



PUBLIC AND ENVIRONMENTAL HEALTH (REVIEW) AMENDMENT ACT 1993

No. 9 of 1993

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ELIZABETHAE II REGINAE

A.D. 1993

No. 9 of 1993

An Act to amend the Public and Environmental Health Act 1987.

[Assented to 25 March 1993]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Public and Environmental Health (Review) Amendment Act 1993*.

(2) The *Public and Environmental Health Act 1987* is referred to in this Act as “the principal Act”.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 3—Interpretation

3. Section 3 of the principal Act is amended—

(a) by inserting after the definition of “building” the following definition:

“child” means a person under the age of 16 years;;

(b) by striking out the definition of “notifiable disease” and substituting the following definition:

“notifiable disease” means—

(a) a communicable disease included in the first schedule;

or

(b) a communicable disease prescribed by regulation to be a notifiable disease;;

and

(c) by inserting after the definition of “vehicle” the following definitions:

“vermin” includes lice, fleas and mites;

“waste control system” means any system that provides for the collection, treatment or disposal of human, commercial or industrial waste through—

(a) a drainage or sewerage system;

(b) a system of pipes, pumps, appliances, plant or storage or treatment facilities that deals with the waste in solid or liquid form, or in a combination of both;

or

(c) a system that incorporates the use of biological, chemical or artificial means, or any combination of such means, to collect, treat or dispose of the waste, or any residues,

and includes any fixture, fitting, appliance, plant or process associated with any such system but does not include any system of a class excluded by regulation from the ambit of this definition:.

Amendment of s. 4—Delegation

4. Section 6 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsections:

(1) The Commission or a local council may, by instrument in writing, delegate any of its powers or functions under this Act.

(1a) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.;

and

(b) by inserting after “the Commission” in subsection (2)(b) “or the local council”.

Insertion of new Division

5. The following Division is inserted after Division II of Part II:

DIVISION III—ENFORCEMENT OF PROPER STANDARDS

Powers and duties of relevant authorities

12a. (1) It is the duty of the Commission—

(a) to promote proper standards of public and environmental health in the State generally;

and

(b) without derogating from the powers of a local council under this Act (but subject to this section), to take adequate measures to ensure that the provisions of this Act are observed within the State.

(2) Subject to this section, it is the duty of a local council—

- (a) to promote proper standards of public and environmental health in its area;
- (b) to take adequate measures to ensure that the provisions of Part III are observed in its area;

and

(c) to take reasonable steps—

- (i) to prevent the occurrence and spread of notifiable diseases within its area;

and

- (ii) to prevent any infestation or spread of vermin, rodents or other pests within its area.

(3) If, in the opinion of the Council, a local council has failed to discharge its duty under this section, the Council must consult with the local council in relation to the matter.

(4) If, after taking action to comply with subsection (3), the Council considers that the matter remains unresolved, the Council may take such action as appears appropriate.

(5) Without limiting the generality of subsection (4), the Council may, by notice in the *Gazette*, withdraw powers from a local council and transfer them to the Commission.

(6) Before taking action under subsection (5)—

(a) the Council must, by notice in writing—

- (i) inform the local council of its proposed course of action (setting out the grounds on which that action is proposed);

and

- (ii) invite the local council to make written submissions in relation to the matter;

and

(b) if the local council so requests in written submissions to the Council—the Council must discuss the matter with a delegation representing the local council.

(7) The Council must, as soon as is reasonably practicable after publishing a notice under subsection (5), furnish the local council with written reasons for its decision.

(8) The Commission may recover as a debt costs and expenses reasonably incurred in exercising powers transferred under subsection (5) from the local council from which the powers are withdrawn.

(9) The Council may, by subsequent notice in the *Gazette*, revoke a notice under subsection (5).

(10) The Commission may agree to discharge on behalf of a local council any part of its duty under subsection (2).

(11) An agreement under subsection (10) may be made subject to conditions and limitations.

(12) Where the Commission enters into an agreement under subsection (10), the Commission is, to the extent contemplated by the agreement, vested with the powers of the local council in respect of which the agreement is made.

(13) A breach of duty under this section does not give rise to any civil liability.

Repeal of Division

6. Division I of Part III of the principal Act (and the heading to that Division) are repealed.

Amendment of s. 29—Further appeal

7. Section 29 of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) An appeal must be instituted within 14 days of the decision of the Council unless the District Court, in its discretion, allows an extension of time for instituting the appeal.

