

Public Health and Wellbeing Amendment Bill 2019

Introduction Print

EXPLANATORY MEMORANDUM

Clause Notes

- Clause 1 sets out the purpose of the Bill, which is to amend the **Public Health and Wellbeing Amendment Act 2008**—
- to remove the requirements in relation to the provision of information before and after HIV testing; and
 - to make minor miscellaneous amendments.
- Clause 2 provides the commencement scheme of the Bill.
- Subclause (1) provides that the Bill, except sections 4, 5 and 6, comes into operation on the day after the day on which the Bill receives the Royal Assent.
- Subclause (2) provides that sections 4, 5 and 6 come into operation on a day to be proclaimed. Sections 4, 5 and 6 of the Bill relate to the repeal of the requirements in the Principal Act for the provision of information before and after HIV testing and related amendments to the use of the term "prescribed disease".
- Subclause (3) provides that if sections 4, 5 and 6 are not proclaimed prior to 15 December 2019, they will come into operation on that date.
- Clause 3 provides that in the Bill, the **Public Health and Wellbeing Act 2008** is called the Principal Act.
- Clause 4 repeals the definition of *prescribed disease* in section 3(1) of the Principal Act and makes a consequential amendment to section 238(1)(o) of the Principal Act.

Prescribed disease currently is defined to mean a disease prescribed for the purposes of Division 8 of Part 8 of the Principal Act (Blood and Tissue Donations). However, the term prescribed disease is used in other provisions of the Principal Act besides those in Division 8 of Part 8. The effect of the repeal is that each use of the term "prescribed disease" in the Principal Act will have its ordinary meaning, being a disease prescribed for the purposes of the relevant provision in regulations made under the Act.

Section 238(1)(o) of the Principal Act sets out that regulations may prescribe a disease to be a prescribed disease for the purposes of Division 8 of Part 8 of the Principal Act.

Clause 4(2) of the Bill makes a consequential amendment to section 238(1)(o) by removing the reference to Division 8 of Part 8.

- Clause 5 substitutes the heading of Division 4 of Part 8 of the Principal Act with "Division 4—Closure of court or tribunal."

This is required so that the heading accurately reflects the contents of Division 4 after the requirements in that Division that relate to the provision of information before and after HIV testing are repealed.

- Clause 6 repeals section 131, section 132 and section 238(1)(1) of the Principal Act.

Section 131(1) of the Principal Act prohibits registered medical practitioners from carrying out or authorising the carrying out of a test for HIV or any other prescribed disease on a person who has requested the test unless they are satisfied that the person requesting the test has been given the prescribed information in accordance with the regulations. Section 131(2) provides an exception to section 131(1) if a pathologist authorises or carries out the test on the authority of another registered medical practitioner.

Section 132 of the Principal Act prohibits registered medical practitioners or persons of a prescribed class from advising a person who has requested a test for HIV or any other prescribed disease of test results if the results are positive unless they are satisfied that the prescribed information has been given to the person who requested the test. The note at the foot of section 132

states that the **Health Records Act 2001** applies in respect of the information acquired about the person requesting a test.

The requirements in sections 131 and 132 of the Principal Act are considered unnecessary and out-dated, as they single out HIV by creating special requirements in relation to its testing. The repeal of these sections will have the effect of HIV being treated like any other blood-borne virus or medical condition.

Section 238(1)(1) of the Principal Act sets out specific matters which regulations made pursuant to the Principal Act may prescribe in regards to the notification of test results for HIV and other prescribed diseases. This includes the classes of persons who may advise a person who requested a test for HIV or any other prescribed disease, of a positive test result and the manner in which the information is provided. This regulation-making power is repealed as a consequence of the repeal of sections 131 and 132, the substantive provisions to which it relates.

Clause 7 provides for statute law revision amendments to the Principal Act.

Subclause (1) updates the definition of *Department* in section 3(1) of the Principal Act by substituting "Department of Health" with "Department of Health and Human Services".

Note: On 1 January 2015, the Department of Health was renamed the Department of Health and Human Services, by Order in Council under section 10 of the **Public Administration Act 2004**.

Subclause (2) amends section 16(1) of the Principal Act by substituting "Department of Health" with "Department of Health and Human Services". This has the effect of updating the name of the Secretary body corporate to "Secretary to the Department of Health and Human Services".

Note: Pursuant to section 7 of the **Administrative Arrangements Act 1983**, if the name of an Agency corporation includes the name of a Department within the meaning of the **Public Administration Act 2004** and the name of the Department is changed under that Act, the name of the Agency corporation is changed at the same time to include the new name of the Department. The Secretary body corporate established by the Principal Act is an *Agency corporation* within the meaning of the **Public Administration Act 2004**.

Subclause (3) corrects a grammatical error in the heading to section 65 of the Principal Act by substituting "districts" with "district".

Subclause (4) corrects a spelling error in section 148(1) of the Principal Act by substituting "statue" with "status".

Clause 8 provides for the automatic repeal of this amending Act on 15 December 2020. The repeal of this Act does not affect in any way the continuing operation of the amendments made by this Act (see section 15(1) of the **Interpretation of Legislation Act 1984**).