

First print



New South Wales

# Public Health Amendment Bill 1995

## Explanatory note

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

### Overview of Bill

The object of this Bill is to amend the *Public Health Act 1991* so as:

- (a) to establish a New South Wales Pap Test Register to record information concerning tests for cervical cancer and its precursors, and
  - (b) to enable a woman who has a cervical cancer test to have her name and address withheld from the Register, if she so chooses, and
  - (c) to limit the persons to whom and the circumstances in which the name and address of a woman who has had a cervical cancer test may be disclosed in conjunction with the results of the test.
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## Outline of provisions

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

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

**Clause 3** is a formal provision giving effect to the Schedule of amendments to the *Public Health Act 1991*.

**Clause 4** repeals an uncommenced Schedule of the *Health Legislation (Miscellaneous Amendments) Act 1994* that is superseded by the proposed Act.

**Schedule 1** inserts a new Part, proposed Part 3B (proposed sections 42E–42P).

**Proposed section 42E** inserts definitions for the purpose of the proposed Part. As well as defining *cervical cancer test* in terms of the familiar “Pap test” and related biopsies, it allows the regulations to prescribe other tests (should any be developed) for the purpose of the definition.

**Proposed section 42F** requires the Director-General to cause to be compiled and maintained a Register relating to cervical cancer tests, to be known as the New South Wales Pap Test Register. The Director-General may enter into any agreement or arrangement for another person to maintain the Register.

**Proposed section 42G** provides that the object of establishing the Register is to reduce the incidence of, and mortality from, preventable cervical cancer by using the Register for the purposes specified in proposed section 42I.

**Proposed section 42H** specifies the information that the Register is to contain in relation to a cervical cancer test. That information includes the date and result of the test, particulars of the person or laboratory that carried it out, the date of birth of the woman tested and, unless the woman elects under proposed section 42M to withhold that information, her name and residential or postal address (her *identifying particulars*).

**Proposed section 42I** sets out the purposes for which the Register is to be used. These include reminding women who fail to have a further cervical cancer test (or other appropriate investigation or treatment) after a reasonable time that a further test (or investigation or treatment) is recommended, monitoring rates and patterns of tests and providing a database for use in



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research into the prevention and treatment of cervical cancer. It also provides a protection from liability arising from any notification or advice to a woman (or any failure to notify or advise a woman) in relation to any matter included in or otherwise concerning the Register for persons acting in good faith for the purposes of the proposed Division.

**Proposed section 42J** limits the categories of persons to whom, and circumstances in which, the identifying particulars of a woman may be disclosed in conjunction with the results of her cervical cancer test.

**Proposed section 42K** requires a health practitioner who, and the person in charge of a laboratory that, carries out a cervical cancer test to furnish the person maintaining the Register with a report of the test. The report is to contain the information specified in proposed section 42H (except for the identifying particulars of the woman who was tested, if she has elected to withhold those particulars from the Register).

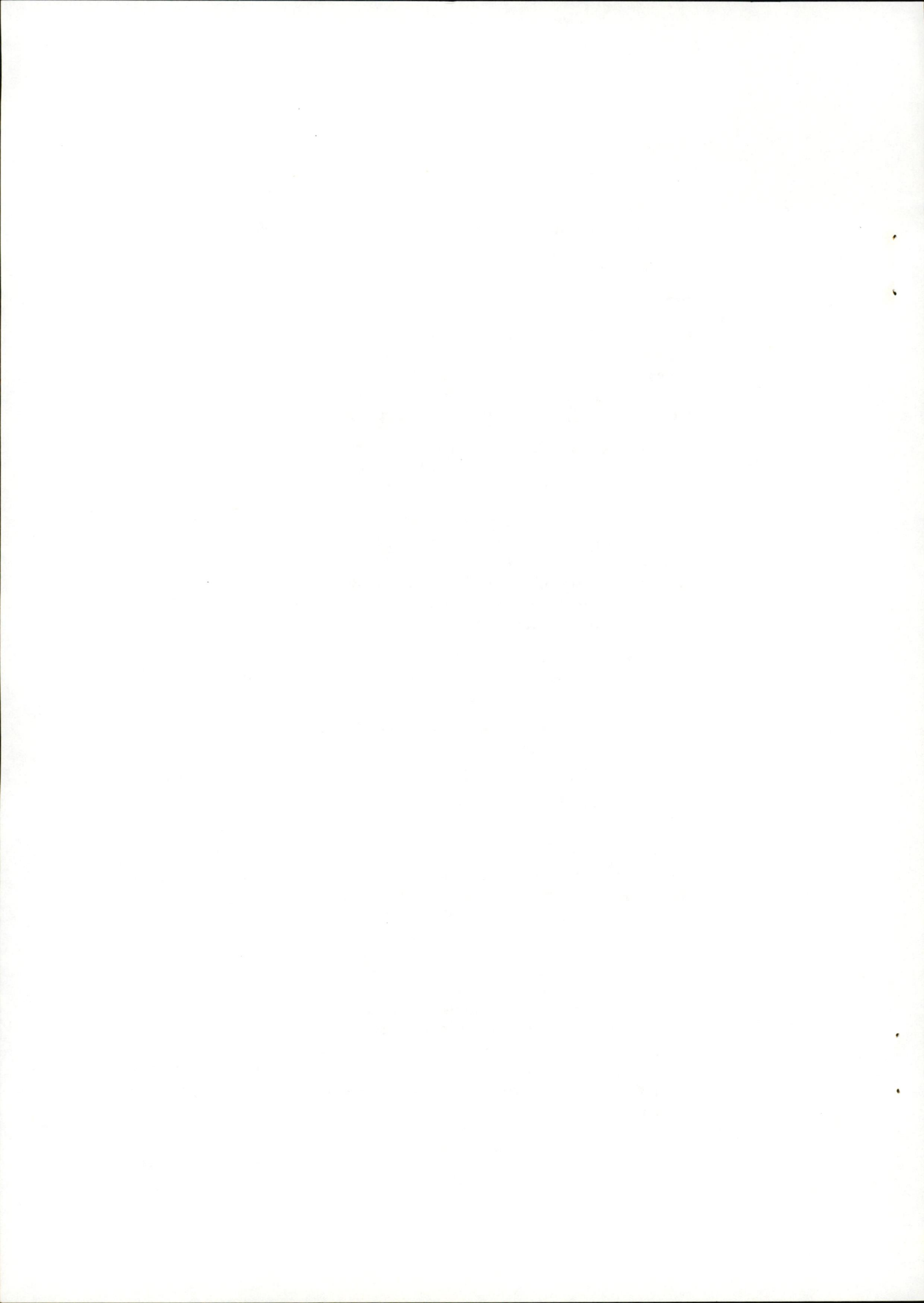
**Proposed section 42L** provides that Division 3 (proposed sections 42L–42P) of the proposed Part, which provides a right to anonymity in the Register, has effect despite proposed section 42H.

**Proposed section 42M** enables a woman who has a cervical cancer test to elect not to have her identifying particulars included in the Register.

**Proposed section 42N** enables a woman whose identifying particulars are included in the Register to have them removed.

**Proposed section 42O** makes it an offence for a health practitioner who, or a person in charge of a laboratory that, carries out a cervical cancer test to provide any person with the identifying particulars, for the purpose of their inclusion in the Register, of any woman who has elected to withhold those particulars from the Register. Any person who has reason to believe that a woman has made such an election is not to include the woman's identifying particulars in the Register.

**Proposed section 42P** requires a health practitioner, before carrying out, or taking a specimen for the purpose of, a cervical cancer test, to provide the woman who is to be tested with detailed information about the Register (unless the health practitioner's records indicate that the woman has previously been provided with that information). The information is to include details of the woman's right to withhold her identifying particulars from the Register.



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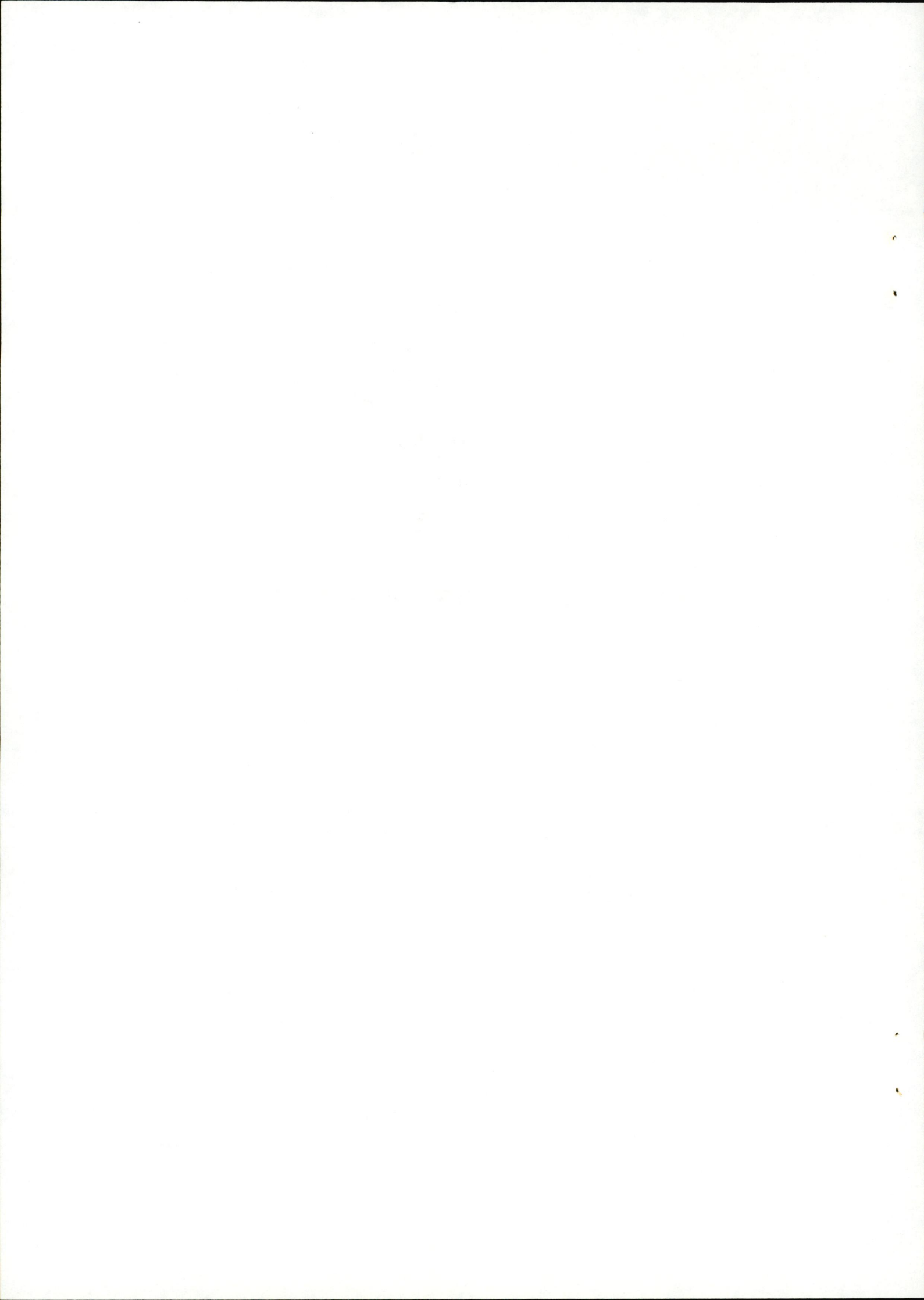
## Public Health Amendment Bill 1995

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New South Wales

## Public Health Amendment Bill 1995

No. , 1995

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### **A Bill for**

An Act to amend the *Public Health Act 1991* to establish a New South Wales Pap Test Register to record information concerning tests for cervical cancer and its precursors; and for related purposes.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Public Health Amendment Act 1995*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation. 5

**3 Amendment of Public Health Act 1991 No 10**

The *Public Health Act 1991* is amended as set out in Schedule 1.

**4 Consequential amendment of Health Legislation (Miscellaneous Amendments) Act 1994 No 19, Schedule 2** 10

The *Health Legislation (Miscellaneous Amendments) Act 1994* is amended by omitting Schedule 2.



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**Schedule 1 Amendment of Public Health Act 1991**  
(Section 3)

**Part 3B**

Insert after Part 3A:

**Part 3B Pap Test Register**

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**Division 1 Preliminary**

**42E Definitions**

In this Part:

*cervical cancer* means a malignant growth of human tissue in the cervix of the uterus that is likely to spread to tissue beyond its site of origin. 10

*cervical cancer test* means a test that is carried out to determine whether or not a woman has cervical cancer or any of its precursors, and that:

- (a) consists of a pathological examination of a specimen of any kind taken from the woman, or 15
- (b) is a test, or a test of a class, prescribed by the regulations for the purposes of this paragraph.

