



Queensland

Public Health and Other Legislation Amendment Regulation (No. 1) 2007

Explanatory Notes for SL 2007 No. 86

made under the

Public Health Act 2005

General Outline

Title

Public Health and Other Legislation Amendment Regulation 2007

Authorising law

Sections 61, 158 and 160 of the *Public Health Act 2005*.

Policy objective of the regulation

The primary objective of the *Public Health Act 2005* is to protect and promote the health of the Queensland public. The proposed amendments to the *Public Health Regulation 2005* will support the objectives of the *Public Health Act 2005* by setting out requirements to help prevent and control specified public health risks as well as giving effect to the mechanisms under Chapter 5 of the Act to help minimise the incidence of childhood contagious conditions.

More specifically, the regulation aims to:

- minimise the risks arising from the inhalation of asbestos fibres due to unsafe removal or handling of asbestos products in non-workplace areas;
- reduce the transmission of mosquito borne disease by preventing the breeding of mosquitos in accumulations of water, water tanks and other receptacles intended for the storage of water;
- reduce the transmission of vermin borne disease by requiring that structures such as buildings, drains, pipes, retaining walls and wharves as well as the land around dwellings be vermin-proofed; and
- help prevent the spread of childhood contagious conditions by specifying the medical conditions and infectious period for which a child may be kept from school or child care under Chapter 5 of the *Public Health Act 2005*.

Reasons for the regulation

The *Public Health Act 2005* was assented to on 2 November 2005. When fully commenced, the Act will replace the outdated public health provisions of the *Health Act 1937*.

The *Public Health Act 2005* has been progressively commenced since 1 December 2005, supported by the *Public Health Regulation*. However, those provisions of the Act dealing with public health risks and childhood contagious conditions have not been commenced as yet.

The environmental health provisions in Chapter 2 of the *Public Health Act 2005* enable local government and the State to respond to public health risks. During the development of the *Public Health Act 2005*, it was envisaged that Chapter 2 would be supported by regulations designed to prevent and control specific public health risks. Accordingly, the *Public Health Regulation 2005* is to be amended to set out measures to prevent and control public health risks associated with the removal and handling of asbestos in non-workplace areas as well as the breeding and harbouring of mosquitos, rats and mice.

The public health risks provisions of the *Public Health Regulation 2005* will be administered and enforced by local government in accordance with the allocation of responsibility for specified public health risks under Chapter 2 of the *Public Health Act 2005*. Local government officers will be appointed as authorised persons under the *Public Health Act 2005* and will

be required to use the powers provided in the *Public Health Act 2005* to administer and enforce the regulations (see section 20 of the Act).

The Amendment regulation also amends the *State Penalties Enforcement Regulation 2000* to enable on-the-spot fines to be issued for certain offences under the public health risk provisions of the *Public Health Act 2005* and *Public Health Regulation 2005*. This will enable local governments to have a simple and cost effective means of enforcing the legislation.

The contagious conditions provisions in Chapter 5 of the *Public Health Act 2005* provide mechanisms to prevent the spread of prescribed contagious conditions at school or child care. For example, a direction can be issued to a parent about the attendance of their child at school or a child care service, following consultation with Queensland Health, if the child is suspected of having a contagious condition or is considered to be at risk because they have not been vaccinated for the condition. In order to give effect to Chapter 5, a regulation must be made to prescribe the medical conditions and infectious periods for which a child must be kept away from school or child care.

It is intended that the public health risk and contagious conditions provisions of the *Public Health Act 2005* and *Public Health Regulation 2005* be commenced simultaneously.

Consistency with policy objectives of authorising law

The regulation is consistent with the policy objectives of the public health risk and contagious condition provisions of the *Public Health Act 2005*.

Consistency with fundamental legislative principles

The regulation is consistent with fundamental legislative principles.

Estimated cost for government

There are administrative and operational costs (including monitoring and enforcement costs) associated with Government implementation of the regulation. These costs will be funded from within existing allocations.

