

**PUBLIC HEALTH (PROCLAIMED DISEASES)
AMENDMENT BILL 1985**

EXPLANATORY NOTE

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

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

- (a) to provide for the declaration of diseases and medical conditions in the Government Gazette as proclaimed diseases;
- (b) to enact various measures for the purposes of preventing the spread and of monitoring the incidence of proclaimed diseases in the community; and
- (c) to protect the identity of persons having proclaimed diseases from unnecessary disclosure.

The diseases and medical conditions which could be declared to be proclaimed diseases under the proposed amendments include acquired immune deficiency syndrome (A.I.D.S.) and related diseases and medical conditions.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day or days appointed by the Governor-in-Council.

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

Schedule 1 (1) amends section 32A of the Principal Act so that all patients who have been removed to a hospital under that section are to be kept in the hospital until free from infection or discharged under medical supervision. At present, that requirement applies only to patients suffering from tuberculosis.

Schedule 1 (2) inserts a new Part IIIB into the Principal Act, containing proposed sections 50F—50S, of which:

306090 372— (50c)

Section 50F is an interpretation provision for proposed Part IIIb in which "proclaimed disease" is defined as meaning a disease or medical condition declared to be a proclaimed disease under proposed section 50G.

Section 50G empowers the Governor-in-Council to declare in the Gazette the diseases and medical conditions to which proposed Part IIIb will apply.

Section 50H requires a medical practitioner to make a record and notify the Secretary of the Department on first becoming aware of a case of a proclaimed disease, unless another practitioner has already taken that action. The practitioner will also be required by proposed section 50H (2) to keep the record for the prescribed period.

Section 50I creates an offence if, in specified circumstances, a medical practitioner divulges the name or address of a patient known to have or suspected of having a proclaimed disease. Practitioners will be required to use a code when notifying the Secretary.

Section 50J provides that a positive result of a test for a proclaimed disease shall be reported directly to the Secretary by the person who carried out the test.

Section 50K enables the Chief Health Officer of the Department, where necessary to safeguard public health and authorised so to do by an order of the District Court, to obtain from a medical practitioner who has notified the Secretary of or requested a test for a proclaimed disease the name and address of a person the Chief Health Officer believes on reasonable grounds to have the proclaimed disease.

Section 50L states the requirements for obtaining an order referred to in proposed section 50K. An application for any such order shall be heard and determined in the absence of the public.

Section 50M aims to ensure that medical practitioners will provide persons who have proclaimed diseases with information about the precautions they should observe.

Section 50N creates an offence if a person who knows he or she has a proclaimed disease has sexual intercourse with another person without the prior informed consent of the other person.

Section 50O creates an offence if the owner or occupier of a building or place permits another person to have sexual intercourse there in contravention of proposed section 50N and for the purpose of prostitution.

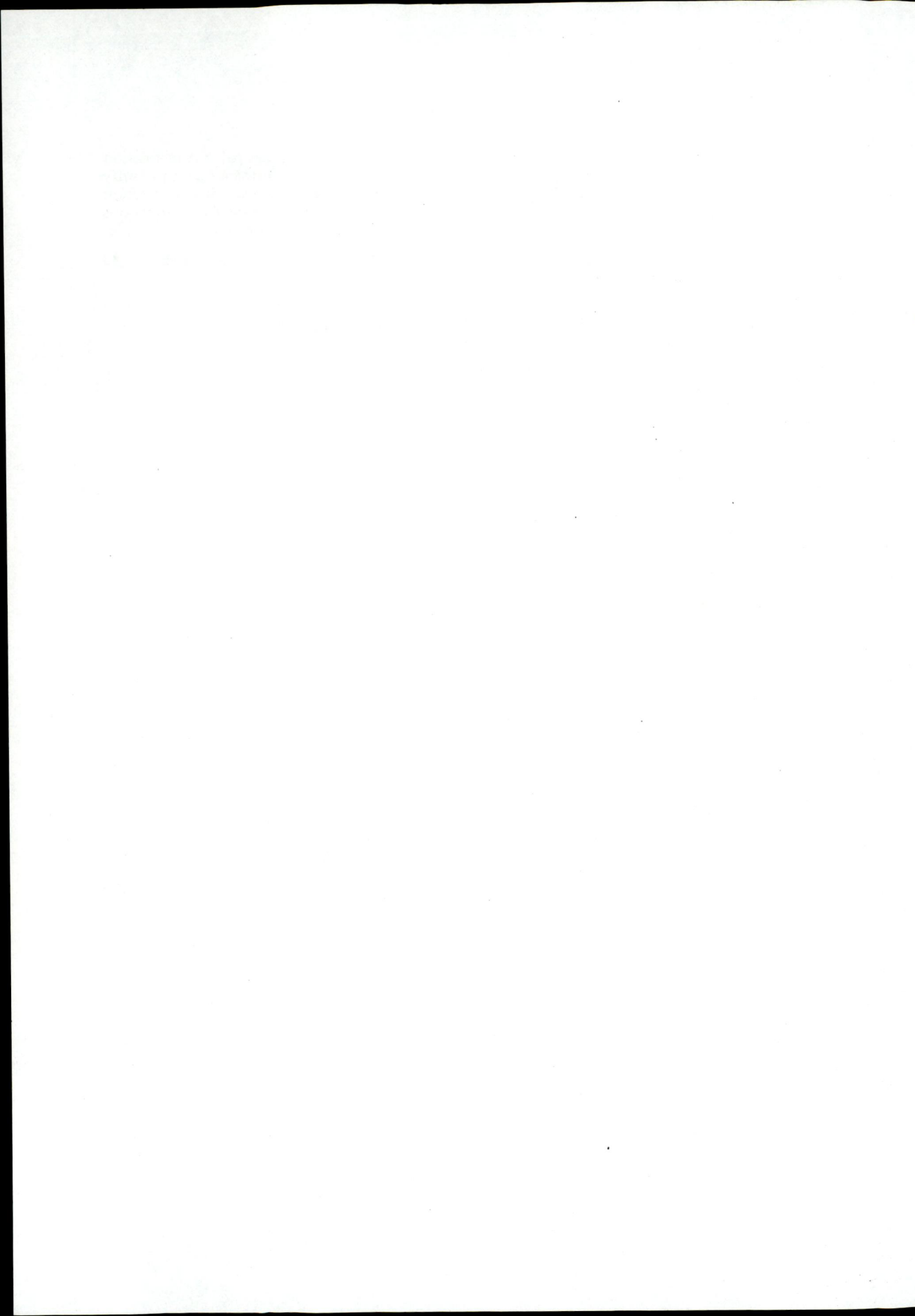
Section 50P enables the Chief Health Officer of the Department, believing on reasonable grounds that a person has a proclaimed disease, to require the person to attend a medical practitioner and undergo a medical examination.

Section 50Q creates an offence if a person who, because of proposed Part IIIb, is aware or has reasonable grounds for believing that another person has a proclaimed disease discloses the identity of the other person except in specified or prescribed circumstances.

Section 50R applies sections 30 and 32A of the Principal Act in relation to proclaimed diseases. Section 30 requires a person registering a death to notify the Secretary if the death appeared to be caused by an infectious disease. Section 32A empowers the removal to a hospital of persons suffering from infectious diseases and, in certain circumstances, their detention in hospital.

Section 50s requires proceedings for offences under proposed Part IIIb to be dealt with in the absence of the public.

Schedule 1 (3) inserts proposed section 110 (2) into the Principal Act which will prevent civil or criminal proceedings from being brought against a medical practitioner for supplying information for the purposes of that Act in good faith and without negligence.



**PUBLIC HEALTH (PROCLAIMED DISEASES)
AMENDMENT BILL 1985**

No. , 1985

A BILL FOR

An Act to amend the Public Health Act 1902 so as to make provisions for
the containment of certain proclaimed diseases.

Public Health (Proclaimed Diseases) Amendment 1985

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:

5 Short title

1. This Act may be cited as the "Public Health (Proclaimed Diseases) Amendment Act 1985".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

10 (2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 30, 1902

15 3. The Public Health Act 1902 is amended in the manner set forth in Schedule 1.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE PUBLIC HEALTH ACT 1902

(1) Section 32A (1)—

20 Omit "and treatment of persons suffering from the infectious disease) and where such person is suffering from tuberculosis", insert instead "of persons suffering from the infectious disease) and".

*Public Health (Proclaimed Diseases) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PUBLIC HEALTH ACT 1902—*continued*

(2) Part IIIB—

After Part IIIA, insert:

PART IIIB

PROCLAIMED DISEASES

5

DIVISION 1—*Preliminary***Interpretation**

50F. In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

10 “medical practitioner” means a legally qualified medical practitioner;

“proclaimed disease” means a disease or medical condition declared to be a proclaimed disease under section 50G.

Powers of Governor

15 50G. The Governor may, by proclamation in the Gazette, declare that any disease or medical condition named or described in the proclamation is a proclaimed disease and may in like manner revoke or vary any such declaration.

DIVISION 2—*Notification of proclaimed diseases***Notification by medical practitioners**

20 50H. (1) As soon as practicable after a medical practitioner—

(a) becomes aware or acquires reasonable grounds for believing that any patient whom the practitioner is attending or has been called in to visit has a proclaimed disease; or

25 (b) by post-mortem examination, acquires reasonable grounds for believing that any person has died as a consequence of having a proclaimed disease,

Public Health (Proclaimed Diseases) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PUBLIC HEALTH ACT 1902—*continued*

the practitioner shall make a record of particulars concerning the patient or person in accordance with the regulations.

Penalty: \$1,000.

5 (2) A medical practitioner who makes a record under subsection (1) shall keep the record for the prescribed period.

Penalty: \$1,000.

(3) Immediately after recording the particulars, the medical practitioner shall send to the Secretary a certificate in the prescribed form relating to the particulars.

10 Penalty: \$1,000.

(4) A medical practitioner is not guilty of an offence under this section if the practitioner satisfies the court that the record or certificate to which the alleged offence relates had been made or sent by another medical practitioner.

15 **Suppression of names**

50i. A medical practitioner shall not—

(a) in a certificate sent under section 50H with respect to a patient; or

20 (b) except in such circumstances as may be prescribed, in any written or oral communication made by the practitioner for the purpose of arranging any test to ascertain whether a patient has a proclaimed disease,

state the name or address of the patient.

Penalty: \$2,000.

SCHEDULE 1—*continued*AMENDMENTS TO THE PUBLIC HEALTH ACT 1902—*continued***Test results to be notified**

50J. A person who has carried out a serological test or any other prescribed test for the purpose of ascertaining the presence of a proclaimed disease, being a test which has given a positive result, shall send to the Secretary as soon as practicable after the conclusion of the test a report in the prescribed form relating to the result of the test.

Penalty: \$1,000.

Notification of name and address of patient

50K. (1) Subject to subsection (2), the Chief Health Officer of the Department may, by notice in writing served personally or by post on a medical practitioner—

(a) who has sent a certificate under section 50H; or

(b) who has requested a test to which a report sent under section 50J relates,

require the practitioner to supply the Chief Health Officer, within the time specified in the notice, with the name and address of the person the subject of the certificate or report, as the case may be.

(2) A notice shall not be served under subsection (1) unless service of the notice is authorised by an order made under section 50L.

(3) A medical practitioner shall not, without reasonable excuse, refuse or neglect to comply with a requirement made under this section.

Penalty (subsection (3)): \$1,000.

Order authorising notice under section 50k

50L. (1) The Chief Health Officer of the Department may apply to the District Court for an order authorising the service of a notice under section 50K on a medical practitioner if the Chief Health Officer has reasonable grounds for believing—

Public Health (Proclaimed Diseases) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PUBLIC HEALTH ACT 1902—*continued*

(a) that a person the subject of—

(i) a certificate sent by the practitioner under section 50H; or

5 (ii) a report sent under section 50J which relates to a test requested by the practitioner,

has a proclaimed disease; and

(b) that ascertaining the identity of the person is necessary for the purpose of safeguarding public health.

10 (2) Subject to this section and the regulations, an application under this section shall be made, heard and determined in accordance with rules of the District Court.

(3) The application shall be heard and determined in the absence of the public.

15 (4) The District Court may, if satisfied that there are reasonable grounds for making the order, make the order to which the application relates.

DIVISION 3—*Prevention of the spread of proclaimed diseases*

Provision of information

20 50M. (1) As soon as practicable after a medical practitioner becomes aware or acquires reasonable grounds for believing that any patient whom the practitioner is attending or has been called in to visit has a proclaimed disease, the practitioner shall provide the patient with such information concerning the disease as is required to be provided by the regulations.

25 Penalty: \$500.

Public Health (Proclaimed Diseases) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PUBLIC HEALTH ACT 1902—*continued*

(2) A medical practitioner is not guilty of an offence under this section if the practitioner satisfies the court that the information to which the alleged offence relates had been supplied by another medical practitioner.

5 **Sexual intercourse by infected persons**

50N. (1) In this section, “sexual intercourse” means—

(a) sexual connection occasioned by the introduction into the vagina, anus or mouth of any person of any part of the penis of another person; or

10 (b) cunnilingus.

(2) For the purposes of this section, a person shall not, only because of age, be presumed incapable of having sexual intercourse.

15 (3) A person who knows he or she has a proclaimed disease shall not have sexual intercourse with another person unless, before the sexual intercourse takes place, the other person—

(a) has been informed of the risk of contracting a proclaimed disease from that person; and

(b) has voluntarily agreed to accept that risk.

20 Penalty: \$5,000.

Premises used for prostitution

25 50O. Any person who, being the owner or occupier of a building or place, knowingly permits another person to have sexual intercourse at the building or place in contravention of section 50N and for the purpose of prostitution is guilty of an offence and liable to a penalty not exceeding \$2,000.

SCHEDULE 1—*continued*AMENDMENTS TO THE PUBLIC HEALTH ACT 1902—*continued*DIVISION 4—*Supplementary***Power to require medical examination**

50P. (1) Where the Chief Health Officer of the Department believes on reasonable grounds that a person has a proclaimed disease, the Officer may, by notice in writing served personally on the person, require the person—

- (a) to attend a medical practitioner; and
- (b) to undergo a medical examination of the kind described in the notice,

by a date specified in the notice.

(2) A person shall not, without reasonable excuse, refuse or neglect to comply with a requirement made under this section.

Penalty: \$1,000.

Protection of identities of infected persons

50Q. A person who, because of the operation of this Part, is aware or has reasonable grounds for believing that another person has a proclaimed disease shall not disclose any information which may identify the other person except—

- (a) with the consent of the other person;
- (b) where it is necessary to do so in connection with the administration or execution of this Part;
- (c) where ordered to do so by a court or by any other body or person authorised by law to examine witnesses; or
- (d) in such circumstances as may be prescribed.

Penalty: \$2,000.

Application of certain provisions of Part III

50R. Sections 30 and 32A apply to and in respect of proclaimed diseases and persons who have those diseases in the

*Public Health (Proclaimed Diseases) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PUBLIC HEALTH ACT 1902—*continued*

same way as they apply to and in respect of infectious diseases and persons who suffer from those diseases and they so apply as if—

- 5 (a) references in those sections to an infectious disease were references to a proclaimed disease; and
- (b) references in section 32A to a person suffering from an infectious disease were references to a person having a proclaimed disease.

Proceedings for offences

10 50s. Proceedings for an offence arising under this Part shall be heard and determined in the absence of the public.

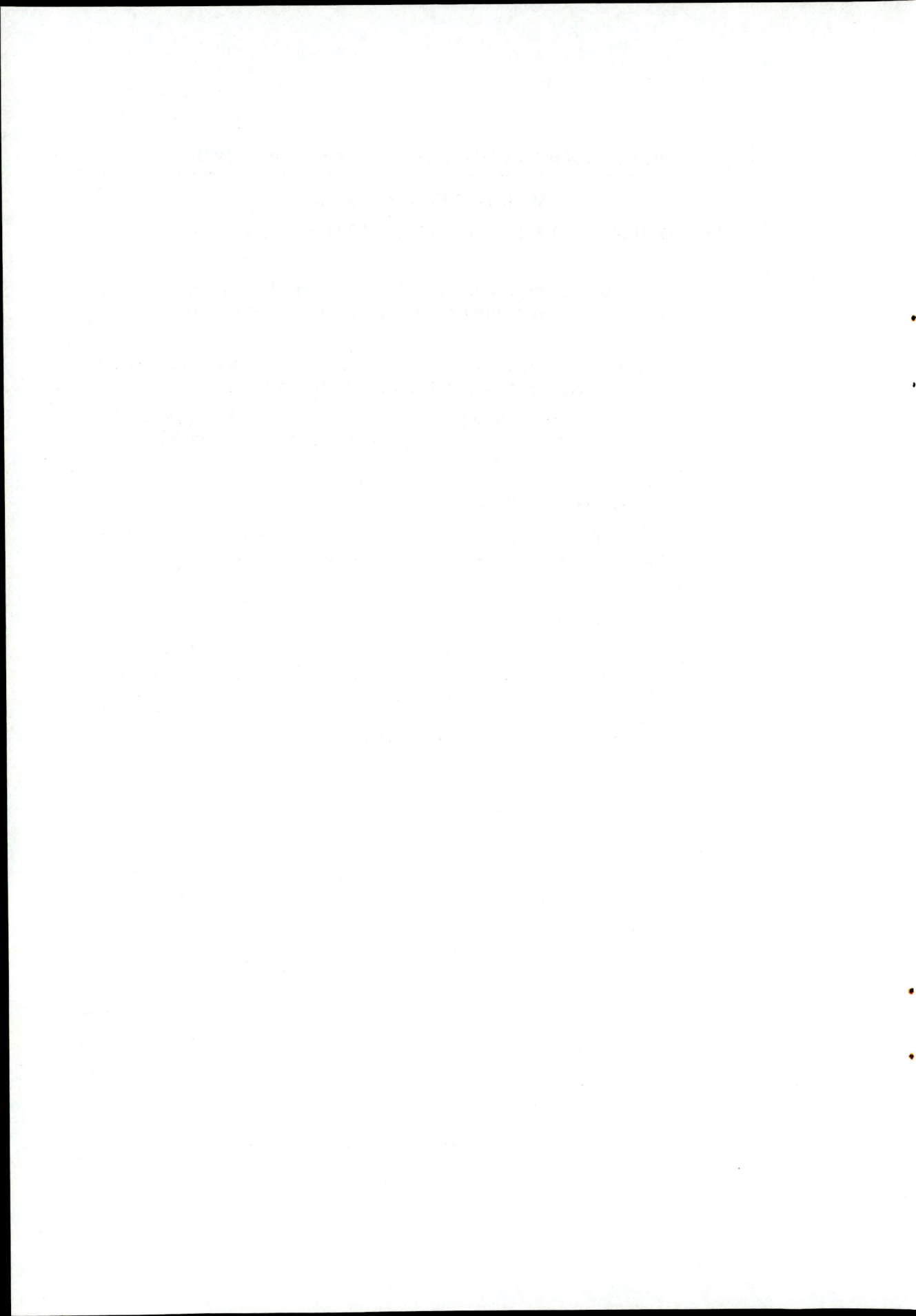
(3) Section 110 (2)—

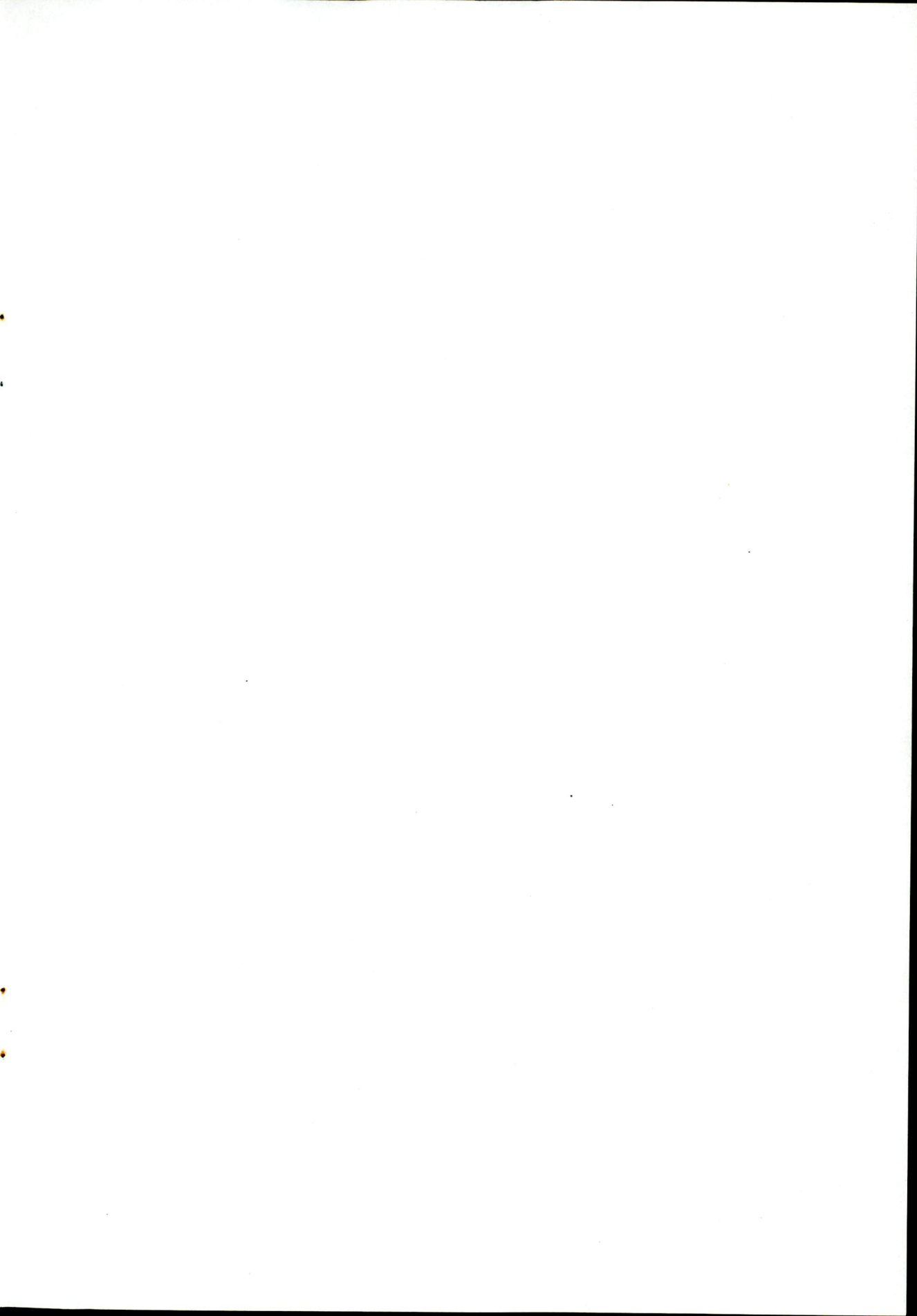
At the end of section 110, insert:

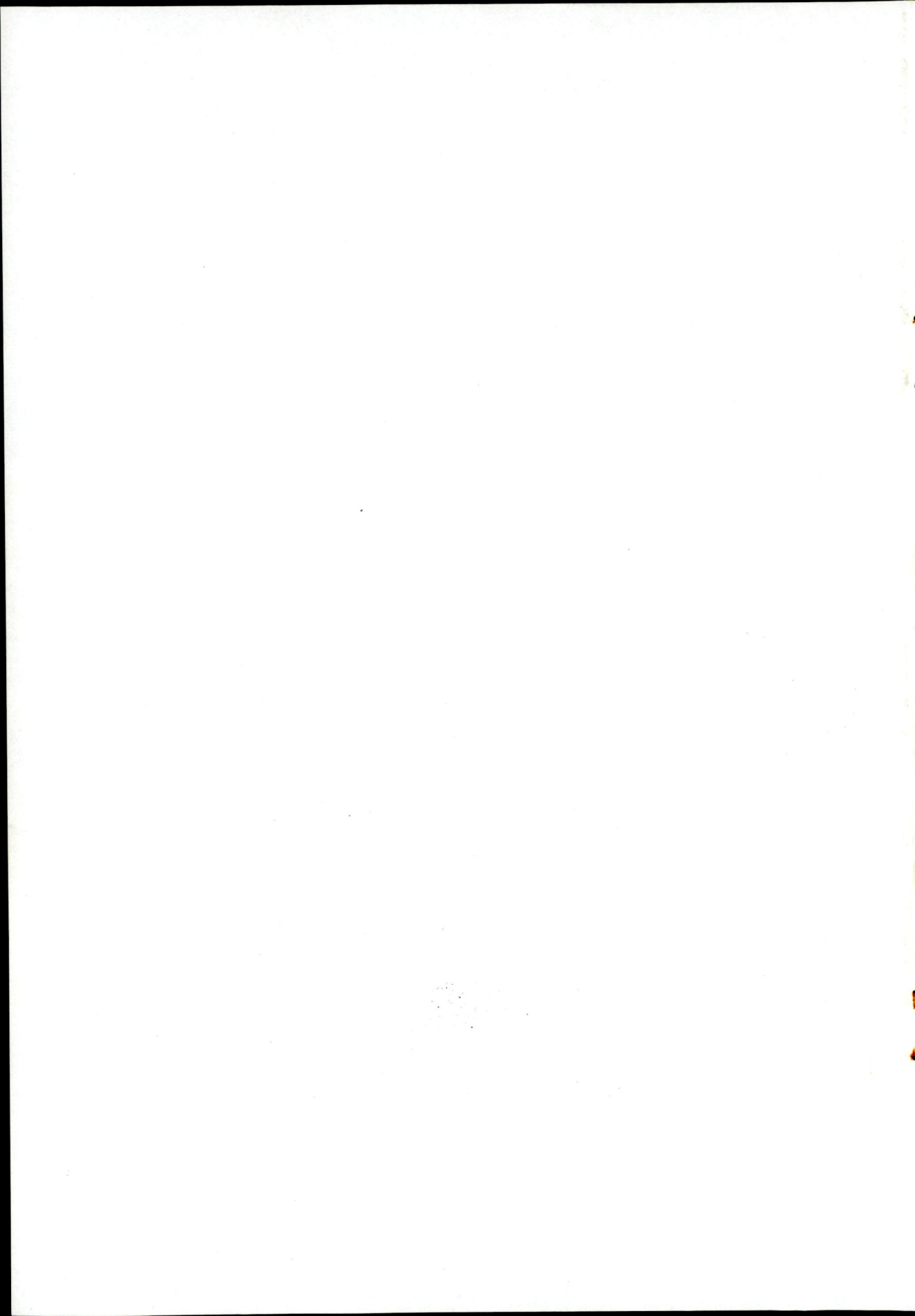
- 15 (2) A certificate, notice or other communication, whether oral or in writing, sent or otherwise effected for the purposes of this Act by any legally qualified medical practitioner in good faith and without negligence shall not be made the ground of any legal proceedings, civil or criminal, against the practitioner.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1985







