

CLAUSE NOTES

Public Health (Miscellaneous Amendments) Bill 2015

Clause	Notes
Part 1 – Preliminary	
Clause 1	Short title
Clause 2	Provides that the Bill, if passed, will commence on proclamation.
Part 2 – Corrections Act 1997 Amended	
Clause 3	Provides that the Principal Act amended by Part 2 is the <i>Corrections Act 1997</i> .
Clause 4	Amends section 30 of the <i>Corrections Act 1997</i> and retains the Director of Corrective Services' ability to require mandatory testing of prisoners and detainees for HIV and other blood borne diseases. Counselling on the necessity of the test is to be conducted by a registered nurse or a medical officer (being a medical practitioner engaged to examine, treat or care for a prisoner or detainee) rather than an 'approved counsellor', that being a redundant concept from the <i>HIV/AIDS Preventive Measures Act</i> .
Clause 5	<p>Repeals section 31 of the <i>Corrections Act 1997</i>, which will remove mandatory notification to the Director of Corrective Services of all test results, leaving positive results to be notified to the Director of Public Health when required under the <i>Public Health Act 1997</i>.</p> <p>This clause also repeals section 32, which will remove incorporated sections of the <i>HIV/AIDS Preventive Measures Act</i> upon its repeal.</p>
Part 3 - Public Health Act 1997 Amended	
Clause 6	Provides that the Principal Act amended by Part 3 is the <i>Public Health Act 1997</i> (referred to in these clause notes as 'the Act').
Clause 7	<p>Amends section 3 (interpretation) by removing, adding and amending some definitions, as a consequence of the substantive amendments to the Act. Some of the changes include:</p> <p><i>Clinical assessment</i></p> <ul style="list-style-type: none"> This new term replaces 'medical examination', as it more accurately reflects the nature and conduct of the assessment, and also puts it beyond doubt that nurses and other health professionals may be competent to carry out examinations and assessments (in addition to medical practitioners).

	<ul style="list-style-type: none"> The definition includes new paragraphs (c), (d), and (e) to enable an assessment to take place other than in person (for example, via use of internet technology or document sources); to clarify that the testing process is part of an assessment; and to provide for other methods to be prescribed in regulations if and as they arise in future. <p><i>Disease</i></p> <ul style="list-style-type: none"> The meaning of disease includes a new reference to 'conditions' and 'signs', so it is clear the definition captures all the relevant clinical and other markers of a disease. <p><i>Notifiable contaminant</i></p> <ul style="list-style-type: none"> This is a new term that will replace the lengthy phrase 'human pathogenic organism or contaminant'. The definition has undergone drafting changes not affecting its operation (as has the definition of <i>notifiable disease</i>). <p><i>Personal information</i></p> <ul style="list-style-type: none"> This term will no longer refer to a Medicare number, as this will be captured by referring to unique numbers in Part 7 of the Act relating to the Cervical Screening Register. <p><i>Solid food</i></p> <ul style="list-style-type: none"> This term will no longer include reference to 'confectionery'. This amendment was inadvertently not included as part of the package of amendments to the tobacco control provisions of the Act passed by Parliament in 2011.
Clause 8	Amends section 15 (public health emergencies) to expressly require the Director of Public Health to notify the State Controller if a public health emergency declaration is extended or revoked (the requirement to notify the making of the declaration already exists). Drafting changes not affecting the operation of section 15 are also included.
Clause 9	Amends section 16 (directions during an emergency) to: <ul style="list-style-type: none"> replace the words 'reduce, remove or destroy any threat to public health' with 'manage a threat or likely threat to public health'. This more accurately describes the purpose for which the Director of Public Health may need to issue directions in a public health emergency. The term 'segregate' is replaced with 'quarantine' for the same reason; require a person who carries out a clinical assessment during a public health emergency to provide the Director with a report as soon as practicable after the assessment. This ensures information relevant to the management of a public health emergency is provided to the