Consultation

A Regulatory Impact Statement (RIS), *Proposed Regulation for the Prevention of Public Health Risks and Childhood Contagious Conditions*, was developed and released in accordance with the requirements of the *Statutory Instruments Act 1992*. The RIS, including a draft of the regulation, was released for public comment on 7 July 2006 for a period of six weeks.

Approximately 400 copies of the RIS were sent to stakeholders and interested parties, including professional organisations, local government, industry representatives, consumer organisations and trade unions. Information about the consultation process for the RIS was also published in metropolitan and regional newspapers as well as Queensland Health's website.

Sixty written submissions were received in response to the RIS, predominately from local government. The overall response to the regulation was favourable.

Local government initially opposed the devolution of responsibility for asbestos in non-workplace areas. However, agreement was reached with the Local Government Association of Queensland (LGAQ) that the State would support local government in this role by:

- conducting a public awareness campaign about asbestos in the home;
- operating an "Asbestos Hotline" as a first point of contact for enquiries;
- providing local government officers with appropriate training and guidance materials
- developing an indemnity agreement between local government and the State. A key concern of the LGAQ was that local government was unable to obtain public liability insurance in relation to local government's proposed role in regulating asbestos in non-workplace areas; and developing a formal agreement between local government and the State under section 14 of the *Public Health Act 2005* to assist local government to enforce the proposed legislative scheme.

Notes on Provisions

Part 1 Preliminary

Clause 1 sets out the short title of the regulation.

Clause 2 sets out the arrangements for the commencement of the regulation, which will come into effect on 18 June 2007.

Part 2 Amendment of *Health Regulation 1996*

Clause 3 specifies that part 2 of the regulation amends the *Health Regulation 1996*.

Clause 4 omits part 8 which deals with mosquito prevention and destruction. These provisions will be replaced by the new mosquito provisions of the *Public Health Regulation 2005*.

Clause 5 deals with an amendment to section 170. The clause omits a cross-reference to part 17, which deals with vermin control and specifications for places. These provisions will be replaced by the new rats and mice provisions of the *Public Health Regulation 2005*, part 1A, division 3 which ensures that clear specifications for places remain.

Clause 6 omits part 17 which deals with vermin control. These provisions will be replaced by the new rats and mice provisions of the *Public Health Regulation 2005*.

Part 3 Amendment of *Public Health Regulation 2005*

Clause 7 specifies that part 3 of the regulation amends the *Public Health Regulation 2005*.

Clause 8 inserts a dictionary for the purposes of the *Public Health Regulation 2005* in accordance with current drafting practices.

Clause 9 inserts a new part 1A in order to support the public health risk provisions of the Act, which is comprised of three divisions. Division 1 regulates the removal and handling of asbestos in non-workplace areas, division 2 sets out measures to control mosquitos and division 3 sets out measures to control rats and mice.

Section 2A clarifies that division 1 prescribes measures that seek to prevent and control the public health risks related to the dispersal and release of

asbestos fibres in non-workplace areas as provided for by section 61(1)(c) of the Act. The key objective of division 1 is to protect the public against the health risks arising from the inhalation of asbestos fibres due to the unsafe handling or removal of asbestos containing materials in non-workplace areas (eg during renovations by do-it-yourself home owners). Division 1 is comprised of sections 2A to 2J.

Section 2B defines key terms used in division 1, including ACM, asbestos, associated asbestos waste, bonded ACM, friable ACM, non-workplace area, prescribed work and remove.

Section 2C specifies that the administration and enforcement of division 1 is the responsibility of local governments solely. Section 61(2) of the *Public Health Act 2005* specifies that a regulation made under section 61 must state whether the regulation is to be administered and enforced by the State only or local governments only.

Sections 2D and 2E sets out the circumstances under which it is an offence to remove friable ACM and bonded ACM from a non-workplace area.

Section 2D makes it an offence to remove any quantity of friable ACM from a non-workplace area, unless the person doing so holds a certificate to carry out the removal under the *Workplace Health and Safety Act 1995*.