*health practitioner* means a person who is:

- (a) a medical practitioner, or 20
- (b) a registered nurse (within the meaning of the *Nurses Act 1991*), or
- (c) a person, or a person of a class, prescribed by the regulations for the purposes of this paragraph.

*identifying particulars* of a woman means the woman's: 25

- (a) full name (and any previous name), and
- (b) residential or postal address.

*pathology request form* means a form submitted to a pathology laboratory by or on behalf of a health practitioner requesting the laboratory to carry out a pathological examination of a specimen. 30

*Register* means the New South Wales Pap Test Register referred to in section 42F.

**Division 2 New South Wales Pap Test Register**

**42F New South Wales Pap Test Register**

- (1) The Director-General is to cause to be compiled and maintained a Register, to be known as the New South Wales Pap Test Register. 5
- (2) The Director-General may enter into any agreement or arrangement for any other person to maintain the Register.

**42G Object of establishing Register**

The object of establishing the Register is to reduce the incidence of, and mortality from, preventable cervical cancer by using the Register for the purposes specified in section 42I. 10

**42H Contents of Register**

- (1) The Register is to contain the following information in relation to a cervical cancer test: 15
  - (a) the identifying particulars of the woman who had the test,
  - (b) her date of birth,
  - (c) the date of the test, 20
  - (d) the result of the test,
  - (e) an indication of whether the test was carried out:
    - (i) because the woman had symptoms that warranted investigation, or
    - (ii) as a routine measure only, 25
  - (f) the identification number of the test,
  - (g) if the test consisted of a pathological examination of a specimen taken from the woman:
    - (i) the name, address and identification code of the health practitioner by or on whose behalf the relevant pathology request form was submitted, and 30
    - (ii) the identification code of the laboratory that examined the specimen,

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- (h) if the test was a test, or a test of a class, prescribed by the regulations:
- (i) the name, address and identification code of the health practitioner who carried out the test, and 5
  - (ii) such clinical information as the regulations may prescribe.
- (2) In this section:
- identification code*, in relation to a health practitioner or laboratory, means a code used to identify the health practitioner or laboratory for the purposes of the Register. 10
- identification number*, in relation to a test, means the number allocated uniquely to the test by:
- (a) the laboratory that carried out the test (in the case of a test consisting of a pathological examination of a specimen taken from a woman), or 15
  - (b) the health practitioner (in any other case).

#### 42I Use of information in Register

- (1) The information in the Register is to be used for the following purposes: 20
- (a) to remind any woman who does not have a further cervical cancer test (or other appropriate investigation or treatment) within a reasonable time after a cervical cancer test that a further test (or investigation or treatment) is recommended, 25
  - (b) to provide a record of test results that links each woman tested with her health practitioner and any laboratory that produces her test results,
  - (c) to monitor rates and patterns of cervical cancer tests to assist in the planning and evaluation of test programs, 30



- (d) to provide information (being information that does not include any woman's identifying particulars):
    - (i) to the public—so as to increase public awareness of the Register and its objects, and 5
    - (ii) to health practitioners and laboratories—to assist them to monitor their quality control procedures in relation to cervical cancer tests, and 10
    - (iii) to the Department of Health, and
    - (iv) to the Commonwealth,
  - (e) to maintain a database (being a database that does not contain any woman's identifying particulars) for use in research into the prevention and treatment of cervical cancer. 15
- (2) Any person acting for the purposes of this Division does not, if acting in good faith, incur any liability by reason of any notification or advice to a woman, or any failure to notify or advise a woman, in relation to any matter included in or otherwise concerning the Register. 20
- (3) In this section, *test results* means the results of a cervical cancer test.
- 42J Disclosure of identifying particulars in conjunction with test result 25**
- (1) A person may disclose, in conjunction with the result of a cervical cancer test, the identifying particulars of the woman who had the test only:
    - (a) to the woman concerned, or
    - (b) with the written consent of the woman, or 30
    - (c) to the woman's health practitioner, or
    - (d) to the person in charge of a laboratory that is, or has previously been, engaged on the woman's behalf to make a pathological examination of a specimen taken from her, or 35

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- (e) for the purposes of section 42I (1) (a) or (b), or
  - (f) if permitted or required to do so under the terms of an order of a court or the provisions of an Act, or
  - (g) in accordance with the regulations.
- (2) The regulations may prescribe either or both of the following: 5
- (a) the persons, or class of persons, to whom a woman's identifying particulars may be disclosed in conjunction with the results of the woman's cervical cancer test, 10
  - (b) the circumstances in which that disclosure may be made.

**42K Provision of information for inclusion in Register**

- (1) The person in charge of a laboratory that carries out a cervical cancer test must provide a report relating to the test in accordance with this section. 15
- Maximum penalty: 10 penalty units.
- (2) A person in charge of a laboratory is not guilty of an offence under this section by reason only that the report concerned did not include information that it was not in the power of the laboratory to provide. 20
- (3) A health practitioner who carries out a test, or a test of a class, prescribed by the regulations for the purposes of paragraph (b) of the definition of *cervical cancer test* in section 42E, must provide a report relating to the test in accordance with this section. 25
- Maximum penalty: 10 penalty units.
- (4) A health practitioner who takes a specimen from a woman for the purposes of a cervical cancer test is to ensure that the relevant pathology request form contains as much of the information required by this section to be included in a report from a laboratory as it is in the power of the health practitioner to provide. 30



- (5) A report referred to in this section:
- (a) is to be provided to the Director-General (or, if the Director-General has entered into an agreement or arrangement with another person under section 42F (2) and the person in charge of the laboratory or the health practitioner concerned has been notified accordingly, to that other person), and 5
  - (b) is to be provided within 30 days after the completion of the test, and 10
  - (c) is to contain, in relation to the test, the information referred to in section 42H, and
  - (d) is to be in a form approved by the Director-General.
- (6) This section is subject to section 42O. 15

### **Division 3 Right to anonymity in Register**

#### **42L Application of Division**

This Division has effect despite section 42H.

#### **42M Woman may elect not to be identified in Register**

A woman who has a cervical cancer test may elect to have her identifying particulars withheld from the Register by advising the health practitioner carrying out, or taking the specimen for the purposes of, the test that she does not want to be identified in the Register. 20

#### **42N Removal of identifying particulars from Register** 25

- (1) A woman may at any time request the Director-General, in writing, to remove her identifying particulars from the Register.
- (2) The Director-General is to cause any such request to be complied with as soon as practicable after receiving it. 30

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**42O Withholding of identifying particulars**

- (1) If a woman elects to have her identifying particulars withheld from the Register, the health practitioner to whom she makes the election:
- (a) must note any relevant pathology request form accordingly, and 5
  - (b) must not provide those particulars to any person for the purpose of their inclusion in the Register.
- Maximum penalty: 10 penalty units.
- (2) A person in charge of a laboratory that receives a pathology request form noted as referred to in subsection (1) must ensure that the laboratory does not provide the identifying particulars of the woman to whom the form relates to any person for the purpose of their inclusion in the Register. 10  
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- Maximum penalty: 10 penalty units.
- (3) Any person who has reason to believe that a woman has elected to have her identifying particulars withheld from the Register is not to include those particulars in the Register. 20

**42P Health practitioner to provide information about Register**

- (1) A health practitioner who carries out a cervical cancer test, or takes a specimen from a woman for the purpose of such a test, is, before carrying out the test or taking the specimen, to provide the woman concerned with details of: 25
- (a) the object of the Register, and
  - (b) the information that is recorded in the Register, and
  - (c) the purposes for which that information may be used, and 30
  - (d) the way in which the confidentiality of the Register is protected.

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Schedule 1 Amendment of Public Health Act 1991

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- (2) Subsection (1) does not apply if the health practitioner's records indicate that the woman has previously been provided with details of the Register. In that case, however, the health practitioner is to remind the woman of her right to have her identifying particulars removed from the Register. 5
- (3) If the health practitioner's records do not indicate that the woman has previously been provided with details of the Register, the health practitioner is also to inform the woman: 10
- (a) that she may elect to have her identifying particulars withheld from the Register, and
  - (b) that if she does not so elect, she may have those particulars removed from the Register at any time after they are recorded in it. 15