Amendment of s. 36—Action to prevent the spread of infection

8. Section 36 of the principal Act is amended—

(a) by striking out from subsection (1) “controlled”;

and

(b) by striking out from subsection (9) “controlled”.

Amendment of s. 37—Person infected with disease must prevent transmission to others

9. Section 37 of the principal Act is amended by striking out subsections (2), (3) and (4).

Amendment of s. 38—Inspections, etc.

10. Section 38 of the principal Act is amended—

(a) by striking out paragraph (a) of subsection (1) and substituting the following paragraph:

(a) at any reasonable time, enter or inspect any premises or vehicle;;

and

(b) by inserting after subsection (2) the following subsections:

(2a) An authorized officer may use force to enter any premises or vehicle—

(a) on the authority of a warrant issued by a magistrate;

or

(b) if the officer believes, on reasonable grounds, that the circumstances require immediate action to be taken.

(2b) A magistrate must not issue a warrant under subsection (2a) unless satisfied, on information given on oath—

(a) that there are reasonable grounds to suspect that an offence against this Act has been, is being, or is about to be, committed;

or

(b) that the warrant is reasonably required in the circumstances.

Amendment of s. 41—Power to require information

11. Section 41 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) A person who furnishes information under this section cannot, by virtue of doing so, be held to have breached any law or any principle of professional ethics.

Insertion of s. 42a

12. The following section is inserted after section 42 of the principal Act:

Provision of certain information

42a. (1) This section applies to a person employed or engaged by the State for the purpose of—

(a) monitoring public health in the State;

(b) investigating public health problems within the State;

or

(c) assessing and improving the quality of public health in the State.

(2) The Governor may, by instrument in writing, authorize a person to whom this section applies to have access to confidential information relating to the performance of any function referred to in subsection (1).

(3) Confidential information may be disclosed to a person authorized under subsection (2), and to any person providing technical, administrative or secretarial assistance to that person, without breach of any law or any principle of professional ethics.

(4) A person must not disclose confidential information obtained directly or indirectly pursuant to this section unless—

(a) the disclosure is made in the course of official duties;

(b) the disclosure is made with the consent of the person to whom the information relates;

or

(c) the disclosure is required by a court or tribunal constituted by law.

Penalty: Division 6 fine.

(5) In this section—

“confidential information” means—

(a) medical information;

or

(b) information relating to a person's personal affairs.

Insertion of s. 43a

13. The following section is inserted after section 43 of the principal Act:

Person infested with vermin must prevent transmission to others

43a. (1) A person infested with vermin must take all reasonable measure to prevent transmission of the vermin to others.

Penalty: Division 9 fine.

(2) If a child is infested with vermin, a parent of the child must take all reasonable measures to prevent transmission of the vermin to others.

Penalty: Division 9 fine.

Amendment of s. 45—Offences

14. Section 45 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsections:

(1) Subject to subsection (1a), an offence against this Act is a summary offence.

(1a) An offence against this Act for which the maximum penalty prescribed by this Act is a division 1 fine is a minor indictable offence.;

and

(b) by inserting after subsection (2) the following subsection:

(2a) An apparently genuine document purporting to be under the hand of the Minister and to authorize the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of an authorization under subsection (2)(e).

Amendment of s. 47—Regulations

15. Section 47 of the principal Act is amended—

(a) by striking out from subsection (2)(h) “septic tanks and common effluent drainage systems” and substituting “waste control systems”;

(b) by inserting after paragraph (h) of subsection (2) the following paragraphs:

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- (ha) regulate the construction, installation, maintenance, alteration and operation of waste control systems;
- (hb) provide for the inspection and testing of waste control systems;
- (hc) require the provision of technical reports or other forms of information in relation to any waste control system, or any proposed waste control system;;
- (c) by striking out paragraph (j) of subsection (2) and substituting the following paragraph:
- (j) on the recommendation of the Council, prescribe guidelines to assist local councils in the administration of this Act;;
- (d) by striking out paragraph (k) of subsection (2) and substituting the following paragraphs:
- (k) prescribe fees and expenses in connection with any matter arising under this Act, which may be of varying amounts according to factors prescribed in the regulations or determined by the Minister from time to time and published in the *Gazette*;
- (ka) provide for the payment and recovery of prescribed fees and expenses;
- (kb) empower or require the Commission or local council to refund, reduce or remit any fee payable under this Act;;
- (e) by inserting after paragraph (l) of subsection (2) the following paragraph:
- (la) regulate the requirements and prescribe information that must be provided in connection with any application made for the purposes of this Act;;
- and
- (f) by striking out subsections (5) and (6) and substituting the following subsections:
- (5) The regulations may adopt, wholly or partially and with or without modification—
- (a) a code or standard relating to matters in respect of which regulations may be made under this Act;
- or
- (b) an amendment to such a code or standard.
- (6) Any regulations adopting a code or standard, or an amendment to a code or standard, may contain such incidental, supplementary and transitional provisions as appear to the Governor to be necessary.
- (7) The regulations or a code or standard adopted by the regulations may—
- (a) refer to or incorporate, wholly or partially and with or without modification, a standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time;
- (b) be of general or limited application;

