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NEW PUBLIC HEALTH LEGISLATION IN NSW

The new Public Health Act and Regulation 1991 replaced a system of public health controls which had operated in NSW since 1902. Over the past 90 years the health issues of concern to legislators have altered significantly. The changing face of Government throughout the 20th century has witnessed myriad legislative and regulatory controls on issues relating to public health, not all of which have been administered by the Health Department. Other bodies such as local governments have taken on certain public health functions and in many cases the duplication which occurred has been administratively cumbersome and has also detracted from the objective of effective public health control.

Advances in health care and technology have eliminated or contained many problems, such as plague and smallpox, which were of concern in 1902. However despite this progress a variety of issues — for example AIDS, Legionnaires' disease and the sale of tobacco products — still requires a framework of legislative and regulatory controls which addresses genuine community concerns and provides precautions against the spread of communicable diseases.

The Public Health Act and Regulation 1991 has:

- modernised the way in which public health risks are to be managed;
- eliminated duplication with other Government requirements; and
- sought to encourage the public's involvement in maintaining acceptable public health standards.

To support this approach the Health Department has published two sets of guidelines and a code of practice which provide details of how certain requirements of the Public Health Act and Regulation 1991 are to be achieved.

The following is a summary of the areas covered by the new Act and Regulation, and reference is made in each part to the relevant provisions and guidelines, where appropriate. The summary does not reproduce the exact text of the Act or Regulation and is intended only as an outline of the main provisions.

HEALTH RISKS

Act — Part 2

The Act provides the Minister and Director-General of the Health Department with powers to deal with situations which pose a significant risk to public health. These situations include public health risks arising under a state of emergency, and the powers extend to closing contaminated water supplies and ordering the disinfection

Continued on page 48 ►

Contents

Articles

47 *New public health legislation in NSW*

50 *The Oregon Plan*

52 *Resolving problems in environmental toxicology*

Infectious diseases

53 *Infectious disease notification — progress at last*

55 *Notifications*

Appendix

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► Continued from page 47

or destruction of contaminated articles. There are also powers to direct other public authorities to exercise their functions, or to rectify action already taken, where a public health risk has arisen as a result.

SCHEDULED (NOTIFIABLE) MEDICAL CONDITIONS

Act – Part 3, Regulation – Part 2

A series of Schedules in the Act list medical conditions which are required to be notified to the Health Department. The term “medical condition” has been used as not all the contents of the Schedules are “diseases” e.g. birth, sudden infant death syndrome (SIDS) and “adverse event following immunisation”.

The Schedules are divided into categories according to who is required to notify. Different conditions are notifiable by:

- medical practitioners (Schedule 1, category 2);
- laboratories (Schedule 1, category 3); and
- hospitals (Schedule 3).

“Hospital” is defined by the Act for notification purposes to include:

- Second, Third and Fifth Schedule public hospitals;
- hospitals under the control of an Area Health Service;
- hospitals within the meaning of the Mental Health Act 1990;
- private hospitals; and
- nursing homes.

The notification forms and particulars relevant to certain conditions are contained in clauses 5 and 81 of the Regulation. The new notification forms in a reply-paid aerogram style are available from Public Health Units (see appendix page 58).

These parts of the Act and Regulation also provide for:

- information which doctors are to supply to patients with sexually transmitted diseases (clause 4 of the Regulation);
- protection of identity for people with AIDS or HIV (section 17 of the Act); and
- the framework for the making of public health orders (sections 21-36 of the Act).

A public health order can be made where a person with leprosy, tuberculosis, AIDS or HIV (i.e. a category 4 or 5 medical condition) is behaving in a way that is likely to endanger the health of the public. Among other things an order can require a person to refrain from certain conduct, have treatment or, in relation to AIDS or HIV (category 5), be detained while the order is in force (up to 28 days). In the case of HIV or AIDS the order must be confirmed by the Local Court within three days of being made and there is provision for the District Court to continue any order for up to six months in certain circumstances.

SKIN PENETRATION

Regulation – Part 3 and Skin Penetration Guidelines

Regulations governing skin penetration procedures, including tattooing, ear piercing and acupuncture had been couched in “legalese” and were available to the public only in the regulation form.

While there is no specific reference to skin penetration in the Act, Part 3 of the new Regulation and the Skin Penetration Guidelines provide readily accessible, easy-to-read guidance on how infections can occur during skin penetration procedures and the most effective methods of preventing the spread of such infections.

Operators of businesses carrying out skin penetration procedures, and workers in this area, have responded positively to the changes, calling them far more effective in achieving the Department’s public health objectives. Continuing dialogue between interested parties and the Department will ensure the technical information remains up-to-date and of practical use for skin penetration operators.

In addition, while operators are still required to notify their business addresses to local councils, the need for operators to be licensed has been abolished. Environmental Health Officers from Public Health Units and councils will continue to visit premises where procedures are carried out. The emphasis of these visits is no longer on “inspection and prosecution” but on education and positive support in assisting business operators and their workers to maintain acceptable public health standards.

PUBLIC SWIMMING POOLS AND SPAS

Regulation – Part 4 and Guidelines for Disinfecting Public Swimming Pools and Spas

As with the approach to skin penetration, Part 4 of the new Regulation combines with the Guidelines for Disinfecting Public Swimming Pools and Spa Pools to provide up-to-date information and requirements for the maintenance of water quality in public swimming pools and spas. The Act itself does not contain any requirements relating specifically to swimming pools or spas. Pools and spas to which the public are admitted include those operated by councils, hotels and fitness centres.

The Guidelines for Disinfecting Public Swimming Pools and Spa Pools set out information about disinfecting and treatment factors, water testing equipment, frequency of testing, recommended testing methods and bacteriological standards. Various industry groups provided input into the technical content of the guidelines and continued liaison with these groups will be pursued to ensure technical developments are incorporated into reprints.

While water quality is the primary focus of the guidelines, the Regulation includes for the first time requirements for pool operators to maintain adequate hygiene in pool surrounds and change rooms. This has been seen as a logical step in ensuring that public health standards are maintained in all aspects of pool and spa use.

DISPOSAL OF BODIES

Regulation — Part 5

The new Regulation is based on the old Public Health (Funeral Industry) Regulation 1987. It reflects the primary objective of maintaining acceptable standards of public health and has generally brought administrative procedures up to date. The areas covered include:

- requirements for premises used for preparing bodies;
- preparation of bodies including embalming, viewing, handling transport; and
- burials, cremations and exhumations.

Specific requirements have been reviewed in close consultation with funeral industry representatives. Many of the old structural and site specifications have been transferred to local government or will be incorporated into existing planning requirements administered by other Government bodies.

Provisions relating to the licensing of undertakers and the registration of mortuaries have been incorporated into section 295 of the Local Government Act 1919. As councils administered these provisions under the Public Health Act 1902, it was considered more appropriate for the provisions themselves to be transferred to the Local Government Act. However, at the request of the Department of Local Government, the provisions of the old Regulation relating to licensing and registration have been saved as an interim measure until the new Local Government Act comes into effect.

MICROBIAL CONTROL

Act — Part 4, Regulation — Part 6 and Code of Practice for the Control of *Legionella* bacteria

Controlling the incidence of Legionnaires' disease in the community is a matter of particular public health importance in NSW since the outbreaks in Wollongong (1987), Newcastle (1989), Merrylands (1990) and Fairfield last month. The provisions relating to microbial control (of which *legionella* bacteria forms a part) provide detailed requirements for the installation, operation and maintenance of:

- air handling systems;
- evaporative cooling systems;
- hot water systems;
- humidifying systems;
- warm water systems; and
- water cooling systems.

The relevant provisions of the Act, Regulation and Code of Practice take into account the requirements of Australian Standard AS 3666 and combine to provide the technical details necessary to achieve effective controls.

TOBACCO PRODUCTS

Act — Part 6 and Regulation — Clause 85

Part 6 of the Act controls the sale of tobacco by requiring tobacco products to be packaged and the package to be marked with one of the following health warnings:

- smoking causes lung cancer;
- smoking causes heart disease;
- smoking damages your lungs; or
- smoking reduces your fitness.

These warnings are to be rotated equally throughout a 12-month period. Words such as "non-injurious", "non-hazardous" and "harmless to man" are prohibited. Significantly, the old Public Health Act prohibited the sale of tobacco to people under 16 years. The minimum age has now been raised to 18 in an effort to curb juvenile smoking, and retailers must display a sign where tobacco is sold, stating that its sale to people under 18 is a criminal offence. Signs have been distributed to all tobacco licensees and more are available from Quit. For Life if required.

MISCELLANEOUS PROVISIONS

Throughout the Act and Regulation, inspectorial powers are provided to Medical Officers of Health (appointed under the Act and attached to Public Health Units) and other authorised officers. All powers of entry must be exercised in accordance with section 72 of the Act which sets out the following conditions.

The person must:

- possess and produce a certificate of authority stating his or her name, the nature and source of power, date of expiry and the type of premises to which the power extends. The certificate must be signed by the Minister, Director-General or delegate;
- give reasonable notice to the occupier where appropriate; and
- use no more force than is reasonably necessary to exercise the power.

Other provisions require:

- public authorities to notify a Medical Officer of Health of a public health risk; and
- occupiers of premises to:
 - ensure a room or cubicle used for sleeping is of a certain minimum size; and
 - take reasonable measures to keep the premises free from vermin such as rats and mice (except where kept as pets). Provisions covering the control of vermin had been unnecessarily complex, requiring, among other matters, that the Director-General of the Health Department approve rat traps and the use of ferrets! While obviously important in 1902, the new clause reduces 111 words to 25 and reflects the new emphasis on outcomes rather than process, where possible.

CONTACTS

Further information on the Public Health Act or Regulation and copies of the:

- Skin Penetration Guidelines;
- Guidelines for Disinfecting Public Swimming Pools and Spa Pools; and
- Code of Practice for the Control of *Legionella* Bacteria

can be obtained from your local Public Health Unit (see Appendix).

Copies of the Public Health Act and Regulation 1991 can be obtained from the Government Information Service on (02) 743 7200, or toll free (008) 463 955.

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