

HEALTH AMENDMENT BILL 2005

EXPLANATORY MEMORANDUM

The purpose of the *Health Amendment Bill 2004* (“**the Bill**”) is to amend parts of the *Health Act 1911* (“**the Health Act**”) to provide improved communicable disease notification, so as to facilitate public health programs for prevention and control of communicable diseases in Western Australia.

The Bill:

- Proposes the replacement of sections 276 and 300 of the *Health Act 1911* to improve the information that is available to assist in the prevention and control of communicable disease outbreaks.
- Provides for the possibility that nurse practitioners may be authorised to diagnose and treat infectious and venereal diseases, requiring nurse practitioners to notify of such diseases in the same way as medical practitioners.
- Proposes the repeal of a number of prescriptive and outdated requirements relating to the treatment of venereal diseases.

Clause 1 – Short title

Contains the short title of the proposed Act.

Clause 2 – Commencement

Provides that the changes made to the *Health Act 1911* by the *Health Amendment Bill 2003* will come into operation on the 28th day after Royal Assent. This is to allow the Department of Health time to advise medical practitioners and others of the changes made by the Bill which will affect them.

Clause 3 – The Act amended

Identifies the *Health Act 1911* as the Act to be amended.

Clause 4 – Section 3 amended

Inserts definitions of terms used in the Bill in the general interpretation section of the *Health Act 1911*. Three of the four terms are self-explanatory.

The definition of **nurse practitioner** is inserted in the *Health Act* so that the infectious diseases and venereal diseases provisions of that Act apply to nurse practitioners (as defined in the *Nurses Act 1992*).

Clause 5 – Section 276 replaced by sections 276 and 276A.

Inserts new sections 276 and 276A into the *Health Act 1911*. These new sections replace the existing provision governing the notification of infectious diseases.

While medical practitioners are currently required to notify both infectious diseases and venereal diseases (under current sections 276 and 300 respectively), pathology laboratories

are only required to notify venereal diseases (under current section 300). The introduction of a statutory requirement for a pathology laboratory to notify the Executive Director, Public Health (“EDPH”) of an infectious disease analysed by the laboratory will correct a significant deficiency in Western Australia’s communicable diseases surveillance.

The new provisions will correct other inconsistencies and limitations in the statutory reporting requirements applying to infectious and venereal diseases under the *Health Act 1911*. For example, the current section 276 contains no guidance as to the information that is to be included in a notification of infectious disease, whereas section 300 requires notifications of venereal disease to be made without identification of the patient.

The current section 276 also contains a number of redundant provisions, e.g. obligation placed on occupiers of houses to report occurrences of infectious diseases to local government.

The new subsections 276(1) and 276(2) propose to place an obligation on medical practitioners, nurse practitioners and responsible pathologists to notify the EDPH of occurrences of infectious diseases. A notification obligation is placed on nurse practitioners for the first time in recognition that nurse practitioners may, in certain circumstances, have primary responsibility for diagnosing or treating infectious diseases.

The infectious diseases to which the notification obligation attaches are identified at **Annexure A**, comprising diseases which are identified in the definition of “**infectious disease**” at section 3(1) of the *Health Act 1911* and other diseases which have been declared to be infectious diseases for the purposes of the Act by the Governor.

New subsection 276(3) requires a notification to be made as soon as practicable and in a form and manner approved by the EDPH.

New subsection 276(4) lists the information that must be included in a notification of infectious disease.

New subsection 276(5) makes it an offence to fail to notify an infectious disease as required. (Refer to notes on clause 13 for information about penalties).

New section 276A makes special provision with respect to notifications of HIV infection or AIDS. HIV infection and AIDS are categorised as infectious diseases for the purposes of the *Health Act 1911*. In recognition of the particular sensitivity attaching to such notifications, the disease notification requirements of most other States and Territories provide for notifications of these conditions to be made on a coded basis rather than involving full identifying information as is proposed for other diseases. New section 276A adopts this standard as part of Western Australia’s disease surveillance arrangements. This is subject to:

- A notifying medical or nurse practitioner being able to include the name and address of a person who is infected with HIV or AIDS in a notification if the person consents, or if there is concern on the part of the notifying practitioner that the person may engage in behaviour that is likely to put other persons at risk of infection; and
- The EDPH having the ability to acquire an infected person’s name and address if the EDPH similarly has concerns about the risk to other individuals from an infected person’s behaviour. Failure on the part of a practitioner to provide this information when requested by the EDPH in this circumstance is made an offence under new subsection 276A(5).

Clause 6 – Section 289 replaced

Proposes to replace section 289 of the *Health Act 1911* with a new provision providing protection from civil liability for medical practitioners, nurse practitioners, and responsible pathologists who notify the occurrence of infectious diseases and/or provide additional information as required under new sections 276 or 276A.

Replacement of the existing section 289 is necessary to address limitations in the protection afforded by that section, and to extend protection to nurse practitioners and responsible pathologists.

Clause 7 – Sections 297 to 299 repealed.

Proposes the repeal of provisions of Part 11 of the *Health Act 1911* that prohibit persons other than medical practitioners from treating venereal diseases, and that require (in conjunction with sections 301 to 304) as a matter of law, the establishment and continuation of a clinical relationship between a doctor and a person who is infected with a venereal disease until such time as the disease is cured.

Section 297(1) of the Act prohibits certain aspects of the treatment of venereal diseases by anyone other than a medical practitioner and therefore creates a legal impediment to nurse practitioners treating venereal diseases in their own right.

Section 297(2) and 297(3) of the Act set out requirements in relation to the dispensing and sale of drugs used for the treatment of venereal diseases. These provisions are redundant as the dispensing and sale of such drugs is regulated by other legislation eg the *Therapeutic Goods Act 1989*.

Sections 298 and 299, together with sections 301 to 304, mandate the establishment and continuation of a clinical relationship between a doctor and a person who is infected with a venereal disease until such time as the disease is cured. While it remains the case that people should seek early confirmation of the presence or otherwise of a venereal disease and obtain treatment as necessary, imposing a statutory obligation to do so backed by criminal sanction in the absence of any appreciable risk to other persons is no longer justified.

In order to provide continuing public health protection, section 307 of the *Health Act 1911*, which provides for the compulsory examination, treatment and/or detention of persons who are considered likely (by the EDPH) to infect others, has been retained.

Clause 8 – Section 300 replaced

Replaces section 300 of the *Health Act 1911* with a new disease reporting requirement applying to venereal diseases. The new section is formulated for consistency with the notification requirements for infectious diseases (found in new section 276).

New subsections 300(1) and (2) will oblige medical practitioners, nurse practitioners and responsible pathologists to notify the EDPH of occurrences of venereal diseases.

New subsection 300(3) requires notification to be made as soon as practicable and in a form and manner approved by the EDPH.

New subsection 300(4) lists the information that must be included in a notification of a venereal disease.

New subsection 300(5) makes it an offence to fail to notify an infectious disease as required. (Refer to notes on clause 13 for information about penalties).

Clause 9 – Section 300A amended

Proposes to amend section 300A of the *Health Act 1911* to extend the protection against civil liability currently provided by that section to the patients of nurse practitioners who provide information for contact tracing purposes. It also provides protection against civil liability for medical practitioners, nurse practitioners and responsible pathologists who report venereal diseases in accordance with new section 300 and who provide other information to the EDPH as required by or under Part 11 of the *Health Act 1911*.

Clause 10 – Sections 301 to 305 repealed

Proposes the repeal of sections 301 to 305 of the Act. These sections, together with sections 298 and 299 require, as a matter of law, the establishment and continuation of a clinical relationship between a doctor and a person who is infected with venereal disease until such time as the disease is cured. These sections are proposed for repeal because they are significantly at odds with prevailing public health practice and values, as well as public health law in other jurisdictions.

Clause 11 – Section 312 amended

Proposes to amend section 312 to delete references to sections 297, 298, 299, 301, 302 and 304 which are to be repealed by clauses 7 and 10.

Clause 12 – Section 315 repealed

Clause 12 repeals section 315, which currently provides a deeming provision in relation to prosecutions under Part 11 of the Act. The effect of the current section is that a person is deemed to be suffering from a venereal disease if a medical officer of health or two medical practitioners certify that the person has been examined and has been found to be suffering a venereal disease, unless the person can produce a certificate of cure. This section will not be relevant upon the repeal of sections 303 and 304 (proposed by clause 10 of the Bill).

Clause 13 – Schedule 5 amended

Provides that offences created by the Bill are to be identified in Schedule 5, Part III of the *Health Act 1911*. It also repeals penalties for offences under current provisions that are repealed by this Bill.

When read in conjunction with section 360 of the *Health Act 1911*, this means that offences under the Bill will be punishable by a maximum fine of \$2,000, and will involve:

- Minimum penalty for a first offence of \$200
- Minimum penalty for a second offence of \$400
- Minimum penalty for a third or subsequent offence of \$1,000.

INFECTIOUS DISEASES DEFINED IN, OR DECLARED UNDER, THE HEALTH ACT 1911

Acquired Immune Deficiency Syndrome (AIDS)	Human Immunodeficiency Virus (HIV) infection	Typhus fever)
Amoebiasis	Hydatid disease	Ross River virus infection
Amoebic meningitis	Influenza	Rubella
Ancylostomiasis	Legionella infection (including Legionnaire's Disease and all other legionelloses)	Rubella Syndrome (congenital)
Anthrax	Leptospirosis	<i>Salmonella</i> infection
Arbovirus encephalitis (includes Australian arbovirus encephalitis; Murray Valley encephalitis and Kunjin virus infection)	Listeriosis	Scarlet fever
Barmah Forest virus infection	Lyssavirus infection (includes Australian bat lyssavirus and other lyssaviridae)	Schistosomiasis
Botulism (foodborne)	Malaria	Severe Acute Respiratory Syndrome
Brucellosis	Measles	Shiga toxin (Verotoxin) producing <i>E coli</i> (STEC/VTEC) infection
<i>Campylobacter</i> infection	Melioidosis	Shigellosis
<i>Chlamydia</i> infection (genital)	Meningococcal infection (invasive)	Smallpox
Cholera	Methicillin resistant <i>Staphylococcus aureus</i> (MRSA) infection	Tetanus
Creutzfeldt-Jakob Disease	Mumps	Trachoma
Cryptosporidiosis	Paratyphoid fever	Tuberculosis
Dengue fever	Pertussis	Tularaemia
Diphtheria	Plague	Typhoid fever
Filariasis	Pneumococcal infection (invasive)	<i>Vibrio parahaemolyticus</i> infection
Giardiasis	Poliomyelitis	Viral haemorrhagic fevers (including Crimean-Congo haemorrhagic fever, Ebola virus disease, Lassa fever and Marburg disease)
Haemolytic Uraemic Syndrome	Psittacosis (Ornithosis)	Yellow fever
<i>Haemophilus influenzae</i> type b infection (invasive)	Q Fever	<i>Yersinia</i> infection
Hepatitis A virus infection	Rabies	
Hepatitis B virus infection	Rickettsial infection (including all forms of	
Hepatitis C virus infection		
Hepatitis D virus infection		
Hepatitis E virus infection		