- (c) make different provision according to the persons, things or circumstances to which they are expressed to apply;

and

- (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Commission or a local council.

(8) Where—

- (a) a code or standard is adopted by the regulations;

or

- (b) the regulations, or a code or standard adopted by the regulations, refers to a standard or other document prepared or published by a prescribed body,

then—

- (c) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations;

- (d) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code, standard or other document;

and

- (e) the code, standard or other document has effect as if it were a regulation made under this Act.

Substitution of first schedule

16. The first schedule of the principal Act is repealed and the following schedule is substituted:

FIRST SCHEDULE *Notifiable Diseases*

Acquired Immuno-Deficiency Syndrome
Arbovirus Infection
Brucellosis
Campylobacter Infection
Chlamydia Infection
Cholera
Cryptosporidiosis
Diphtheria
Food Poisoning
Gonococcal Infection
Haemophilus Influenzae Infection
Human Immunodeficiency Virus Infection
Hydatid Disease
Legionellosis

Leptospirosis
Listeriosis
Malaria
Measles
Meningococcal Infection
Mumps
Mycobacterial Infection
Pertussis
Plague
Poliomyelitis
Q Fever
Rabies
Rubella
Salmonella Infection
Shigella Infection
Syphilis
Tetanus
Viral Haemorrhagic Fever
Viral Hepatitis
Yellow Fever
Yersinia Infection

Substitution of second schedule

17. The second schedule of the principal Act is repealed and the following schedule is substituted:

SECOND SCHEDULE
Controlled Notifiable Diseases

Acquired Immuno-Deficiency Syndrome
Cholera
Diphtheria
Haemophilus Influenzae Infection
Human Immunodeficiency Virus Infection
Measles
Meningococcal Infection
Mycobacterial Infection
Plague
Poliomyelitis
Rabies
Salmonella Infection
Shigella Infection
Viral Haemorrhagic Fever
Viral Hepatitis
Yellow Fever

Penalties

18. The principal Act is amended as follows:

Section 15(3)	Delete "\$5 000" and substitute "Division 5 fine".
Section 15(5)	Delete "\$2 500" and substitute "Division 6 fine".
Section 16(1)	Delete "\$5 000" and substitute "Division 5 fine".
Section 17(2)	Delete "\$5 000" and substitute "Division 5 fine".
Section 18(1)	Delete "\$10 000" and substitute "Division 3 fine".
Section 18(2)	Delete "\$10 000" and substitute "Division 3 fine".

Section 18(4)	Delete "\$10 000" and substitute "Division 3 fine".
Section 19(1)	Delete "\$2 500" and substitute "Division 6 fine".
Section 19(3)	Delete "\$2 500" and substitute "Division 6 fine".
Section 20(2)	Delete "\$2 500" and substitute "Division 6 fine".
Section 20(4)	Delete "\$2 500" and substitute "Division 6 fine".
Section 21(1)	Delete "\$10 000" and substitute "Division 1 fine".
Section 21(3)	Delete "\$10 000" and substitute "Division 1 fine".
Section 22(2)	Delete "\$7 500" and substitute "Division 4 fine".
Section 30(1)	Delete "\$1 000" and substitute "Division 7 fine".
Section 33(5)	Delete "\$5 000" and substitute "Division 5 fine".
Section 36(3)	Delete "\$5 000" and substitute "Division 5 fine".
Section 37(1)	Delete "\$10 000" and substitute "Division 3 fine".
Section 38(4)	Delete "\$2 500" and substitute "Division 6 fine".
Section 41(2)	Delete "\$2 500" and substitute "Division 6 fine".
Section 42	Delete "\$2 000" and substitute "Division 6 fine".
Section 45(4)	Delete "\$100" and substitute "Division 10 fine".
Section 47(2)(n)	Delete "\$2 500" and substitute "a division 6 fine".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor