

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 27 February, 1975.*

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. , 1975.

An Act to dissolve the Advisory Board of Health; to make further provision for regulating the use of dangerous substances; for these and other purposes to amend the Public Health Act, 1902, and the Medical Practitioners Act, 1938; and for purposes connected therewith.

BE

Public Health (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by
and with the advice and consent of the Legislative
Council and Legislative Assembly of New South Wales in
Parliament assembled, and by the authority of the same, as
5 follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Public Health Short title.
(Amendment) Act, 1975".

10 2. (1) This Part and Part II shall commence on the Commence-
date of assent to this Act. ment.

(2) The several provisions of Part III shall commence
on such day or days as may be appointed by the Governor
in respect thereof and as may be notified by proclamation
15 published in the Gazette.

3. The Public Health Act, 1902, is, in this Act, referred Principal
to as the Principal Act. Act.

4. This Act is divided as follows :— Division
of Act.

PART I.—PRELIMINARY—ss. 1-4.

20 PART II.—DISSOLUTION OF ADVISORY BOARD OF
HEALTH—ss. 5, 6.

PART III.—REGULATION OF DANGEROUS SUBSTANCES
—ss. 7-9.

PART

Public Health (Amendment).

PART II.

DISSOLUTION OF ADVISORY BOARD OF HEALTH.

5. The Principal Act is amended—

Amendment
of Act No.
30, 1902.

- 5 (a) (i) by omitting from the matter relating to Part II in section 1 the words "ADVISORY BOARD OF HEALTH" and by inserting instead the word "COMMISSION";
- 10 (ii) by omitting from the same matter the words "*The Advisory Board of Health—ss. 6–16.*" and by inserting instead the words "*The Commission—ss. 10–16.*";
- (b) (i) by omitting the definition of "Board" in section 3;
- 15 (ii) by omitting the definition of "President" in section 3;
- (c) by omitting the headings to Part II and to Division 1 of Part II and by inserting instead the following headings :—

Sec. 1.
(Short title
and
division.)Sec. 3.
(Interpre-
tation.)

PART II.

20 THE COMMISSION AND LOCAL AUTHORITIES.

DIVISION 1.—*The Commission.*

- (d) by omitting section 6;
- (e) by omitting section 7;
- (f) by omitting section 8;
- 25 (g) by omitting section 9.

Sec. 6.
(Constitu-
tion of the
Board.)Sec. 7.
(Members
of the
Board.)Sec. 8.
(Quorum.)Sec. 9.
(Advisory
powers of
the Board.)

Public Health (Amendment).

6. (1) In this section, "Board" has the meaning attributed thereto by section 3 of the Principal Act immediately before the commencement of this Part. Dissolution of Advisory Board of Health.

(2) The Board that was in existence immediately before the commencement of this Part is dissolved.

(3) Any person who, immediately before the commencement of this Part, held office as a member of the Board—

- (a) ceases, upon that commencement, to hold that office; and
- (b) is not entitled to be paid any remuneration or compensation by reason of his ceasing to be a member of the Board.

PART III.

REGULATION OF DANGEROUS SUBSTANCES.

7. The Principal Act is further amended—

- (a) (i) by omitting from the matter relating to Part VIIA in section 1 the words "HYDROCYANIC ACID AND OTHER"; Further amendment of Act No. 30, 1902. Sec. 1. (Short title and division.)
- (ii) by omitting from the same matter the matter "71C" and by inserting instead the matter "71G";
- (iii) by omitting from the matter relating to Division 5 of Part X in section 1 the matter "108" and by inserting instead the matter "108B";
- (b) by omitting from section 29 (3) the words "a fee of twenty-five cents" and by inserting instead the words "the prescribed fee"; Sec. 29. (Notification of infectious diseases.)
- (c) by omitting from the heading to Part VIIA the words "HYDROCYANIC ACID AND OTHER"; Heading to Part VIIA.
- (d)

Public Health (Amendment).

- (d) by omitting from section 71B (2) the words "two hundred dollars" and by inserting instead the words "\$200 and, in addition, where a contravention continues, to a further penalty not exceeding \$100 for each day the contravention continues";
- (e) (i) by inserting in section 71C (1) after the word "regulations" the words "for or";
- (ii) by inserting in section 71C (1) (a) after the word "granting" the words ", renewing and cancelling";
- (iii) by omitting section 71C (1) (b) and (c) and by inserting instead the following paragraphs :—
- (b) prohibiting or regulating the use of a dangerous substance;
- (c) the design, supply, cleanliness, maintenance, marking and disposal of any container, equipment, appliance or thing which is to be, or has been, used in connection with a dangerous substance;
- (d) precautions against risk of absorption of a dangerous substance, or risk of injury or poisoning arising out of the use of a dangerous substance including the use of things provided in pursuance of the regulations;
- (e) the storage, handling and conveyance of a dangerous substance;
- (f) procedures to be followed in the event of escape or spillage of a dangerous substance;
- (g) preventing the contamination of any thing or person by a dangerous substance;

(h)

Public Health (Amendment).

- 5 (h) the design, supply, use, storage, main-
tenance, washing and cleansing of
protective clothing and other clothing
and of other things required for pro-
tecting persons, clothing, equipment
and appliances from contamination
by any dangerous substance or
for removing any contamination
therefrom ;
- 10 (i) the provision, design, location and
maintenance of amenities, including
accommodation, facilities for washing
and eating and the supply and use of
15 drinking water, in prescribed circum-
stances involving risk of absorption of
a dangerous substance or risk of injury
or poisoning arising out of the use of a
dangerous substance ;
- 20 (j) requiring persons, in prescribed cir-
cumstances involving risk of absorption
of a dangerous substance or risk of
injury or poisoning arising out of the
use of a dangerous substance, to
undergo a prescribed biological test ;
- 25 (k) requiring persons to abstain from eat-
ing, drinking or smoking in prescribed
circumstances involving risk of absorp-
tion of a dangerous substance or risk
of injury or poisoning arising out of
30 the use of a dangerous substance ;
- 35 (l) securing intervals between, or limita-
tions of, periods of exposure to risk of
absorption of a dangerous substance or
risk of injury or poisoning arising out
of the use of a dangerous substance ;

(m)

Public Health (Amendment).

- 5 (m) prohibiting (temporarily or permanently) or restricting the exposure of persons to risk of absorption of a dangerous substance or risk of injury or poisoning arising out of the use of a dangerous substance;
- 10 (n) measures for detecting and investigating cases in which absorption of a dangerous substance or injury or poisoning arising out of the use of a dangerous substance has occurred including medical examinations, the making of prescribed biological tests and the notification of absences from
- 15 work in prescribed circumstances involving risk of absorption of a dangerous substance or risk of injury or poisoning arising out of the use of a dangerous substance;
- 20 (o) the provision, keeping available in good order, and the use, of facilities, equipment and other things for preventive and first aid treatment in prescribed circumstances involving risk of absorption of a dangerous substance or risk of injury or poisoning arising out of the use of a dangerous substance;
- 25 (p) requiring the provision of, and submission to, instruction and training in the use of things provided in pursuance of the regulations and in the effects of dangerous substances and the observance of precautions;
- 30 (q) the making, keeping and inspection of records of matters relating to the risk of absorption of, or risk of injury or poisoning arising out of the use of, a dangerous substance and the furnishing
- 35 of

Public Health (Amendment).

- 5 of returns and information relating to those matters including returns and information related to medical examinations, biological tests and injury or poisoning;
- (r) imposing on prescribed persons or classes of persons the obligation to comply with the provisions of the regulations; and
- 10 (s) all matters which by this Part are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- 15 (iv) by omitting from section 71c (2) the words "paragraph (c) of";
- (v) by omitting from section 71c (2) the words "Factories and Shops Act, 1912-1943" and by inserting instead the words "Factories, Shops and Industries Act, 1962";
- 20 (vi) by inserting after section 71c (2) the following subsections :—
- (3) Regulations made under subsection (1) may—
- 25 (a) apply differently according to such factors as may be specified in the regulations;
- (b) provide that any act or thing shall be done or be in accordance wholly or partly with a specified standard or with the approval or to the satisfaction of a prescribed person or class of persons;
- 30 (c) confer upon a prescribed person or class of persons a discretionary authority;
- 35 (d)

Public Health (Amendment).

- 5 (d) confer on either the Commission or other prescribed persons, or both, power to give, in such manner as may be prescribed, instructions, orders, directions or requirements;
- 10 (e) exempt persons or classes of persons, either absolutely or subject to conditions, from provisions of the regulations or provide for the grant of absolute or conditional exemptions from provisions of the regulations by the Commission or other prescribed persons, or both; and
- 15 (f) impose a penalty not exceeding \$200 for any breach of a regulation and, in addition, where the breach continues, a penalty not exceeding \$100 for every day that the breach continues.
- (4) No person shall—
- 20 (a) wilfully interfere with or misuse any clothing, appliance, equipment, facility or other thing provided in pursuance of a regulation made under subsection (1); or
- 25 (b) wilfully and without reasonable cause do anything likely to cause risk of absorption of a dangerous substance or risk of injury or poisoning by a dangerous substance, to himself or
- 30 others.

Penalty for an offence against this subsection : \$200, and, in addition, for a continuing offence, \$100 for each day the offence continues.

(f)

Public Health (Amendment).

(f) by inserting after section 71C the following ^{Secs.} sections :— ^{71D-71G.}

71D. (1) The Commission may appoint officers ^{Inspectors.} to be inspectors of dangerous substances.

5 (2) Subject to subsection (3), an inspector of dangerous substances, for the purpose of the execution of this Part or of regulations made under this Part, may enter at any reasonable time any premises or conveyance—

10 (a) in or on which a dangerous substance is being, has recently been or is about to be, used, stored, handled or conveyed;

(b) in or on which things are required by regulations to be done or provided; or

15 (c) which he has reasonable cause to believe to be premises or a conveyance falling within paragraph (a) or (b).

(3) An inspector of dangerous substances shall not enter any premises or conveyance, or any part of premises or of a conveyance, used exclusively as a residence except with the consent of the occupier.

25 (4) Any person refusing or failing to admit an inspector of dangerous substances in the exercise of his authority under subsection (2) is, for the purposes of section 96 (1) (b) (iii), subject to a penalty.

30 (5) The provisions of section 96 apply where an inspector of dangerous substances has an authority to enter any premises or conveyance in the same way as they apply where the Commission or a local authority or their officers have a power to enter any premises under, or referred to in, section

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95 and they so apply as if the word "premises" wherever occurring in section 96 were construed so as to include a conveyance.

5 (6) For the purpose of the execution of this Part or of regulations made under this Part, an inspector of dangerous substances may—

10 (a) require the production of, and inspect, examine and copy, registers, records or other documents kept in pursuance of regulations made under this Part;

15 (b) make examinations, enquiries and tests and take such photographs as he considers necessary to ascertain whether the provisions of this Part, and the regulations made under this Part, are being complied with;

20 (c) require any person whom he finds in or on any premises or conveyance referred to in subsection (2) to give such information as it is in his power to give as to who is the owner or occupier of those premises or that conveyance or the employer of persons employed to work in or on those premises or that conveyance;

25 (d) either alone or in the presence of any other person, as the inspector thinks fit, require any person whom he finds in or on any premises or conveyance referred to in subsection (2) or whom he has reasonable cause to believe to be, or to have been within the preceding three months, employed to work in or on those premises or that conveyance to answer questions with respect to the observance of the provisions of this Part, or the regulations made under this Part;

(e)

Public Health (Amendment).

5 (e) take for analysis a sample of any substance or thing which in his opinion may be, contain or be contaminated by, a dangerous substance or a degradation product of a dangerous substance;

(f) in the case of an inspector who is a legally qualified medical practitioner, carry out medical examinations;

10 (g) carry out prescribed biological tests in a prescribed manner in prescribed circumstances; and

15 (h) exercise such other powers as may be necessary for carrying out the provisions of this Part, and regulations made under this Part.

20 (7) Where, under this section, an inspector requires a person to answer a question and the answer tends to incriminate that person, neither the question nor the answer may be used in any proceedings against that person except proceedings under subsection (9) in respect of a wilfully false or misleading answer to the question.

25 (8) Subsection (7) applies whether the person required to answer a question objects to answering it or not.

(9) A person shall be deemed to have obstructed a person in the discharge of a duty imposed on him under an authority conferred by this Act if that person—

30 (a) wilfully delays an inspector of dangerous substances in the exercise of any power under this section;

(b) fails to comply with any requirement of an inspector made in pursuance of this section;

(c)

Public Health (Amendment).

(c) prevents or attempts to prevent, a person from appearing before, or complying with a requirement of, an inspector under this section; or

5 (d) wilfully gives a false or misleading answer in purported compliance with such a requirement.

10 71E. (1) Any person aggrieved by any Appeals. determination made by an inspector of dangerous substances under a discretionary authority may appeal, within ten days after the determination is notified to him, against the determination to the Commission.

15 (2) An appeal under subsection (1) shall be made in accordance with the regulations.

20 (3) The Commission, in deciding an appeal under subsection (1), may confirm the determination made by the inspector appealed against with or without modification or refuse to confirm that determination.

(4) The determination of the Commission in respect of any appeal under subsection (1) shall be final and shall be deemed to be the determination of the inspector.

25 71F. (1) In this section "analyst" means an Analysis. analyst within the meaning of the Therapeutic Goods and Cosmetics Act, 1972.

30 (2) An inspector of dangerous substances may submit any sample taken under section 71D (6) (e) to an analyst for analysis.

(3)

Public Health (Amendment).

5 (3) Where an analysis has been made by an analyst or under his personal supervision in respect of any sample submitted for analysis under subsection (2), the analyst may issue a certificate setting out the results of that analysis.

10 (4) Where a certificate has been issued under subsection (3) setting out the results of an analysis made in respect of any sample, the owner of the substance or thing from which the sample was taken or the person in whose possession, care or custody or under whose control the substance or thing was at the time of the taking of the sample shall, upon payment of the prescribed fee, be supplied with a copy of the certificate.

15 (5) No person shall, for trade purposes or advertisement, use any analysis made for the purpose of this section.

20 71G. A person shall not disclose any information obtained by him in connection with the implementation of this Part or the regulations made under this Part except in the course of his implementing this Part or those regulations. Non-disclosure of information.

25 (g) (i) by inserting in section 108 (1) (b) after the word "officer" where secondly occurring the words " , inspector of dangerous substances"; Sec. 108. (Proof in certain cases.)

(ii) by inserting after section 108 (2) the following subsection :—

30 (3) In any legal proceeding or prosecution under the provisions of this Act a certificate purporting to be signed by an analyst and setting out the results of an analysis is evidence of the substance analysed, of the result of the analysis and that the analysis was carried out in such manner as may be specified in the certificate.

(h)

Public Health (Amendment).

(h) by inserting after section 108 the following sections :—

Secs. 108A
and 108B.

5 108A. (1) A person against whom proceedings are brought for a contravention of the provisions of this Act or the regulations is, upon information laid by him and on giving to the prosecution not less than three clear days' notice of his intention, entitled to have any other person to whose act or default he alleges that the contravention was due brought before the court in the proceedings.

Third party
procedure.

15 (2) If, after the contravention has been proved, the original defendant proves that the contravention was due to the act or default of that other person, that other person may be convicted of the offence, and, if the original defendant further proves that he used all due diligence to secure that the provisions in question were complied with, the information against him for the offence shall be dismissed.

20 (3) Where a defendant seeks to avail himself of the provisions of subsection (2)—

25 (a) the prosecution, as well as the person whom the defendant charges with the offence, has the right to cross-examine the defendant if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence; and

30 (b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party to those proceedings.

108B. A person who is a director, within the meaning of the Companies Act, 1961, or an employee, of a corporation which offends against

Offences by
corpora-
tions.

this

Public Health (Amendment).

this Act or the regulations is guilty of the same offence, and liable to be punished accordingly, unless—

- 5 (a) the offence committed by the corporation was committed without the knowledge of that person;
- (b) that person was not in a position to influence the conduct of the corporation in relation to the commission of the offence by it; or
- 10 (c) that person, being in such a position, used all due diligence to prevent the commission of the offence by the corporation.

8. The Medical Practitioners Act, 1938, is amended by
15 inserting after section 42 (3) the following subsection :—

Amendment
of Act No.
37, 1938.

Sec. 42.

(4) Subsection (2) shall not apply to an advertisement or holding out by an inspector of dangerous substances appointed under section 71D of the Public Health Act, 1902, in relation to the lawful exercise of
20 his functions or duties under that Act or the regulations made under that Act.

(Penalty for
posing as
medical
practitioner
when not
registered.)

9. A regulation made under section 71C of the Principal
Act and in force immediately before the commencement of
section 7 of this Act shall, if it could have been made under
25 the Principal Act as amended by this Act, be deemed to have
been made under the Principal Act, as so amended.

Saving.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975
[16c]

No. , 1975.

A BILL

To dissolve the Advisory Board of Health; to make further provision for regulating the use of dangerous substances; for these and other purposes to amend the Public Health Act, 1902, and the Medical Practitioners Act, 1938; and for purposes connected therewith.

[MR HEALEY—19 February, 1975.]

BE

Public Health (Amendment).

5 **B**E it enacted by the Queen's Most Excellent Majesty, by
and with the advice and consent of the Legislative
Council and Legislative Assembly of New South Wales in
Parliament assembled, and by the authority of the same, as
follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Public Health Short title.
(Amendment) Act, 1975".

10 2. (1) This Part and Part II shall commence on the Commence-
date of assent to this Act. ment.

(2) The several provisions of Part III shall commence
on such day or days as may be appointed by the Governor
in respect thereof and as may be notified by proclamation
15 published in the Gazette.

3. The Public Health Act, 1902, is, in this Act, referred Principal
to as the Principal Act. Act.

4. This Act is divided as follows :—

Division
of Act.

PART I.—PRELIMINARY—ss. 1-4.

20 PART II.—DISSOLUTION OF ADVISORY BOARD OF
HEALTH—ss. 5, 6.

PART III.—REGULATION OF DANGEROUS SUBSTANCES
—ss. 7-9.

PART

Public Health (Amendment).

PART II.

DISSOLUTION OF ADVISORY BOARD OF HEALTH.

5. The Principal Act is amended—

Amendment
of Act No.
30, 1902.

- 5 (a) (i) by omitting from the matter relating to Part Sec. 1.
II in section 1 the words "ADVISORY BOARD (Short title
OF HEALTH" and by inserting instead the word and
"COMMISSION"; division.)
- 10 (ii) by omitting from the same matter the words
"The Advisory Board of Health—ss. 6–16."
and by inserting instead the words "The
Commission—ss. 10–16.";
- (b) (i) by omitting the definition of "Board" in Sec. 3.
section 3; (Interpre-
tation.)
- 15 (ii) by omitting the definition of "President" in
section 3;
- (c) by omitting the headings to Part II and to Division Part II.
1 of Part II and by inserting instead the following
headings :—

PART II.

20 THE COMMISSION AND LOCAL AUTHORITIES.

DIVISION 1.—*The Commission.*

- (d) by omitting section 6; Sec. 6.
(Constitu-
tion of the
Board.)
- (e) by omitting section 7; Sec. 7.
(Members
of the
Board.)
- (f) by omitting section 8; Sec. 8.
(Quorum.)
- 25 (g) by omitting section 9. Sec. 9.
(Advisory
powers of
the Board.)

Public Health (Amendment).

6. (1) In this section, "Board" has the meaning attributed thereto by section 3 of the Principal Act immediately before the commencement of this Part. Dissolution of Advisory Board of Health.

(2) The Board that was in existence immediately before the commencement of this Part is dissolved.

(3) Any person who, immediately before the commencement of this Part, held office as a member of the Board—

- (a) ceases, upon that commencement, to hold that office; and
- (b) is not entitled to be paid any remuneration or compensation by reason of his ceasing to be a member of the Board.

PART III.

REGULATION OF DANGEROUS SUBSTANCES.

7. The Principal Act is further amended—

(a) (i) by omitting from the matter relating to Part VIIA in section 1 the words "HYDROCYANIC ACID AND OTHER";

(ii) by omitting from the same matter the matter "71C" and by inserting instead the matter "71G";

(iii) by omitting from the matter relating to Division 5 of Part X in section 1 the matter "108" and by inserting instead the matter "108B";

(b) by omitting from section 29 (3) the words "a fee of twenty-five cents" and by inserting instead the words "the prescribed fee";

(c) by omitting from the heading to Part VIIA the words "HYDROCYANIC ACID AND OTHER";

(d)

Further amendment of Act No. 30, 1902.

Sec. 1. (Short title and division.)

Sec. 29. (Notification of infectious diseases.)

Heading to Part VIIA.

Public Health (Amendment).

- (d) by omitting from section 71B (2) the words “two hundred dollars” and by inserting instead the words “\$200 and, in addition, where a contravention continues, to a further penalty not exceeding \$100 for each day the contravention continues”; Sec. 71B.
(Restriction on use of dangerous substance for purpose of fumigation.)
- 5
- (e) (i) by inserting in section 71C (1) after the word “regulations” the words “for or”; Sec. 71C.
(Regulations.)
- (ii) by inserting in section 71C (1) (a) after the word “granting” the words “, renewing and cancelling”;
- 10
- (iii) by omitting section 71C (1) (b) and (c) and by inserting instead the following paragraphs :—
- (b) prohibiting or regulating the use of a dangerous substance;
- 15
- (c) the design, supply, cleanliness, maintenance, marking and disposal of any container, equipment, appliance or thing which is to be, or has been, used in connection with a dangerous substance;
- 20
- (d) precautions against risk of absorption of a dangerous substance, or risk of injury or poisoning arising out of the use of a dangerous substance including the use of things provided in pursuance of the regulations;
- 25
- (e) the storage, handling and conveyance of a dangerous substance;
- 30
- (f) procedures to be followed in the event of escape or spillage of a dangerous substance;
- (g) preventing the contamination of any thing or person by a dangerous substance;
- 35

(h)

Public Health (Amendment).

- 5 (h) the design, supply, use, storage, main-
tenance, washing and cleansing of
protective clothing and other clothing
and of other things required for pro-
tecting persons, clothing, equipment
and appliances from contamination
by any dangerous substance or
for removing any contamination
therefrom ;
- 10 (i) the provision, design, location and
maintenance of amenities, including
accommodation, facilities for washing
and eating and the supply and use of
15 drinking water, in prescribed circum-
stances involving risk of absorption of
a dangerous substance or risk of injury
or poisoning arising out of the use of a
dangerous substance ;
- 20 (j) requiring persons, in prescribed cir-
cumstances involving risk of absorption
of a dangerous substance or risk of
injury or poisoning arising out of the
use of a dangerous substance, to
undergo a prescribed biological test ;
- 25 (k) requiring persons to abstain from eat-
ing, drinking or smoking in prescribed
circumstances involving risk of absorp-
tion of a dangerous substance or risk
of injury or poisoning arising out of
30 the use of a dangerous substance ;
- 35 (l) securing intervals between, or limita-
tions of, periods of exposure to risk of
absorption of a dangerous substance or
risk of injury or poisoning arising out
of the use of a dangerous substance ;

(m)

Public Health (Amendment).

- 5 (m) prohibiting (temporarily or permanently) or restricting the exposure of persons to risk of absorption of a dangerous substance or risk of injury or poisoning arising out of the use of a dangerous substance ;
- 10 (n) measures for detecting and investigating cases in which absorption of a dangerous substance or injury or poisoning arising out of the use of a dangerous substance has occurred including medical examinations, the making of prescribed biological tests and the notification of absences from work in prescribed circumstances involving risk of absorption of a dangerous substance or risk of injury or poisoning arising out of the use of a dangerous substance ;
- 15 (o) the provision, keeping available in good order, and the use, of facilities, equipment and other things for preventive and first aid treatment in prescribed circumstances involving risk of absorption of a dangerous substance or risk of injury or poisoning arising out of the use of a dangerous substance ;
- 20 (p) requiring the provision of, and submission to, instruction and training in the use of things provided in pursuance of the regulations and in the effects of dangerous substances and the observance of precautions ;
- 25 (q) the making, keeping and inspection of records of matters relating to the risk of absorption of, or risk of injury or poisoning arising out of the use of, a dangerous substance and the furnishing
- 30 of
- 35

Public Health (Amendment).

- 5 of returns and information relating to those matters including returns and information related to medical examinations, biological tests and injury or poisoning;
- (r) imposing on prescribed persons or classes of persons the obligation to comply with the provisions of the regulations; and
- 10 (s) all matters which by this Part are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- 15 (iv) by omitting from section 71c (2) the words "paragraph (c) of";
- (v) by omitting from section 71c (2) the words "Factories and Shops Act, 1912-1943" and by inserting instead the words "Factories, Shops and Industries Act, 1962";
- 20 (vi) by inserting after section 71c (2) the following subsections :—
- (3) Regulations made under subsection (1) may—
- 25 (a) apply differently according to such factors as may be specified in the regulations;
- (b) provide that any act or thing shall be done or be in accordance wholly or partly with a specified standard or with the approval or to the satisfaction of a prescribed person or class of persons;
- 30 (c) confer upon a prescribed person or class of persons a discretionary authority;
- 35 (d)

Public Health (Amendment).

5 (d) confer on either the Commission or other prescribed persons, or both, power to give, in such manner as may be prescribed, instructions, orders, directions or requirements;

10 (e) exempt persons or classes of persons, either absolutely or subject to conditions, from provisions of the regulations or provide for the grant of absolute or conditional exemptions from provisions of the regulations by the Commission or other prescribed persons, or both; and

15 (f) impose a penalty not exceeding \$200 for any breach of a regulation and, in addition, where the breach continues, a penalty not exceeding \$100 for every day that the breach continues.

(4) No person shall—

20 (a) wilfully interfere with or misuse any clothing, appliance, equipment, facility or other thing provided in pursuance of a regulation made under subsection (1); or

25 (b) wilfully and without reasonable cause do anything likely to cause risk of absorption of a dangerous substance or risk of injury or poisoning by a dangerous substance, to himself or
30 others.

Penalty for an offence against this subsection : \$200, and, in addition, for a continuing offence, \$100 for each day the offence continues.

(f)

Public Health (Amendment).

(f) by inserting after section 71c the following ^{Secs.}
sections :— ^{71D-71G.}

71D. (1) The Commission may appoint officers ^{Inspectors.}
to be inspectors of dangerous substances.

5 (2) Subject to subsection (3), an inspector
of dangerous substances, for the purpose of the
execution of this Part or of regulations made under
this Part, may enter at any reasonable time any
premises or conveyance—

10 (a) in or on which a dangerous substance is
being, has recently been or is about to be,
used, stored, handled or conveyed;

(b) in or on which things are required by
regulations to be done or provided; or

15 (c) which he has reasonable cause to believe to
be premises or a conveyance falling within
paragraph (a) or (b).

(3) An inspector of dangerous substances
shall not enter any premises or conveyance, or any
20 part of premises or of a conveyance, used exclusively
as a residence except with the consent of the
occupier.

(4) Any person refusing or failing to admit
an inspector of dangerous substances in the exercise
25 of his authority under subsection (2) is, for the
purposes of section 96 (1) (b) (iii), subject to a
penalty.

(5) The provisions of section 96 apply
where an inspector of dangerous substances has an
30 authority to enter any premises or conveyance in
the same way as they apply where the Commission
or a local authority or their officers have a power to
enter any premises under, or referred to in, section

Public Health (Amendment).

95 and they so apply as if the word "premises" wherever occurring in section 96 were construed so as to include a conveyance.

5 (6) For the purpose of the execution of this Part or of regulations made under this Part, an inspector of dangerous substances may—

10 (a) require the production of, and inspect, examine and copy, registers, records or other documents kept in pursuance of regulations made under this Part;

15 (b) make examinations, enquiries and tests and take such photographs as he considers necessary to ascertain whether the provisions of this Part, and the regulations made under this Part, are being complied with;

20 (c) require any person whom he finds in or on any premises or conveyance referred to in subsection (2) to give such information as it is in his power to give as to who is the owner or occupier of those premises or that conveyance or the employer of persons employed to work in or on those premises or that conveyance;

25 (d) either alone or in the presence of any other person, as the inspector thinks fit, require any person whom he finds in or on any premises or conveyance referred to in subsection (2) or whom he has reasonable cause to believe to be, or to have been within the preceding three months, employed to work in or on those premises or that conveyance to answer questions with respect to the observance of the provisions of this Part, or the regulations made under this Part;

30

35

(e)

Public Health (Amendment).

- 5 (e) take for analysis a sample of any substance or thing which in his opinion may be, contain or be contaminated by, a dangerous substance or a degradation product of a dangerous substance;
 - (f) in the case of an inspector who is a legally qualified medical practitioner, carry out medical examinations;
 - 10 (g) carry out prescribed biological tests in a prescribed manner in prescribed circumstances; and
 - 15 (h) exercise such other powers as may be necessary for carrying out the provisions of this Part, and regulations made under this Part.
- (7) Where, under this section, an inspector requires a person to answer a question and the answer tends to incriminate that person, neither the question nor the answer may be used in any proceedings against that person except proceedings under subsection (9) in respect of a wilfully false or misleading answer to the question.
- (8) Subsection (7) applies whether the person required to answer a question objects to answering it or not.
- (9) A person shall be deemed to have obstructed a person in the discharge of a duty imposed on him under an authority conferred by this Act if that person—
- 30 (a) wilfully delays an inspector of dangerous substances in the exercise of any power under this section;
 - (b) fails to comply with any requirement of an inspector made in pursuance of this section;

(c)

Public Health (Amendment).

(c) prevents or attempts to prevent, a person from appearing before, or complying with a requirement of, an inspector under this section; or

5 (d) wilfully gives a false or misleading answer in purported compliance with such a requirement.

10 71E. (1) Any person aggrieved by any Appeals. determination made by an inspector of dangerous substances under a discretionary authority may appeal, within ten days after the determination is notified to him, against the determination to the Commission.

15 (2) An appeal under subsection (1) shall be made in accordance with the regulations.

20 (3) The Commission, in deciding an appeal under subsection (1), may confirm the determination made by the inspector appealed against with or without modification or refuse to confirm that determination.

(4) The determination of the Commission in respect of any appeal under subsection (1) shall be final and shall be deemed to be the determination of the inspector.

25 71F. (1) In this section "analyst" means an Analysis. analyst within the meaning of the Therapeutic Goods and Cosmetics Act, 1972.

30 (2) An inspector of dangerous substances may submit any sample taken under section 71D (6) (e) to an analyst for analysis.

(3)

Public Health (Amendment).

5 (3) Where an analysis has been made by an analyst or under his personal supervision in respect of any sample submitted for analysis under subsection (2), the analyst may issue a certificate setting out the results of that analysis.

10 (4) Where a certificate has been issued under subsection (3) setting out the results of an analysis made in respect of any sample, the owner of the substance or thing from which the sample was taken or the person in whose possession, care or custody or under whose control the substance or thing was at the time of the taking of the sample shall, upon payment of the prescribed fee, be supplied with a copy of the certificate.

15 (5) No person shall, for trade purposes or advertisement, use any analysis made for the purpose of this section.

20 71G. A person shall not disclose any information obtained by him in connection with the implementation of this Part or the regulations made under this Part except in the course of his implementing this Part or those regulations. Non-disclosure of information.

25 (g) (i) by inserting in section 108 (1) (b) after the word "officer" where secondly occurring the words ", inspector of dangerous substances"; Sec. 108. (Proof in certain cases.)

(ii) by inserting after section 108 (2) the following subsection :—

30 (3) In any legal proceeding or prosecution under the provisions of this Act a certificate purporting to be signed by an analyst and setting out the results of an analysis is evidence of the substance analysed, of the result of the analysis and that the analysis was carried out in such manner as may be specified in the certificate.

35

(h)

Public Health (Amendment).

(h) by inserting after section 108 the following sections :— Secs. 108A
and 108B.

5 108A. (1) A person against whom proceedings are brought for a contravention of the provisions of this Act or the regulations is, upon information laid by him and on giving to the prosecution not less than three clear days' notice of his intention, entitled to have any other person to whose act or default he alleges that the contravention was due brought before the court in the proceedings. Third party
procedure.

10 (2) If, after the contravention has been proved, the original defendant proves that the contravention was due to the act or default of that other person, that other person may be convicted of the offence, and, if the original defendant further proves that he used all due diligence to secure that the provisions in question were complied with, the information against him for the offence shall be dismissed.

20 (3) Where a defendant seeks to avail himself of the provisions of subsection (2)—

25 (a) the prosecution, as well as the person whom the defendant charges with the offence, has the right to cross-examine the defendant if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence; and

30 (b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party to those proceedings.

108B. A person who is a director, within the meaning of the Companies Act, 1961, or an employee, of a corporation which offends against

this

Public Health (Amendment).

this Act or the regulations is guilty of the same offence, and liable to be punished accordingly, unless—

- 5 (a) the offence committed by the corporation was committed without the knowledge of that person;
- (b) that person was not in a position to influence the conduct of the corporation in relation to the commission of the offence by it; or
- 10 (c) that person, being in such a position, used all due diligence to prevent the commission of the offence by the corporation.

8. The Medical Practitioners Act, 1938, is amended by inserting after section 42 (3) the following subsection :—

Amendment
of Act No.
37, 1938.

Sec. 42.

(4) Subsection (2) shall not apply to an advertisement or holding out by an inspector of dangerous substances appointed under section 71D of the Public Health Act, 1902, in relation to the lawful exercise of his functions or duties under that Act or the regulations made under that Act.

(Penalty for
posing as
medical
practitioner
when not
registered.)

9. A regulation made under section 71C of the Principal Act and in force immediately before the commencement of section 7 of this Act shall, if it could have been made under the Principal Act as amended by this Act, be deemed to have been made under the Principal Act, as so amended.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975

[16c]

PUBLIC HEALTH (AMENDMENT) BILL, 1975

EXPLANATORY NOTE

THE objects of this Bill are—

- (a) to dissolve the Advisory Board of Health;
- (b) to provide that a medical practitioner who sends a certificate relating to an infectious disease in accordance with section 29 (1A) (a) of the Public Health Act, 1902, shall be paid the prescribed fee, instead of a fee of 25c;
- (c) to make further provision for regulating the use, handling, storage and conveyance of dangerous substances;
- (d) to create offences relating to—
 - (i) interference with, or misuse of, items which are provided in pursuance of the regulations; and
 - (ii) causing risk of absorption of a dangerous substance or risk of injury or poisoning by a dangerous substance;
- (e) to provide for the appointment of inspectors of dangerous substances and their powers;
- (f) to provide for analysis of samples which may contain a dangerous substance;
- (g) to permit a defendant, in certain circumstances, to join a further defendant in proceedings under the Public Health Act, 1902;
- (h) to make employees and certain officers of a corporation personally liable, in certain circumstances, in respect of an offence under that Act committed by the corporation;
- (i) to amend the Medical Practitioners Act, 1938, to permit inspectors of dangerous substances to carry out prescribed biological tests in a prescribed manner in prescribed circumstances;
- (j) to make further consequential or ancillary provisions.

PROOF

No. , 1975.

A BILL

To dissolve the Advisory Board of Health; to make further provision for regulating the use of dangerous substances; for these and other purposes to amend the Public Health Act, 1902, and the Medical Practitioners Act, 1938; and for purposes connected therewith.

19 February, 1975.

BE

Public Health (Amendment).

5 **B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Public Health Short title. (Amendment) Act, 1975".

10 2. (1) This Part and Part II shall commence on the Commence-
date of assent to this Act. ment.

(2) The several provisions of Part III shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation
15 published in the Gazette.

3. The Public Health Act, 1902, is, in this Act, referred Principal
to as the Principal Act. Act.

4. This Act is divided as follows :—

Division
of Act.

PART I.—PRELIMINARY—ss. 1–4.

20 PART II.—DISSOLUTION OF ADVISORY BOARD OF
HEALTH—ss. 5, 6.

PART III.—REGULATION OF DANGEROUS SUBSTANCES
—ss. 7–9.

PART II.

25 DISSOLUTION OF ADVISORY BOARD OF HEALTH.

Public Health (Amendment).

5. The Principal Act is amended—

Amendment
of Act No.
30, 1902.

- 5 (a) (i) by omitting from the matter relating to Part II in section 1 the words "ADVISORY BOARD OF HEALTH" and by inserting instead the word "COMMISSION";
- (ii) by omitting from the same matter the words "*The Advisory Board of Health—ss. 6–16.*" and by inserting instead the words "*The Commission—ss. 10–16.*";
- 10 (b) (i) by omitting the definition of "Board" in section 3;
- (ii) by omitting the definition of "President" in section 3;
- 15 (c) by omitting the headings to Part II and to Division 1 of Part II and by inserting instead the following headings :—

PART II.

THE COMMISSION AND LOCAL AUTHORITIES.

DIVISION 1.—*The Commission.*

- 20 (d) by omitting section 6;
- (e) by omitting section 7;
- (f) by omitting section 8;
- (g) by omitting section 9.

Sec. 6.
(Constitu-
tion of the
Board.)

Sec. 7.
(Members
of the
Board.)

Sec. 8.
(Quorum.)

Sec. 9.
(Advisory
powers of
the Board.)

Public Health (Amendment).

6. (1) In this section, "Board" has the meaning attributed thereto by section 3 of the Principal Act immediately before the commencement of this Part. Dissolution of Advisory Board of Health.
- (2) The Board that was in existence immediately before the commencement of this Part is dissolved.
- (3) Any person who, immediately before the commencement of this Part, held office as a member of the Board—
- (a) ceases, upon that commencement, to hold that office; and
- (b) is not entitled to be paid any remuneration or compensation by reason of his ceasing to be a member of the Board.

PART III.

REGULATION OF DANGEROUS SUBSTANCES.

7. The Principal Act is further amended—

- (a) (i) by omitting from the matter relating to Part VIIA in section 1 the words "HYDROCYANIC ACID AND OTHER"; Further amendment of Act No. 30, 1902. Sec. 1. (Short title and division.)
- (ii) by omitting from the same matter the matter "71C" and by inserting instead the matter "71G";
- (iii) by omitting from the matter relating to Division 5 of Part X in section 1 the matter "108" and by inserting instead the matter "108B";
- (b) by omitting from section 29 (3) the words "a fee of twenty-five cents" and by inserting instead the words "the prescribed fee"; Sec. 29. (Notification of infectious diseases.)
- (c) by omitting from the heading to Part VIIA the words "HYDROCYANIC ACID AND OTHER"; Heading to Part VIIA.
- (d)

Public Health (Amendment).

- 5 (d) by omitting from section 71B (2) the words "two hundred dollars" and by inserting instead the words "\$200 and, in addition, where a contravention continues, to a further penalty not exceeding \$100 for each day the contravention continues";
- 10 (e) (i) by inserting in section 71c (1) after the word "regulations" the words "for or";
- (ii) by inserting in section 71c (1) (a) after the word "granting" the words ", renewing and cancelling";
- 15 (iii) by omitting section 71c (1) (b) and (c) and by inserting instead the following paragraphs :—
- (b) prohibiting or regulating the use of a dangerous substance;
- 20 (c) the design, supply, cleanliness, maintenance, marking and disposal of any container, equipment, appliance or thing which is to be, or has been, used in connection with a dangerous substance;
- 25 (d) precautions against risk of absorption of a dangerous substance, or risk of injury or poisoning arising out of the use of a dangerous substance including the use of things provided in pursuance of the regulations;
- 30 (e) the storage, handling and conveyance of a dangerous substance;
- (f) procedures to be followed in the event of escape or spillage of a dangerous substance;
- 35 (g) preventing the contamination of any thing or person by a dangerous substance;

Sec. 71B.
(Restriction
on use of
dangerous
substance
for purpose
of
fumigation.)

Sec. 71c.
(Regula-
tions.)

(h)

Public Health (Amendment).

- 5 (h) the design, supply, use, storage, main-
tenance, washing and cleansing of
protective clothing and other clothing
and of other things required for pro-
tecting persons, clothing, equipment
and appliances from contamination
by any dangerous substance or
for removing any contamination
therefrom ;
- 10 (i) the provision, design, location and
maintenance of amenities, including
accommodation, facilities for washing
and eating and the supply and use of
15 drinking water, in prescribed circum-
stances involving risk of absorption of
a dangerous substance or risk of injury
or poisoning arising out of the use of a
dangerous substance ;
- 20 (j) requiring persons, in prescribed cir-
cumstances involving risk of absorption
of a dangerous substance or risk of
injury or poisoning arising out of the
use of a dangerous substance, to
undergo a prescribed biological test ;
- 25 (k) requiring persons to abstain from eat-
ing, drinking or smoking in prescribed
circumstances involving risk of absorp-
tion of a dangerous substance or risk
of injury or poisoning arising out of
30 the use of a dangerous substance ;
- (l) securing intervals between, or limita-
tions of, periods of exposure to risk of
absorption of a dangerous substance or
risk of injury or poisoning arising out
35 of the use of a dangerous substance ;

(m)

Public Health (Amendment).

- 5 (m) prohibiting (temporarily or permanently) or restricting the exposure of persons to risk of absorption of a dangerous substance or risk of injury or poisoning arising out of the use of a dangerous substance ;
- 10 (n) measures for detecting and investigating cases in which absorption of a dangerous substance or injury or poisoning arising out of the use of a dangerous substance has occurred including medical examinations, the making of prescribed biological tests and the notification of absences from work in prescribed circumstances involving risk of absorption of a dangerous substance or risk of injury or poisoning arising out of the use of a dangerous substance ;
- 15 (o) the provision, keeping available in good order, and the use, of facilities, equipment and other things for preventive and first aid treatment in prescribed circumstances involving risk of absorption of a dangerous substance or risk of injury or poisoning arising out of the use of a dangerous substance ;
- 20 (p) requiring the provision of, and submission to, instruction and training in the use of things provided in pursuance of the regulations and in the effects of dangerous substances and the observance of precautions ;
- 25 (q) the making, keeping and inspection of records of matters relating to the risk of absorption of, or risk of injury or poisoning arising out of the use of, a dangerous substance and the furnishing of
- 30
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Public Health (Amendment).

- 5 of returns and information relating to those matters including returns and information related to medical examinations, biological tests and injury or poisoning;
- (r) imposing on prescribed persons or classes of persons the obligation to comply with the provisions of the regulations; and
- 10 (s) all matters which by this Part are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- 15 (iv) by omitting from section 71c (2) the words "paragraph (c) of";
- (v) by omitting from section 71c (2) the words "Factories and Shops Act, 1912-1943" and by inserting instead the words "Factories, Shops and Industries Act, 1962";
- 20 (vi) by inserting after section 71c (2) the following subsections :—
- (3) Regulations made under subsection (1) may—
- 25 (a) apply differently according to such factors as may be specified in the regulations;
- (b) provide that any act or thing shall be done or be in accordance wholly or partly with a specified standard or with the approval or to the satisfaction of a prescribed person or class of persons;
- 30 (c) confer upon a prescribed person or class of persons a discretionary authority;
- 35 (d)

Public Health (Amendment).

5 (d) confer on either the Commission or other prescribed persons, or both, power to give, in such manner as may be prescribed, instructions, orders, directions or requirements;

10 (e) exempt persons or classes of persons, either absolutely or subject to conditions, from provisions of the regulations or provide for the grant of absolute or conditional exemptions from provisions of the regulations by the Commission or other prescribed persons, or both; and

15 (f) impose a penalty not exceeding \$200 for any breach of a regulation and, in addition, where the breach continues, a penalty not exceeding \$100 for every day that the breach continues.

(4) No person shall—

20 (a) wilfully interfere with or misuse any clothing, appliance, equipment, facility or other thing provided in pursuance of a regulation made under subsection (1); or

25 (b) wilfully and without reasonable cause do anything likely to cause risk of absorption of a dangerous substance or risk of injury or poisoning by a dangerous substance, to himself or
30 others.

Penalty for an offence against this subsection : \$200, and, in addition, for a continuing offence, \$100 for each day the offence continues.

(f)

Public Health (Amendment).

(f) by inserting after section 71c the following **Secs.**
sections :— **71D-71G.**

71D. (1) The Commission may appoint officers **Inspectors.**
to be inspectors of dangerous substances.

5 (2) Subject to subsection (3), an inspector of dangerous substances, for the purpose of the execution of this Part or of regulations made under this Part, may enter at any reasonable time any premises or conveyance—

- 10 (a) in or on which a dangerous substance is being, has recently been or is about to be, used, stored, handled or conveyed;
- (b) in or on which things are required by regulations to be done or provided; or
- 15 (c) which he has reasonable cause to believe to be premises or a conveyance falling within paragraph (a) or (b).

(3) An inspector of dangerous substances shall not enter any premises or conveyance, or any
20 part of premises or of a conveyance, used exclusively as a residence except with the consent of the occupier.

(4) Any person refusing or failing to admit an inspector of dangerous substances in the exercise
25 of his authority under subsection (2) is, for the purposes of section 96 (1) (b) (iii), subject to a penalty.

(5) The provisions of section 96 apply where an inspector of dangerous substances has an
30 authority to enter any premises or conveyance in the same way as they apply where the Commission or a local authority or their officers have a power to enter any premises under, or referred to in, section

Public Health (Amendment).

95 and they so apply as if the word "premises" wherever occurring in section 96 were construed so as to include a conveyance.

5 (6) For the purpose of the execution of this Part or of regulations made under this Part, an inspector of dangerous substances may—

10 (a) require the production of, and inspect, examine and copy, registers, records or other documents kept in pursuance of regulations made under this Part;

15 (b) make examinations, enquiries and tests and take such photographs as he considers necessary to ascertain whether the provisions of this Part, and the regulations made under this Part, are being complied with;

20 (c) require any person whom he finds in or on any premises or conveyance referred to in subsection (2) to give such information as it is in his power to give as to who is the owner or occupier of those premises or that conveyance or the employer of persons employed to work in or on those premises or that conveyance;

25 (d) either alone or in the presence of any other person, as the inspector thinks fit, require any person whom he finds in or on any premises or conveyance referred to in subsection (2) or whom he has reasonable cause to believe to be, or to have been within the preceding three months, employed to work in or on those premises or that conveyance to answer questions with respect to the observance of the provisions of this Part, or the regulations made under this Part;

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(e)

(e)

Public Health (Amendment).

- 5 (e) take for analysis a sample of any substance or thing which in his opinion may be, contain or be contaminated by, a dangerous substance or a degradation product of a dangerous substance;
- (f) in the case of an inspector who is a legally qualified medical practitioner, carry out medical examinations;
- 10 (g) carry out prescribed biological tests in a prescribed manner in prescribed circumstances; and
- 15 (h) exercise such other powers as may be necessary for carrying out the provisions of this Part, and regulations made under this Part.

20 (7) Where, under this section, an inspector requires a person to answer a question and the answer tends to incriminate that person, neither the question nor the answer may be used in any proceedings against that person except proceedings under subsection (9) in respect of a wilfully false or misleading answer to the question.

25 (8) Subsection (7) applies whether the person required to answer a question objects to answering it or not.

(9) A person shall be deemed to have obstructed a person in the discharge of a duty imposed on him under an authority conferred by this Act if that person—

- 30 (a) wilfully delays an inspector of dangerous substances in the exercise of any power under this section;
- (b) fails to comply with any requirement of an inspector made in pursuance of this section;

(c)

Public Health (Amendment).

- (c) prevents or attempts to prevent, a person from appearing before, or complying with a requirement of, an inspector under this section; or
- 5 (d) wilfully gives a false or misleading answer in purported compliance with such a requirement.

71E. (1) Any person aggrieved by any Appeals. determination made by an inspector of dangerous substances under a discretionary authority may appeal, within ten days after the determination is notified to him, against the determination to the Commission.

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(2) An appeal under subsection (1) shall be made in accordance with the regulations.

15

(3) The Commission, in deciding an appeal under subsection (1), may confirm the determination made by the inspector appealed against with or without modification or refuse to confirm that determination.

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(4) The determination of the Commission in respect of any appeal under subsection (1) shall be final and shall be deemed to be the determination of the inspector.

71F. (1) In this section "analyst" means an Analysis. analyst within the meaning of the Therapeutic Goods and Cosmetics Act, 1972.

25

(2) An inspector of dangerous substances may submit any sample taken under section 71D (6) (e) to an analyst for analysis.

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(3)

Public Health (Amendment).

(3) Where an analysis has been made by an analyst or under his personal supervision in respect of any sample submitted for analysis under subsection (2), the analyst may issue a certificate setting out the results of that analysis.

(4) Where a certificate has been issued under subsection (3) setting out the results of an analysis made in respect of any sample, the owner of the substance or thing from which the sample was taken or the person in whose possession, care or custody or under whose control the substance or thing was at the time of the taking of the sample shall, upon payment of the prescribed fee, be supplied with a copy of the certificate.

(5) No person shall, for trade purposes or advertisement, use any analysis made for the purpose of this section.

71G. A person shall not disclose any information obtained by him in connection with the implementation of this Part or the regulations made under this Part except in the course of his implementing this Part or those regulations.

Non-disclosure of information.

(g) (i) by inserting in section 108 (1) (b) after the word "officer" where secondly occurring the words ", inspector of dangerous substances";

Sec. 108. (Proof in certain cases.)

(ii) by inserting after section 108 (2) the following subsection :—

(3) In any legal proceeding or prosecution under the provisions of this Act a certificate purporting to be signed by an analyst and setting out the results of an analysis is evidence of the substance analysed, of the result of the analysis and that the analysis was carried out in such manner as may be specified in the certificate.

(h)

Public Health (Amendment).

(h) by inserting after section 108 the following Secs. 108A
and 108B.
sections:—

108A. (1) A person against whom proceedings Third party
procedure.
are brought for a contravention of the provisions
of this Act or the regulations is, upon information
laid by him and on giving to the prosecution not
less than three clear days' notice of his intention,
entitled to have any other person to whose act or
default he alleges that the contravention was due
brought before the court in the proceedings.

(2) If, after the contravention has been
proved, the original defendant proves that the
contravention was due to the act or default of that
other person, that other person may be convicted of
the offence, and, if the original defendant further
proves that he used all due diligence to secure that
the provisions in question were complied with, the
information against him for the offence shall be
dismissed.

(3) Where a defendant seeks to avail
himself of the provisions of subsection (2)—

(a) the prosecution, as well as the person whom
the defendant charges with the offence, has
the right to cross-examine the defendant if
he gives evidence, and any witness called by
him in support of his pleas, and to call
rebutting evidence; and

(b) the court may make such order as it thinks
fit for the payment of costs by any party
to the proceedings to any other party to
those proceedings.

108B. A person who is a director, within the Offences by
corporations.
meaning of the Companies Act, 1961, or an
employee, of a corporation which offends against

this

Public Health (Amendment).

this Act or the regulations is guilty of the same offence, and liable to be punished accordingly, unless—

- 5 (a) the offence committed by the corporation was committed without the knowledge of that person;
- (b) that person was not in a position to influence the conduct of the corporation in relation to the commission of the offence by it; or
- 10 (c) that person, being in such a position, used all due diligence to prevent the commission of the offence by the corporation.

8. The Medical Practitioners Act, 1938, is amended by Amendment
15 inserting after section 42 (3) the following subsection :— of Act No.
37, 1938.

(4) Subsection (2) shall not apply to an advertise- (Penalty for
ment or holding out by an inspector of dangerous posing as
substances appointed under section 71D of the Public medical
Health Act, 1902, in relation to the lawful exercise of practitioner
20 his functions or duties under that Act or the regulations when not
made under that Act. registered.)

9. A regulation made under section 71c of the Principal Saving.
Act and in force immediately before the commencement of
section 7 of this Act shall, if it could have been made under
25 the Principal Act as amended by this Act, be deemed to have
been made under the Principal Act, as so amended.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 12 March, 1975.*

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 16, 1975.

An Act to dissolve the Advisory Board of Health; to make further provision for regulating the use of dangerous substances; for these and other purposes to amend the Public Health Act, 1902, and the Medical Practitioners Act, 1938; and for purposes connected therewith.
[Assented to, 10th April, 1975.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

H. G. COATES,
Acting Chairman of Committees of the Legislative Assembly.

Public Health (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title. **1.** This Act may be cited as the "Public Health (Amendment) Act, 1975".

Commence-
ment. **2.** (1) This Part and Part II shall commence on the date of assent to this Act.

(2) The several provisions of Part III shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal
Act. **3.** The Public Health Act, 1902, is, in this Act, referred to as the Principal Act.

Division
of Act. **4.** This Act is divided as follows :—

PART I.—PRELIMINARY—ss. 1–4.

**PART II.—DISSOLUTION OF ADVISORY BOARD OF
HEALTH—ss. 5, 6.**

**PART III.—REGULATION OF DANGEROUS SUBSTANCES
—ss. 7–9.**

PART

Public Health (Amendment).

PART II.

DISSOLUTION OF ADVISORY BOARD OF HEALTH.

5. The Principal Act is amended—

Amendment
of Act No.
30, 1902.

- (a) (i) by omitting from the matter relating to Part II in section 1 the words "ADVISORY BOARD OF HEALTH" and by inserting instead the word "COMMISSION"; Sec. 1.
(Short title
and
division.)
- (ii) by omitting from the same matter the words "*The Advisory Board of Health—ss. 6–16.*" and by inserting instead the words "*The Commission—ss. 10–16.*";
- (b) (i) by omitting the definition of "Board" in section 3; Sec. 3.
(Interpre-
tation.)
- (ii) by omitting the definition of "President" in section 3;
- (c) by omitting the headings to Part II and to Division 1 of Part II and by inserting instead the following headings :—

PART II.

THE COMMISSION AND LOCAL AUTHORITIES.

DIVISION 1.—*The Commission.*

- (d) by omitting section 6; Sec. 6.
(Constitu-
tion of the
Board.)
- (e) by omitting section 7; Sec. 7.
(Members
of the
Board.)
- (f) by omitting section 8; Sec. 8.
(Quorum.)
- (g) by omitting section 9. Sec. 9.
(Advisory
powers of
the Board.)

Public Health (Amendment).

Dissolution
of Advisory
Board of
Health.

6. (1) In this section, "Board" has the meaning attributed thereto by section 3 of the Principal Act immediately before the commencement of this Part.

(2) The Board that was in existence immediately before the commencement of this Part is dissolved.

(3) Any person who, immediately before the commencement of this Part, held office as a member of the Board—

- (a) ceases, upon that commencement, to hold that office; and
- (b) is not entitled to be paid any remuneration or compensation by reason of his ceasing to be a member of the Board.

PART III.

REGULATION OF DANGEROUS SUBSTANCES.

Further
amendment
of Act No.
30, 1902.

Sec. 1.
(Short title
and
division.)

7. The Principal Act is further amended—

- (a) (i) by omitting from the matter relating to Part VIIA in section 1 the words "HYDROCYANIC ACID AND OTHER";
- (ii) by omitting from the same matter the matter "71C" and by inserting instead the matter "71G";
- (iii) by omitting from the matter relating to Division 5 of Part X in section 1 the matter "108" and by inserting instead the matter "108B";

Sec. 29.
(Notification
of infectious
diseases.)

- (b) by omitting from section 29 (3) the words "a fee of twenty-five cents" and by inserting instead the words "the prescribed fee";

Heading to
Part VIIA.

- (c) by omitting from the heading to Part VIIA the words "HYDROCYANIC ACID AND OTHER";

(d)

Public Health (Amendment).

- (d) by omitting from section 71B (2) the words "two hundred dollars" and by inserting instead the words "\$200 and, in addition, where a contravention continues, to a further penalty not exceeding \$100 for each day the contravention continues";
- Sec. 71B.
(Restriction
on use of
dangerous
substance
for purpose
of
fumigation.)
- (e) (i) by inserting in section 71C (1) after the word "regulations" the words "for or";
- Sec. 71C.
(Regula-
tions.)
- (ii) by inserting in section 71C (1) (a) after the word "granting" the words ", renewing and cancelling";
- (iii) by omitting section 71C (1) (b) and (c) and by inserting instead the following paragraphs :—
- (b) prohibiting or regulating the use of a dangerous substance;
 - (c) the design, supply, cleanliness, maintenance, marking and disposal of any container, equipment, appliance or thing which is to be, or has been, used in connection with a dangerous substance;
 - (d) precautions against risk of absorption of a dangerous substance, or risk of injury or poisoning arising out of the use of a dangerous substance including the use of things provided in pursuance of the regulations;
 - (e) the storage, handling and conveyance of a dangerous substance;
 - (f) procedures to be followed in the event of escape or spillage of a dangerous substance;
 - (g) preventing the contamination of any thing or person by a dangerous substance;

(h)

Public Health (Amendment).

- (h) the design, supply, use, storage, maintenance, washing and cleansing of protective clothing and other clothing and of other things required for protecting persons, clothing, equipment and appliances from contamination by any dangerous substance or for removing any contamination therefrom;
- (i) the provision, design, location and maintenance of amenities, including accommodation, facilities for washing and eating and the supply and use of drinking water, in prescribed circumstances involving risk of absorption of a dangerous substance or risk of injury or poisoning arising out of the use of a dangerous substance;
- (j) requiring persons, in prescribed circumstances involving risk of absorption of a dangerous substance or risk of injury or poisoning arising out of the use of a dangerous substance, to undergo a prescribed biological test;
- (k) requiring persons to abstain from eating, drinking or smoking in prescribed circumstances involving risk of absorption of a dangerous substance or risk of injury or poisoning arising out of the use of a dangerous substance;
- (l) securing intervals between, or limitations of, periods of exposure to risk of absorption of a dangerous substance or risk of injury or poisoning arising out of the use of a dangerous substance;
- (m)

Public Health (Amendment).

- (m) prohibiting (temporarily or permanently) or restricting the exposure of persons to risk of absorption of a dangerous substance or risk of injury or poisoning arising out of the use of a dangerous substance;
- (n) measures for detecting and investigating cases in which absorption of a dangerous substance or injury or poisoning arising out of the use of a dangerous substance has occurred including medical examinations, the making of prescribed biological tests and the notification of absences from work in prescribed circumstances involving risk of absorption of a dangerous substance or risk of injury or poisoning arising out of the use of a dangerous substance;
- (o) the provision, keeping available in good order, and the use, of facilities, equipment and other things for preventive and first aid treatment in prescribed circumstances involving risk of absorption of a dangerous substance or risk of injury or poisoning arising out of the use of a dangerous substance;
- (p) requiring the provision of, and submission to, instruction and training in the use of things provided in pursuance of the regulations and in the effects of dangerous substances and the observance of precautions;
- (q) the making, keeping and inspection of records of matters relating to the risk of absorption of, or risk of injury or poisoning arising out of the use of, a dangerous substance and the furnishing

of

(b)

Public Health (Amendment).

of returns and information relating to those matters including returns and information related to medical examinations, biological tests and injury or poisoning;

(r) imposing on prescribed persons or classes of persons the obligation to comply with the provisions of the regulations; and

(s) all matters which by this Part are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Part.

(iv) by omitting from section 71c (2) the words "paragraph (c) of";

(v) by omitting from section 71c (2) the words "Factories and Shops Act, 1912-1943" and by inserting instead the words "Factories, Shops and Industries Act, 1962";

(vi) by inserting after section 71c (2) the following subsections :—

(3) Regulations made under subsection (1) may—

(a) apply differently according to such factors as may be specified in the regulations;

(b) provide that any act or thing shall be done or be in accordance wholly or partly with a specified standard or with the approval or to the satisfaction of a prescribed person or class of persons;

(c) confer upon a prescribed person or class of persons a discretionary authority;

(d)

Public Health (Amendment).