**PUBLIC HEALTH (PROCLAIMED DISEASES) AMENDMENT ACT
1985 No. 183**

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* * * * *

Act No. 183, 1985

An Act to amend the Public Health Act 1902 so as to make provisions for the containment of certain proclaimed diseases. [Assented to, 4th December, 1985.]

Public Health (Proclaimed Diseases) Amendment 1985

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:

Short title

1. This Act may be cited as the "Public Health (Proclaimed Diseases) Amendment Act 1985".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 30, 1902

3. The Public Health Act 1902 is amended in the manner set forth in Schedule 1.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE PUBLIC HEALTH ACT 1902

(1) Section 32A (1)—

Omit "and treatment of persons suffering from the infectious disease) and where such person is suffering from tuberculosis", insert instead "of persons suffering from the infectious disease) and".

Public Health (Proclaimed Diseases) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PUBLIC HEALTH ACT 1902—*continued*

(2) Part IIIB—

After Part IIIA, insert:

PART IIIB

PROCLAIMED DISEASES

DIVISION 1—*Preliminary*

Interpretation

50F. In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

“medical practitioner” means a legally qualified medical practitioner;

“proclaimed disease” means a disease or medical condition declared to be a proclaimed disease under section 50G.

Powers of Governor

50G. The Governor may, by proclamation in the Gazette, declare that any disease or medical condition named or described in the proclamation is a proclaimed disease and may in like manner revoke or vary any such declaration.

DIVISION 2—*Notification of proclaimed diseases*

Notification by medical practitioners

50H. (1) As soon as practicable after a medical practitioner—

- (a) becomes aware or acquires reasonable grounds for believing that any patient whom the practitioner is attending or has been called in to visit has a proclaimed disease; or
- (b) by post-mortem examination, acquires reasonable grounds for believing that any person has died as a consequence of having a proclaimed disease,

Public Health (Proclaimed Diseases) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PUBLIC HEALTH ACT 1902—*continued*

the practitioner shall make a record of particulars concerning the patient or person in accordance with the regulations.

Penalty: \$1,000.

(2) A medical practitioner who makes a record under subsection (1) shall keep the record for the prescribed period.

Penalty: \$1,000.

(3) Immediately after recording the particulars, the medical practitioner shall send to the Secretary a certificate in the prescribed form relating to the particulars.

Penalty: \$1,000.

(4) A medical practitioner is not guilty of an offence under this section if the practitioner satisfies the court that the record or certificate to which the alleged offence relates had been made or sent by another medical practitioner.

Suppression of names

50i. A medical practitioner shall not—

- (a) in a certificate sent under section 50H with respect to a patient; or
- (b) except in such circumstances as may be prescribed, in any written or oral communication made by the practitioner for the purpose of arranging any test to ascertain whether a patient has a proclaimed disease,

state the name or address of the patient.

Penalty: \$2,000.

Public Health (Proclaimed Diseases) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PUBLIC HEALTH ACT 1902—*continued*

Test results to be notified

50J. A person who has carried out a serological test or any other prescribed test for the purpose of ascertaining the presence of a proclaimed disease, being a test which has given a positive result, shall send to the Secretary as soon as practicable after the conclusion of the test a report in the prescribed form relating to the result of the test.

Penalty: \$1,000.

Notification of name and address of patient

50K. (1) Subject to subsection (2), the Chief Health Officer of the Department may, by notice in writing served personally or by post on a medical practitioner—

- (a) who has sent a certificate under section 50H; or
- (b) who has requested a test to which a report sent under section 50J relates,

require the practitioner to supply the Chief Health Officer, within the time specified in the notice, with the name and address of the person the subject of the certificate or report, as the case may be.

(2) A notice shall not be served under subsection (1) unless service of the notice is authorised by an order made under section 50L.

(3) A medical practitioner shall not, without reasonable excuse, refuse or neglect to comply with a requirement made under this section.

Penalty (subsection (3)): \$1,000.

Order authorising notice under section 50K

50L. (1) The Chief Health Officer of the Department may apply to the District Court for an order authorising the service of a notice under section 50K on a medical practitioner if the Chief Health Officer has reasonable grounds for believing—

Public Health (Proclaimed Diseases) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PUBLIC HEALTH ACT 1902—*continued*

- (a) that a person the subject of—
- (i) a certificate sent by the practitioner under section 50H; or
 - (ii) a report sent under section 50J which relates to a test requested by the practitioner,
- has a proclaimed disease; and
- (b) that ascertaining the identity of the person is necessary for the purpose of safeguarding public health.

(2) Subject to this section and the regulations, an application under this section shall be made, heard and determined in accordance with rules of the District Court.

(3) The application shall be heard and determined in the absence of the public.

(4) The District Court may, if satisfied that there are reasonable grounds for making the order, make the order to which the application relates.

DIVISION 3—*Prevention of the spread of proclaimed diseases*

Provision of information

50M. (1) As soon as practicable after a medical practitioner becomes aware or acquires reasonable grounds for believing that any patient whom the practitioner is attending or has been called in to visit has a proclaimed disease, the practitioner shall provide the patient with such information concerning the disease as is required to be provided by the regulations.

Penalty: \$500.

Public Health (Proclaimed Diseases) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PUBLIC HEALTH ACT 1902—*continued*

(2) A medical practitioner is not guilty of an offence under this section if the practitioner satisfies the court that the information to which the alleged offence relates had been supplied by another medical practitioner.

Sexual intercourse by infected persons

50N. (1) In this section, “sexual intercourse” means—

(a) sexual connection occasioned by the introduction into the vagina, anus or mouth of any person of any part of the penis of another person; or

(b) cunnilingus.

(2) For the purposes of this section, a person shall not, only because of age, be presumed incapable of having sexual intercourse.

(3) A person who knows he or she has a proclaimed disease shall not have sexual intercourse with another person unless, before the sexual intercourse takes place, the other person—

(a) has been informed of the risk of contracting a proclaimed disease from that person; and

(b) has voluntarily agreed to accept that risk.

Penalty: \$5,000.

Premises used for prostitution

50O. Any person who, being the owner or occupier of a building or place, knowingly permits another person to have sexual intercourse at the building or place in contravention of section 50N and for the purpose of prostitution is guilty of an offence and liable to a penalty not exceeding \$2,000.

Public Health (Proclaimed Diseases) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PUBLIC HEALTH ACT 1902—*continued*

DIVISION 4—*Supplementary*

Power to require medical examination

50P. (1) Where the Chief Health Officer of the Department believes on reasonable grounds that a person has a proclaimed disease, the Officer may, by notice in writing served personally on the person, require the person—

- (a) to attend a medical practitioner; and
- (b) to undergo a medical examination of the kind described in the notice,

by a date specified in the notice.

(2) A person shall not, without reasonable excuse, refuse or neglect to comply with a requirement made under this section.

Penalty: \$1,000.

Protection of identities of infected persons

50Q. A person who, because of the operation of this Part, is aware or has reasonable grounds for believing that another person has a proclaimed disease shall not disclose any information which may identify the other person except—

- (a) with the consent of the other person;
- (b) where it is necessary to do so in connection with the administration or execution of this Part;
- (c) where ordered to do so by a court or by any other body or person authorised by law to examine witnesses; or
- (d) in such circumstances as may be prescribed.

Penalty: \$2,000.

Application of certain provisions of Part III

50R. Sections 30 and 32A apply to and in respect of proclaimed diseases and persons who have those diseases in the

Public Health (Proclaimed Diseases) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PUBLIC HEALTH ACT 1902—*continued*

same way as they apply to and in respect of infectious diseases and persons who suffer from those diseases and they so apply as if—

- (a) references in those sections to an infectious disease were references to a proclaimed disease; and
- (b) references in section 32A to a person suffering from an infectious disease were references to a person having a proclaimed disease.

Proceedings for offences

50s. Proceedings for an offence arising under this Part shall be heard and determined in the absence of the public.

(3) Section 110 (2)—

At the end of section 110, insert:

(2) A certificate, notice or other communication, whether oral or in writing, sent or otherwise effected for the purposes of this Act by any legally qualified medical practitioner in good faith and without negligence shall not be made the ground of any legal proceedings, civil or criminal, against the practitioner.