Section 2E makes it an offence for a person to remove a quantity of 10m² or more of bonded ACM from a non-workplace area, unless the person doing so holds a certificate to carry out the removal under the *Workplace Health and Safety Act*.

The removal of friable ACM, or a quantity of 10m² or more of bonded ACM, from a non-workplace area by a certificate holder must be carried out in accordance with the requirements of the *Workplace Health and Safety Act*. Responsibility for monitoring and enforcing compliance with the *Workplace Health and Safety Act* resides with the Department of Employment and Industrial Relations.

Section 2E does not prohibit a person (eg a do-it-yourself home renovator) from removing up to 10m² bonded ACM. A person may remove this smaller quantity of bonded ACM without holding a certificate under the *Workplace Health and Safety Act*. However, when doing so, they will be bound by the requirements of division 1.

Section 2F prohibits certain methods being used to clean or cut ACM. A person must not use:

- a power tool or a device attached to a power tool to cut or clean ACM. A power tool is described to mean an electric, battery, hydraulic, fuel or pneumatic powered tool, other than a battery powered drill that operates at less than 650rpm;
- a high pressure water process to clean ACM; or
- compressed air to clean ACM or a surface where ACM is present.

Section 2G requires persons removing or carrying out work to seal any broken bonded ACM if it is to remain in-situ. This can be achieved in numerous ways including the application of PVA glue or paint to the surface.

Section 2H requires that reasonable measures be taken to minimise the risk of asbestos fibres being released when a person is carrying out prescribed work in relation to asbestos containing materials. Prescribed work is defined in clause 2B to mean breaking, cleaning, cutting, maintaining, removing, repairing, storing, using or separating associated asbestos waste from other waste. Subsection (2) lists a number of recognised measures which can be utilised to minimise the risks of asbestos fibres being released when a person is working with asbestos containing materials. However, subsection (3) clarifies that the reasonable measures which may be used are not limited to those listed in subsection (2).

The effect of section 2H, when prescribed work involves removal of asbestos containing materials, must be considered in light of the prohibitions under section 2D and 2E. As discussed above, these sections prohibit a person from removing friable ACM, or a quantity of 10m² or more of bonded ACM, from a non-workplace area unless the person holds a certificate under the *Workplace Health and Safety Act 1995*. Consequently, a person may remove up to 10m² of bonded ACM without holding a certificate, but in doing so they are bound by the requirements of section 2H, which requires them to take reasonable measures when removing the bonded ACM to minimise any health risks to themselves or others.

Section 2I specifies that a person, who carries out prescribed work in relation to asbestos containing materials, must package and dispose of the associated asbestos waste as detailed in subsection (2). Asbestos waste is defined to mean any asbestos containing materials removed from a non-workplace area (including ACM dust) or disposable items contaminated with ACM (eg personal protective equipment). Under subsection (2), associated asbestos waste must be double bagged or

doubled wrapped; the package must be clearly labelled with a warning that the package contains asbestos and should not be damaged; and that the package should be disposed of as soon as possible at a site approved by local government.

Once again section 2I must be considered in light of the prohibitions under sections 2D and 2E. A person may only remove friable ACM, or a quantity of 10m² or more of bonded ACM, from a non-workplace area if they hold a certificate under the *Workplace Health and Safety Act 1995*. As a consequence, this work must be carried out in accordance with the requirements of the *Workplace Health and Safety Act*. However, if a person is removing less than 10m² of bonded ACM, for which they do not have to hold a certificate under the *Workplace Health and Safety Act*, they will be required to comply with the requirements of section 2I.

Section 2J prohibits a person from selling, bartering, exchanging, supplying or giving away ACM stored at a non-workplace setting. The maximum penalty for a contravention of this section is set at 100 penalty units.

Offences under sections 2D to 2J carry a maximum penalty of 100 penalty units (or \$7,500). However, as a result of the amendments made to the *State Penalties Enforcement Regulation 2000* by part 4 of the regulation, an 'on-the-stop' fine may be issued for these offences.

Division 2 Mosquitos

Section 2K states that the purpose of new division 2 is to set out measures designed to control mosquitos and the public health risks associated with outbreaks of mosquito borne diseases. Division 2 is comprised of sections 2L to 2Q.

Section 2L defines key terms used in division 2, including mosquito, relevant person and relevant tank. It is important to note that mosquito is defined in terms of the life cycle of mosquitos (i.e. egg, larva, pupa and adult) and is not limited to those mosquitos which are known to transmit disease to humans.

Section 2M specifies that the administration and enforcement of division 2 is the responsibility of local governments solely. Section 61(2) of the *Public Health Act 2005* specifies that a regulation made under section 61 must state whether the regulation is to be administered and enforced by the State only or local governments only.

Section 2N makes it an offence for an occupier of a place or the owner of a place to allow an accumulation of water or another liquid at the place to become a breeding ground for mosquitos. This requirement recognises that the primary action that can be taken to prevent and control the breeding of mosquitos is to prevent accumulations of water and other liquids from serving as a breeding ground. Subsection (2) clarifies that the regulation applies to any accumulation of water whether it is artificial, natural, permanent or temporary. However, as detailed in subsection (3), it is a defence for a person to prove that they took all reasonable steps to ensure compliance with the requirements of the regulation.

Section 2O requires that a person construct, install and maintain a tank or other receptacle that is used or intended to be used for holding or storing water or another liquid (a “relevant tank” as defined in section 2L) in compliance with section 2P.

Section 2P requires that a relevant tank be constructed in such a way to prevent mosquitos from entering the tank. Mosquito-proof screens or flap valves must be fitted at every opening of a tank. The requirements under this section have been developed having regard to the obligations imposed under section 2O. In particular, that the mosquito-proof screens and flap valves fitted to a tank are maintained in good repair so that they continue to stop mosquitos passing through the openings to create a breeding ground.

Section 2Q makes it an offence for a person to destroy damage or remove a mosquito proof screen or flap for reasons other than maintenance where the screen is replaced immediately after the completion of the maintenance.

Offences under sections 2N, 2O and 2Q carry a maximum penalty of 40 penalty units (or \$3,000). However, as a result of the amendments made to the *State Penalties Enforcement Regulation 2000* by part 4 of the regulation, an ‘on-the-stop’ fine may be issued for these offences.

Division 3 Rats and mice

Section 2R sets out the purpose of new division 3, which is to prescribe measures to control rats and mice, and the public health risks associated with outbreaks of diseases transmitted by rats and mice. Division 3 is comprised of sections 2R to 2X.

Section 2S defines the term “relevant structure’ for the purposes of division 3 to mean any of the following: a building, a drain, a pipe connected to a building, a retaining wall or a wharf.

Section 2T specifies that the administration and enforcement of division 3 is the responsibility of local governments solely. Section 61(2) of the *Public Health Act 2005* specifies that a regulation made under section 61 must state whether the regulation is to be administered and enforced by the State only or local governments only.

Section 2U places a statutory obligation on the owners of relevant structures to take reasonable steps to prevent rats and mice from entering the structure. Subsection (2) outlines what reasonable steps may be taken, including sealing or covering any holes or gaps in exterior surfaces of structures; fitting a cover, grate or plug securely in a covered pipe or drain; or removing a disused pipe or drain. Subsection (3) clarifies that this section does not apply to rats and mice which must be securely housed if they are kept as pets, a source of food for other animals or for research purposes pursuant to section 2X.

Section 2V makes it an offence for a person to damage, destroy or remove a screen or another object that has the purpose of stopping rats and mice from entering a relevant structure. Subsection (2) provides a limited exception to this requirement to enable maintenance activities to be carried out so that screens and other fixtures are kept in good repair.

Section 2W places a statutory obligation on the occupier or owner of a place to ensure that rats and mice are not harboured or breed on land around a dwelling. If a person is charged with such a contravention, they are entitled under subsection 2W(2) to assert that they took all reasonable steps to ensure that this requirement was complied with.

Section 2X specifies the conditions under which rats and mice are to be kept, if they are kept as a pet; or at a laboratory for medical, research, scientific or teaching purposes; or for the purpose of feeding them to other animals. A person must keep the rats or mice in an enclosure from which they cannot escape. However, subsection 2X(3) also clarifies that a local government may develop local laws that impose requirements on the keeping of rats and mice.

All of the offences under division 3 carry a maximum penalty of 40 penalty units (or \$3,000). However, as a result of the amendments made to the *State Penalties Enforcement Regulation 2000* by part 4 of the regulation, an 'on-the-spot' fine may issued for an offence under section 2V or 2X (see part 4 of the regulation).

Part 2B Child health - contagious conditions

Clause 10 inserts a new part 2B after section 12A to support the contagious conditions provisions in Chapter 5 of the *Public Health Act 2005*. Part 2B is comprised of sections 12B to 12E.

Section 12B specifies that the following contagious medical conditions listed in schedule 2A are contagious conditions: diphtheria, enterovirus 71 neurological disease, gastroenteritis illness, haemophilus influenzae type b infection (invasive), hepatitis A, measles, meningococcal infection (invasive), paratyphoid, pertussis, poliomyelitis, rubella, tuberculosis, typhoid and varicella.

Section 12C clarifies what is meant by ‘vaccinated’ in relation to a vaccine preventable condition. That is, child must have received all of the vaccinations for a condition (eg measles) recommended for the child’s age in the National Immunisation Program Schedule (IM66). If a child has not been vaccinated, or has not received all of the vaccinations required for a particular vaccine preventable condition, the child may be a risk of contracting the condition. Most vaccines need to be repeated a number of times to enable the immune system to build long lasting protection.

Section 12D specifies that the following contagious medical conditions listed in schedule 2A are vaccine preventable conditions: measles and pertussis. It is not appropriate for all known vaccine preventable conditions to be prescribed, as isolation from other children is not recognised as a viable means of breaking the cycle of transmission for these conditions.

Section 12E specifies the prescribed period for contagious conditions and vaccine preventable conditions are listed in schedule 2A. That is, the period during which a child must be absent from school or a child care service if the child is suspected of having a contagious condition or is suspected of being at risk of contacting a vaccine preventable condition because they have not been vaccinated for the condition and have been in contact with another child suspected of having the condition.

Clause 11 inserts a new schedule 2A after schedule 2. The schedule is comprised of three parts. Part 1 of the schedule lists those medical conditions which are prescribed as contagious conditions and the prescribed periods for a child suspected of having a contagious condition. Part 2 lists those conditions which are prescribed as vaccine preventable conditions and the prescribed period for which a child will be at risk of the condition. Part 3 defines key terms used in schedule 2A including at risk child, diagnose, infectious period, relevant contact and suspected.

Clause 12 inserts a new schedule 4 to include a dictionary of the terms defined for the purposes of the *Public Health Regulation 2005*, in accordance with current drafting practice.

Part 4 Amendment of State Penalties Enforcement Regulation 2000

Clause 13 specifies that part 4 amends the *State Penalties Enforcement Regulation 2000* to enable infringement notices to be issued for certain offences under the public health risk provisions of the *Public Health Act 2005* and *Public Health Regulation 2005*. This will enable local governments to have a simple and cost effective means of enforcing the legislation.

Clauses 14 and 15 amend sections 5 and 5A of the *State Penalties Enforcement Regulation* to specify who is the administering authority for a nominated law (the definition of which has been amended to include the *Public Health Act 2005*).

Clause 16 inserts a new s8AA to specify that the administering authority for an infringement notice offence that is an offence against a provision of the *Public Health Act 2005*, or an infringement notice about the offence, is either the local government or the department in which the provision is administered.

Clause 17 amends schedule 5 to detail which of the offences under the public health risks provisions of the *Public Health Act 2005* and *Public Health Regulation 2005* are infringement notice offences and the infringement notice fine for these offences.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Health.