	<p>Director in a timely manner;</p> <ul style="list-style-type: none"> • expressly require the Director revoke a direction as soon as practicable after being satisfied the direction is no longer necessary to manage a threat or likely threat to public health; • require the Director reassess the need for a quarantine, isolation or location direction at reasonable periods, at minimum every 7 days, and to arrange for a clinical assessment to take place if necessary to determine whether the direction should continue. This provides express legislative limits relating to the exercise of these powers; and • make drafting changes not affecting the operation of section 16.
Clause 10	<p>Introduces a warrant framework that can be accessed during a public health emergency (sections 16A, 16B, 16C). The Director may apply, and a magistrate may issue, a warrant for the apprehension of a person who has failed to comply with a direction of the Director issued during a public health emergency.</p> <p>Without a warrant framework, a person who does not comply with a direction may risk a fine at some future date, but there is no alternative mechanism to compel the timely action needed as part of managing the public health emergency.</p> <p>A warrant framework addresses this by providing that such a person can be brought before a magistrate (or represented by another person if there is a health risk in bringing the person before the court) and a magistrate may order the person comply (or may revoke or make other orders). A person failing to comply with an order of a magistrate is then in breach of a court order. The Magistrate may also order the detention, quarantine, isolation or clinical assessment of the person.</p> <p>An order of a magistrate that requires a person be quarantined or isolated, ends when the Director declares that action is no longer necessary to manage a threat or likely threat to public health.</p>
Clause 11	<p>Contains drafting changes not affecting the operation of section 17.</p>
Clause 12	<p>Introduces a framework for amending guidelines during a public health emergency (sections 17A, 17B, 17C).</p> <p>Section 17A – allows for the temporary suspension of the requirement to issue a public notice (under section 184(4)) and table an amended guideline in Parliament (under section 196(2)) if the Director amends or revokes a guideline during a public health emergency.</p> <p>The temporary suspension of these processes will enable the Director to amend the guidelines in a timely manner as required in response to an</p>

	<p>unpredictable and changing emergency situation.</p> <p>For example, during a public health emergency the Director may amend notification guidelines to require doctors notify the Director of the occurrence of a particular disease when it fits a specific case definition. That case definition may change more than once throughout the emergency period which would – in the absence of this clause – require multiple amendments to the guidelines, multiple public notices and tabling of documents in Parliament which may, at the time of tabling, already be out-of-date.</p> <p>The Bill provides that if the guideline reverts back to the pre-emergency requirements within 30 days of the public health emergency ending, then it will not be necessary to issue a public notice or table the amendments. If, however, the change is to take effect beyond this time then the Director is to issue a public notice advising of the change and the amended guidelines must be tabled in Parliament (so the usual processes apply).</p> <p>Section 17B – requires the Director take reasonable steps to ensure that persons directly affected by the change to the guideline are notified. Where parties agree email is the established notification protocol for public health messages, an email advising of the changes is taken to satisfy the notice requirement.</p> <p>Section 17C – provides a defence to an allegation that a person failed to comply with an amended guideline. A person has a defence if the allegation relates only to the amended parts of the guideline when those parts were in force; the failure would not have constituted an offence if the amendment had not been made; and notice of the amendment was not given to the person.</p>
Clause 13	<p>Amends the heading for Part 3 of the Act which contains the framework for the notification, investigation and management of threats or likely threats to public health arising from diseases and contaminants.</p> <p>The existing framework in the Act allows the Director of Public Health to issue a public notice declaring a disease or contaminant to be 'notifiable'.</p> <p>The Director may then issue guidelines requiring particular persons notify the occurrence of the disease or contaminant; may investigate to determine the existence and extent of a threat or likely threat to public health; and, if needed, issue directions to manage that threat.</p>
Clause 14	<p>Repeals section 41 (which will be covered in section 42) and substitutes a revised section 40. Section 40 continues to permit the Director of Public Health to issue a public notice declaring a disease or a contaminant to be 'notifiable'. Specific reference to 'non-communicable' diseases has been</p>

	added, so it is clear that such diseases (eg, lead poisoning) can be declared 'notifiable' and are diseases for which Part 3 of the Act can be used. The ability to require a 'class' of organisms or substances be notifiable contaminants has also been added, to ensure greater flexibility of laboratory and notifications practice where, for example, a species of organism may have multiple sub-types (eg, <i>Listeria</i>).
Clause 15	<p>Amends section 42 (directions to persons) to:</p> <ul style="list-style-type: none"> • ensure it is clear the Director of Public Health can, if necessary to manage a threat or likely threat to public health, issue a section 42 direction to a person who may have been exposed to a notifiable disease (who may carry the disease without exhibiting symptoms); • use the revised terminology 'clinical assessment'; • require a person conducting a clinical assessment to provide a written report to the Director as soon as practicable after the assessment; • introduce express provisions relating to ending or revoking a direction; and • as with the section 16 emergency directions, expressly require the Director to reassess the need for a quarantine or isolation direction at least every 7 days, which provides express legislative limits relating to the exercise of these powers.
Clause 16	<p>Repeals the old warrant framework and inserts a new framework (sections 43, 44, 45), which mirrors that introduced by clause 9.</p> <p>It also introduces a more specific head of power (section 46) for guidelines issued by the Director of Public Health that require certain people (for example, laboratories and doctors) to notify the occurrence or suspected occurrence of a 'notifiable' disease or contaminant.</p>
Clause 17	Makes minor amendments to section 49 (reports to councils by the Director), to better reflect practical requirements.
Clause 18	Amends section 50 (doctors providing information) so the provisions also apply where a person may have been exposed to a notifiable disease. The substance of the information to be provided by medical practitioners has not changed. The Director may now require a medical practitioner pass on to the Director relevant information received from the patient (instead of just collecting it). More express defence provisions are now included.
Clause 19	Amends section 52 so it is clear an investigation may be carried out in relation to the <i>suspected</i> presence or occurrence of a notifiable disease or contaminant (not just where the disease or contaminant is present or has occurred) – thereby enabling more timely and more effective public health

	action to be taken.
Clause 20	Contains drafting changes not affecting the operation of section 55.
Clause 21	Contains drafting changes not affecting the operation of section 56.
Clause 22	<p>Inserts a new Division into Part 3.</p> <p>The Division re-establishes a revised permit system to regulate the supply of new needles and syringes to injecting drug users. The existing system ends with the repeal of the <i>HIV/AIDS Preventive Measures Act</i>.</p> <p>The system is administered by the Director of Public Health. Essentially it requires organisations to obtain a permit and only allow trained persons to supply equipment to injecting drug users.</p> <p>The permit system does not apply to organisations involved in supplying needles and syringes for medical or veterinary purposes or wholesale activities.</p> <p>Section 56A:</p> <p>Contains all the terms that have a particular meaning for the purposes of this Division.</p> <p>Most relevant is the definition of 'organised distributor', which encompasses all government, community sector and commercial organisations who supply injecting equipment.</p> <p>The notable exclusion from this list is a natural person. The reason for this is to exclude individuals who are involved in the peer distribution of new equipment. Peers are integral to facilitating the use of needle and syringe outlets, distributing new equipment and encouraging the appropriate disposal of used needles and syringes.</p> <p>Section 56B:</p> <p>Defines the word 'supply', as used in this Division, to:</p> <ul style="list-style-type: none"> • exclude supply for legitimate medical and veterinary purposes; wholesale distribution; and disposal; • create the authority to exclude any other appropriate groups by regulation; and • expressly include supply of needles and syringes by way of a vending machine, personal delivery and post (where posted at the direction of a 'certified person' under the Act). <p>Section 56C:</p> <p>Creates an offence for the supply of needles and syringes by an organised</p>

distributor without a permit.

Section 56D

Establishes a process by which an organised distributor may apply to the Director of Public Health for a permit. The Director must be satisfied of a number of matters prior to issuing a permit (at subsections (3), (4) and (5)). The Director may only issue a permit if satisfied that it is in the interests of public health for needles and syringes to be supplied by the organised distributor, at the nominated premises, or by post or personal delivery.

A permit may be issued for a maximum of three years; may be renewed upon application (subsection 6); and is non transferrable (subsection 8).

Section 56E:

Requires the Director to specify as a *term* on a permit the manner in which the supply is authorised – that is, on the premises, via a dispensing machine and/or by post or personal delivery.

Section 56F:

Establishes the *conditions* attaching to a permit, some mandatory and some at the discretion of the Director. Specifically:

- a permit is subject to the terms specified in section 56E;
- permit holders must only use certified persons to supply needles or syringes or, in the case of a dispensing machine, a certified person must be responsible for the day to day operation of the machine;
- permit holders must provide information specified in any notice from the Director;
- permit holders must comply with approved service standards; and
- the Director has the discretion to specify additional conditions.

Section 56G:

Establishes a mechanism for the variation, revocation and specification of terms and conditions of permits. Notably, the Director may only vary, revoke or specify a term or condition if satisfied it is in the interests of public health to do so.

Section 56H:

Establishes a method and the basis on which the Director may revoke or renew a permit. The Director may refuse an application to renew or grant the renewal for a period of up to 3 years.

	<p>Section 56I:</p> <p>Enables the Director to approve training courses for people seeking to supply needles and syringes on behalf of a permit holder. A person who successfully completes a course is issued with a certificate valid for a period of three years.</p> <p>The Director also has the capacity to cancel a certificate if the training was inadequate or no longer considered adequate; or the person is not a suitable person to be authorised to supply needles or syringes.</p> <p>Section 56J:</p> <p>Enables the Director to approve service standards for permit holders in relation to the supply of needles and syringes, and establishes the matters that may be specified in the service standards.</p> <p>Section 56K:</p> <p>The purpose of these provisions is to protect persons possessing and supplying injecting equipment from prosecution for certain offences so as not to undermine the purpose of the needle and syringe program:</p> <ul style="list-style-type: none"> • mere possession won't constitute an offence; • nor will possession of any trace element of a substance in the used equipment, or supply of that equipment for disposal; and • supplying information and unused equipment that has been provided under the needle and syringe program is not itself an offence, nor does it make a person an accessory to particular offences or crimes. <p>Similar provisions have already been in existence for permit holders under the <i>HIV/AIDS Preventive Measures Act 1993</i> but in this Bill the protection has been extended to include peer distributors – that is, people re-supplying equipment and information originally supplied under a permit.</p> <p>Section 56L:</p> <p>Creates two offences. Subsection (1) establishes a universal obligation on persons in possession of a needle or syringe to take all reasonable care and precautions to avoid risk to the life, safety or health of other persons that may be caused by a needle or syringe. Subsection (2) extends this obligation to those persons who no longer have possession, that is: to a person who abandons, discards or seeks to dispose of a needle or syringe.</p>
<p>Clause 23</p>	<p>Repeals section 61 (disclosure of information relating to a notifiable disease) as section 147 contains provisions for the disclosure of all identifying information collected for the purposes of the Act.</p>

Clause 24	<p>Amends section 62 to include the power for a court to close the court in any proceedings relating to a notifiable disease if satisfied it is in the <i>public interest</i> to do so. The court may do so of its own motion or on the application of the Director of Public Health or a party or witness in respect of the proceedings. This provision transfers and revises court closure provisions currently included in the <i>HIV/AIDS Preventive Measures Act 1993</i>.</p> <p>This compliments the existing power of the court at section 62 to prohibit or restrict the publication of any part of proceedings relating to a notifiable disease if satisfied it is in the <i>best interest</i> of a party to the proceedings to do so. This is extended to include the best interests of a witness in respect of the proceedings. Again, the court may make such an order of its own motion or on application by the Director, a party or a witness in respect of the proceedings.</p>
Clause 25	Amends section 67B to ensure it is clear that 'private premises' designated by the occupier, and enforceable, as smoke-free areas under the Act do not include premises used for domestic purposes. The amendment also makes it clear that public streets may be designated as smoke-free. This reinstates councils' ability to designate a street it occupies as smoke-free, a power inadvertently removed in a previous amendment.
Clause 26	Amends section 67I to enable the Director of Public Health to approve, on conditions, designated smoking areas at public events that have been declared by the Director as smoke-free under the Act.
Clause 27	Amends section 70 to permit tobacco advertising on packets or packaging if it is in accordance with relevant guidelines. This provision is intended to provide the head of power for guidelines to be issued which permit the display of a price board in retail outlets at the point of sale. The ban on advertising on tobacco packets will remain.
Clause 28	Amends section 74C so that a tobacco seller's licence cannot be issued in connection with a public event (elevating this requirement from subordinate legislation).
Clause 29	Amends a heading.
Clause 30	Contains definitions relevant to Part 6 of the Act.
Clause 31	Amends a heading.
Clause 32	Amends the provisions relating to the notification of a threat or likely threat to public health posed by water. The persons required to notify has not changed, however instead of initially notifying the Director of Public Health, some persons are required to notify the relevant council so the council (generally through its Environmental Health Officer) can assess the risk and

	advise the Director of the nature of any threat or likely threat to public health.
Clause 33	<p>Inserts a new Division into Part 6 that establishes a framework for water quality auditors.</p> <p>Section 129A:</p> <p>Re-inserts the existing obligation to manage water so it does not pose a threat to public health.</p> <p>Section 129B:</p> <p>Introduces a more specific head of power for guidelines issued by the Director of Public Health in relation to drinking water quality. A new head of power permits the Director to require a person managing or in control of water to organise for an approved water quality auditor to audit and report on its drinking water quality management plan and the bodies of water to which the plan relates. The Director has consulted on draft guidelines imposing this obligation on Tasmania's regulated entity (TasWater).</p> <p>Section 129C:</p> <p>Establishes the framework for the approval of a natural person as a water quality auditor. An approval remains in force for 12 months.</p> <p>Section 129D:</p> <p>Provides for the variation of the water quality auditor approval.</p> <p>Section 129E:</p> <p>Provides for the suspension and cancellation of the water quality auditor approval.</p> <p>Section 129F:</p> <p>Sets out the duties of a water quality auditor.</p> <p>Section 129G:</p> <p>Sets out when the water quality auditor is taken to have a conflict of interest. The Director may refuse to grant, or suspend or cancel the approval of a water quality auditor if he or she has a conflict.</p> <p>Section 129H:</p> <p>Requires the Director maintain a publicly available list of water quality auditors.</p> <p>Clause 54:</p> <p>Clause 54 of the Bill contains review rights in relation to an application, a decision to impose or vary conditions, or to suspend or cancel an approval.</p>

Clause 34	Contains an administrative amendment not affecting the substantive operation of section 130.
Clause 35	Contains an administrative amendment not affecting the substantive operation of section 131.
Clause 36	Amends a heading.
Clause 37	<p>Improves the drafting of section 133(1), without changing its effect, and inserts two new subsections so it is clear:</p> <ul style="list-style-type: none"> • a person supplying water from a private water source as part of a rental agreement is not required to register with a council – whether it be a long-term residential lease or a short-term holiday stay; and • a food business registered with a council under the <i>Food Act 2003</i> who supplies water from private water source as part of that business, is not required to also register under the <i>Public Health Act 1997</i> as a private water supplier.
Clause 38	Makes minor amendments to section 134.
Clause 39	Amends section 135 to expand the matters a council is to have regard to when considering an application from a person to be registered a supplier of water from a private water source.
Clause 40	Makes minor amendments to section 136.
Clause 41	Inserts a framework for the renewal of registration as a supplier of water from a private water source, which mirrors the initial application framework. Registration is valid for up to 12 months.
Clause 42	Makes minor amendments to section 136A.
Clause 43	Introduces a new requirement for suppliers of water from a private water source to take action, in accordance with guidelines issued by the Director of Public Health, if water it supplies is, or is likely to become, a threat to public health. This mirrors the existing obligation on the regulated entity and councils and which is proposed for water carriers.
Clause 44	Makes drafting changes to section 136B not affecting its substantive operation.
Clause 45	Makes consequential changes to section 136C arising from the additional matters a council is to consider when assessing a registration application (under clause 39; section 135).

Clause 46	Inserts a new Division into Part 6 that establishes a framework for water carriers, which mirrors the framework for suppliers of water from a private water source: water carriers must be registered with the relevant council (where the majority of vehicles are stored – registration with multiple councils is not required); councils must have regard to the same application assessment criteria; a council is to issue a written certificate on registration; a council may renew, vary or cancel a registration; registration is valid for up to 12 months; a water carrier must supply the water in a manner that does not pose a threat to public health and in accordance with registration conditions and guidelines issued by the Director of Public Health; and must take action, in accordance with guidelines, if water it supplies is a threat or likely threat to public health.
Clause 47	Amends section 137A so information as to whether a person is an Aboriginal or Torres Strait Islander or both, and unique identifying numbers, can be recorded on the Cervical Screening Register.
Clause 48	<p>Introduces a revised section 147 so it is clear the provision applies to information from which the identity of a natural person (subsection 1), or a business or premise (subsection 4), is reasonably ascertainable.</p> <p>Both subsections are substantially the same.</p> <p>The new aspects of section 147 provide more detailed heads of power for the release of information.</p> <p>Rather than relying on the general provision that permits the release of information for a purpose authorised or required by the Act, there are now specific provisions permitting the release of information during the diagnosis, detection, treatment, notification, investigation, prevention and management of a notifiable disease or contaminant; and managing a threat or likely threat to public health.</p> <p>The provision permitting disclosure to a medical practitioner involved in the treatment of a person has been extended to include persons involved in the diagnosis, clinical assessment or counselling of the person.</p>
Clause 49	Amends section 148, granting a court the power to order a person provide information to the Director of Public Health if found guilty of failing to comply with a requirement of the Director to do so.
Clause 50	Repeals section 149 prohibiting the collection and recording of information otherwise than in accordance with guidelines issued under the Act. This has been superseded by the <i>Personal Information Protection Act 2004</i> .
Clause 51	Makes drafting changes to section 153 not affecting its substantive operation.

Clause 52	Introduces offences against water quality auditors.
Clause 53	Inserts review rights in relation to the needle and syringe program.
Clause 54	Inserts review rights in relation to the designated smoking areas and water quality auditor provisions.
Clause 55	Makes minor amendments to the review rights at section 163A, relating to the water provisions.
Clause 56	Inserts review rights in relation to water carriers.
Clause 57	Clarifies the scope of the Director's power to issue guidelines.
Clause 58	Introduces an obligation on the Secretary of the Department to ensure a person quarantined, placed in isolation or required to stay in a particular place by the Director of Public Health is given reasonable opportunities to communicate with the person's lawyer or doctor.
Clause 59	Makes minor drafting amendments to section 196, and allows the Director to commence a guideline at a specified future date.
Clause 60	Inserts transitional provisions.
Clause 61	Makes minor drafting amendments to Schedule 1.
Part 4 – Legislation Repealed	
Clause 62	This clause is the substantive provision that repeals the legislation listed in Schedule 1 – the <i>HIV/AIDS Preventive Measures Act 1993</i> .
Part 5 - Repeal of Act	
Clause 63	This is a standard clause repealing the Amendment Bill, as the substance of the Bill is incorporated into the relevant Act(s) on commencement.
Schedule 1	Lists the legislation repealed by Clause 62 – the <i>HIV/AIDS Preventive Measures Act 1993</i> .