disease. **Schedule 1 [43]** makes a consequential amendment.

Schedule 1 [45] amends section 88 (2) of the Act to enable the public health officer, in the event of an outbreak of a vaccine preventable disease, to direct the principal of a school or child care facility to notify the parent of a child who has the disease, who has come into contact with a person who has the disease or for whom no immunisation certificate has been provided, that the child is not to attend the school or facility for the duration of the outbreak.

Public health registers

Schedule 1 [47] omits Divisions 1–3 (sections 89–96) of Part 6 of the Act, which relate to the maintenance of the Pap Test Register. The proposed amendment is consequential on the establishment of a National Cancer Screening Register. **Schedule 1 [46], [48] and [50]** make consequential amendments.

Schedule 1 [49] amends section 97 of the Act to insert a regulation-making power to permit the regulations to prescribe other purposes for which a public health register may be established and maintained under Part 6 of the Act.

Schedule 1 [51] amends section 98 of the Act to make it clear that certain requirements in that section relating to the information that a register may contain apply only to registers established under that section. **Schedule 1 [52]** inserts a definition of *identifying particulars* of a person to mean the person's full name (and any previous name) or residential, postal or email address.

Enforcement of Act

Schedule 1 [53] amends section 106 of the Act in relation to the exercise of enforcement powers by persons conducting a public health inquiry for the Secretary. In particular it will enable such a person to apply for a search warrant under the Act.

Schedule 1 [54] inserts proposed section 106 (4A) to enable the Secretary to direct a person whom the Secretary reasonably believes is responsible for, or contributed to, a public health risk identified in an inquiry, to notify specified persons or a specified class of persons of the nature of the risk and of any measures to be taken to mitigate that risk.

Schedule 2 Amendment of Public Health Regulation 2012

Schedule 2 amends clause 44A to provide the principal of a child care facility with an exemption from the requirement that unvaccinated children not be enrolled at the facility if:

- (a) the child is subject to a guardianship order made under section 79A of the *Children and Young Persons (Care and Protection) Act 1998* because the child is in out-of-home care or in need of care and protection, or

- (b) the child is in any form of out-of-home care under that Act (and not merely in out-of-home care as a matter of emergency), or
- (c) the child is an Aboriginal or Torres Strait Islander.