- (d) confer on either the Commission or other prescribed persons, or both, power to give, in such manner as may be prescribed, instructions, orders, directions or requirements;
 - (e) exempt persons or classes of persons, either absolutely or subject to conditions, from provisions of the regulations or provide for the grant of absolute or conditional exemptions from provisions of the regulations by the Commission or other prescribed persons, or both; and
 - (f) impose a penalty not exceeding \$200 for any breach of a regulation and, in addition, where the breach continues, a penalty not exceeding \$100 for every day that the breach continues.
- (4) No person shall—
- (a) wilfully interfere with or misuse any clothing, appliance, equipment, facility or other thing provided in pursuance of a regulation made under subsection (1); or
 - (b) wilfully and without reasonable cause do anything likely to cause risk of absorption of a dangerous substance or risk of injury or poisoning by a dangerous substance, to himself or others.

Penalty for an offence against this subsection : \$200, and, in addition, for a continuing offence, \$100 for each day the offence continues.

(f)

Public Health (Amendment).

Secs.
71D-71G.

(f) by inserting after section 71C the following sections :—

Inspectors.

71D. (1) The Commission may appoint officers to be inspectors of dangerous substances.

(2) Subject to subsection (3), an inspector of dangerous substances, for the purpose of the execution of this Part or of regulations made under this Part, may enter at any reasonable time any premises or conveyance—

- (a) in or on which a dangerous substance is being, has recently been or is about to be, used, stored, handled or conveyed;
- (b) in or on which things are required by regulations to be done or provided; or
- (c) which he has reasonable cause to believe to be premises or a conveyance falling within paragraph (a) or (b).

(3) An inspector of dangerous substances shall not enter any premises or conveyance, or any part of premises or of a conveyance, used exclusively as a residence except with the consent of the occupier.

(4) Any person refusing or failing to admit an inspector of dangerous substances in the exercise of his authority under subsection (2) is, for the purposes of section 96 (1) (b) (iii), subject to a penalty.

(5) The provisions of section 96 apply where an inspector of dangerous substances has an authority to enter any premises or conveyance in the same way as they apply where the Commission or a local authority or their officers have a power to enter any premises under, or referred to in, section

Public Health (Amendment).

95 and they so apply as if the word "premises" wherever occurring in section 96 were construed so as to include a conveyance.

(6) For the purpose of the execution of this Part or of regulations made under this Part, an inspector of dangerous substances may—

- (a) require the production of, and inspect, examine and copy, registers, records or other documents kept in pursuance of regulations made under this Part;
- (b) make examinations, enquiries and tests and take such photographs as he considers necessary to ascertain whether the provisions of this Part, and the regulations made under this Part, are being complied with;
- (c) require any person whom he finds in or on any premises or conveyance referred to in subsection (2) to give such information as it is in his power to give as to who is the owner or occupier of those premises or that conveyance or the employer of persons employed to work in or on those premises or that conveyance;
- (d) either alone or in the presence of any other person, as the inspector thinks fit, require any person whom he finds in or on any premises or conveyance referred to in subsection (2) or whom he has reasonable cause to believe to be, or to have been within the preceding three months, employed to work in or on those premises or that conveyance to answer questions with respect to the observance of the provisions of this Part, or the regulations made under this Part;

(e)

(c)

Public Health (Amendment).

- (e) take for analysis a sample of any substance or thing which in his opinion may be, contain or be contaminated by, a dangerous substance or a degradation product of a dangerous substance;
- (f) in the case of an inspector who is a legally qualified medical practitioner, carry out medical examinations;
- (g) carry out prescribed biological tests in a prescribed manner in prescribed circumstances; and
- (h) exercise such other powers as may be necessary for carrying out the provisions of this Part, and regulations made under this Part.

(7) Where, under this section, an inspector requires a person to answer a question and the answer tends to incriminate that person, neither the question nor the answer may be used in any proceedings against that person except proceedings under subsection (9) in respect of a wilfully false or misleading answer to the question.

(8) Subsection (7) applies whether the person required to answer a question objects to answering it or not.

(9) A person shall be deemed to have obstructed a person in the discharge of a duty imposed on him under an authority conferred by this Act if that person—

- (a) wilfully delays an inspector of dangerous substances in the exercise of any power under this section;
- (b) fails to comply with any requirement of an inspector made in pursuance of this section;

(c)

Public Health (Amendment).

- (c) prevents or attempts to prevent, a person from appearing before, or complying with a requirement of, an inspector under this section; or
- (d) wilfully gives a false or misleading answer in purported compliance with such a requirement.

71E. (1) Any person aggrieved by any Appeals. determination made by an inspector of dangerous substances under a discretionary authority may appeal, within ten days after the determination is notified to him, against the determination to the Commission.

(2) An appeal under subsection (1) shall be made in accordance with the regulations.

(3) The Commission, in deciding an appeal under subsection (1), may confirm the determination made by the inspector appealed against with or without modification or refuse to confirm that determination.

(4) The determination of the Commission in respect of any appeal under subsection (1) shall be final and shall be deemed to be the determination of the inspector.

71F. (1) In this section "analyst" means an Analysis. analyst within the meaning of the Therapeutic Goods and Cosmetics Act, 1972.

(2) An inspector of dangerous substances may submit any sample taken under section 71D (6) (e) to an analyst for analysis.

(3)

Public Health (Amendment).

(3) Where an analysis has been made by an analyst or under his personal supervision in respect of any sample submitted for analysis under subsection (2), the analyst may issue a certificate setting out the results of that analysis.

(4) Where a certificate has been issued under subsection (3) setting out the results of an analysis made in respect of any sample, the owner of the substance or thing from which the sample was taken or the person in whose possession, care or custody or under whose control the substance or thing was at the time of the taking of the sample shall, upon payment of the prescribed fee, be supplied with a copy of the certificate.

(5) No person shall, for trade purposes or advertisement, use any analysis made for the purpose of this section.

Non-disclosure of information.

71G. A person shall not disclose any information obtained by him in connection with the implementation of this Part or the regulations made under this Part except in the course of his implementing this Part or those regulations.

Sec. 108.
(Proof in certain cases.)

(g) (i) by inserting in section 108 (1) (b) after the word "officer" where secondly occurring the words ", inspector of dangerous substances";

(ii) by inserting after section 108 (2) the following subsection :—

(3) In any legal proceeding or prosecution under the provisions of this Act a certificate purporting to be signed by an analyst and setting out the results of an analysis is evidence of the substance analysed, of the result of the analysis and that the analysis was carried out in such manner as may be specified in the certificate.

(f)

(h)

Public Health (Amendment).

(h) by inserting after section 108 the following sections :—

Secs. 108A
and 108B.

108A. (1) A person against whom proceedings are brought for a contravention of the provisions of this Act or the regulations is, upon information laid by him and on giving to the prosecution not less than three clear days' notice of his intention, entitled to have any other person to whose act or default he alleges that the contravention was due brought before the court in the proceedings.

Third party
procedure.

(2) If, after the contravention has been proved, the original defendant proves that the contravention was due to the act or default of that other person, that other person may be convicted of the offence, and, if the original defendant further proves that he used all due diligence to secure that the provisions in question were complied with, the information against him for the offence shall be dismissed.

(3) Where a defendant seeks to avail himself of the provisions of subsection (2)—

(a) the prosecution, as well as the person whom the defendant charges with the offence, has the right to cross-examine the defendant if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence; and

(b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party to those proceedings.

108B. A person who is a director, within the meaning of the Companies Act, 1961, or an employee, of a corporation which offends against

Offences by
corpora-
tions.

this

Public Health (Amendment).

this Act or the regulations is guilty of the same offence, and liable to be punished accordingly, unless—

- (a) the offence committed by the corporation was committed without the knowledge of that person;
- (b) that person was not in a position to influence the conduct of the corporation in relation to the commission of the offence by it; or
- (c) that person, being in such a position, used all due diligence to prevent the commission of the offence by the corporation.

Amendment
of Act No.
37, 1938.
Sec. 42.
(Penalty for
posing as
medical
practitioner
when not
registered.)

8. The Medical Practitioners Act, 1938, is amended by inserting after section 42 (3) the following subsection :—

(4) Subsection (2) shall not apply to an advertisement or holding out by an inspector of dangerous substances appointed under section 71D of the Public Health Act, 1902, in relation to the lawful exercise of his functions or duties under that Act or the regulations made under that Act.

Saving.

9. A regulation made under section 71C of the Principal Act and in force immediately before the commencement of section 7 of this Act shall, if it could have been made under the Principal Act as amended by this Act, be deemed to have been made under the Principal Act, as so amended.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

Government House,
Sydney, 10th April, 1975.