

## Notes

<sup>1</sup> This is a compilation of the *Health Act 1911* and includes the amendments made by the other written laws referred to in the following tables <sup>1a</sup>.

**Compilation Table**

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Health Act 1911</i>	34 of 1911	16 February 1911	1 June 1911 (see section 1 and <i>Gazette</i> 3 March 1911 p.961)	
<i>Health Act Amendment Act 1911</i>	3 of 1912	9 January 1912	9 January 1912	
<i>Health Act Amendment Act 1912</i>	28 of 1912	27 September 1912	27 September 1912	
<i>Health Act Amendment Act 1915</i>	55 of 1915	8 December 1915	8 December 1915	
<i>Health Act Amendment Act 1918</i>	17 of 1918	13 June 1918	13 June 1918	Section 54: temporary operation of section 41
<i>Health Act Amendment Act 1919</i>	15 of 1919	30 September 1919	30 September 1919	
<i>Health Act Continuation Act 1920</i>	12 of 1920	29 November 1920	29 November 1920	
<i>Health Act Amendment Act 1921</i>	5 of 1922	31 January 1922	31 January 1922	
<i>Health Act Amendment Act 1926</i>	50 of 1926	24 December 1926	24 December 1926	
<i>Health Act Amendment Act 1932</i>	30 of 1932	30 December 1932	30 December 1932	
<i>Health Act Amendment Act 1933</i>	5 of 1933	2 October 1933	2 October 1933	

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<i>Health Act Amendment Act 1933 (No. 2)</i>	38 of 1933	4 January 1934	4 January 1934	Amended by <i>Health Act Amendment Act 1935</i> (No. 16 of 1935)
<i>Limitation Act 1935, section 48A</i>	35 of 1935	7 January 1936	The relevant amendments as set out in the Second Schedule took effect on 1 March 1955 (see section 2 and <i>Gazette</i> 18 February 1955 p.343)	As amended by Act No. 73 of 1954, section 8.
<i>Health Act Amendment Act 1937</i>	32 of 1937	18 January 1938	18 January 1938	
<i>Health Act Amendment Act 1942</i>	34 of 1942	23 December 1942	23 December 1942	
<i>Nurses Registration Act Amendment Act 1944, section 12</i>	14 of 1944	8 December 1944	8 December 1944	
<i>Health Act Amendment Act 1944</i>	21 of 1944	23 December 1944	23 December 1944	
<i>Health Act Amendment Act 1948</i>	22 of 1948	18 November 1948	18 November 1948	
<i>Health Act Amendment Act (No. 2) 1948</i>	70 of 1948	21 January 1949	21 January 1949	
<i>Health Act Amendment Act (No. 3) 1948</i>	71 of 1948	21 January 1949	21 January 1949	
<i>Health Act Amendment Act 1950</i>	25 of 1950	5 December 1950	5 December 1950	
<i>Health Act Amendment Act 1952</i>	11 of 1952	4 November 1952	4 November 1952	
<i>Health Act Amendment Act (No. 2) 1952</i>	25 of 1952	28 November 1952	28 November 1952	

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<i>Health Act Amendment Act (No. 2) 1954</i>	34 of 1954	18 November 1954	12 April 1957 (see section 2 and <i>Gazette</i> 12 April 1957 p.1081)	
<i>Health Act Amendment Act 1954</i>	45 of 1954	8 December 1954	8 December 1954	
<i>Health Act Amendment Act 1955</i>	29 of 1955	15 November 1955	15 November 1955	
<i>Health Act Amendment Act 1956</i>	17 of 1956	26 October 1956	26 October 1956	
<i>Health Act Amendment Act 1957</i>	21 of 1957	9 October 1957	1 December 1957 (see section 2 and <i>Gazette</i> 29 November 1957 p.3445)	
<i>Health Act Amendment Act 1959</i>	22 of 1959	8 October 1959	8 October 1959	
<i>Health Act Amendment Act 1960</i>	23 of 1960	11 October 1960	11 October 1960	
<i>Health Act Amendment Act (No. 2) 1960</i>	38 of 1960	3 November 1960	3 November 1960	
<i>Health Act Amendment Act 1962</i>	33 of 1962	29 October 1962	29 October 1962	
<i>Health Act Amendment Act (No. 3) 1962</i>	49 of 1962	20 November 1962	20 November 1962	
<i>Health Act Amendment Act 1964</i>	18 of 1964	8 October 1964	8 October 1964	
<i>Health Act Amendment Act 1965</i>	8 of 1965	15 September 1965	15 September 1965	
<i>Decimal Currency Act 1965, section 4(1)</i>	113 of 1965	21 December 1965	14 February 1966 (see section 2(2))	
<i>Health Act Amendment Act 1966</i>	35 of 1966	31 October 1966	16 December 1966 (see section 2 and <i>Gazette</i> 16 December 1966 p.3315)	

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<i>Health Act Amendment Act 1968</i>	52 of 1968	12 November 1968	12 November 1968	
<i>Health Act Amendment Act 1970</i>	24 of 1970	20 May 1970	1 October 1970 (see section 2 and <i>Gazette</i> 25 September 1970 p.3015)	
<i>Age of Majority Act 1972, section 6</i>	46 of 1972	18 September 1972	1 November 1972 (see section 2 and <i>Gazette</i> 13 October 1972 p.4069)	
<i>Metric Conversion Act 1972</i>	94 of 1972	4 December 1972	The relevant amendments as set out in the Third Schedule, took effect 8 February 1974 (see section 4(2) and <i>Gazette</i> 13 October 1972 p.325) The relevant amendments, as set out in the Fourth Schedule, took effect on 28 November 1975 (see section 4(2) and <i>Gazette</i> 28 November 1975 p.4287)	The Third Schedule was inserted by the <i>Metric Conversion Act Amendment Act (No. 2) 1973</i> (No. 83 of 1973, section 4) The Fourth Schedule was inserted by the <i>Metric Conversion Amendment Act 1975</i> (No. 42 of 1975)
<i>Health Act Amendment Act 1973</i>	102 of 1973	28 December 1973	22 March 1974 (see section 2 and <i>Gazette</i> 22 March 1974 p.902)	
<i>Health Act Amendment Act 1975</i>	2 of 1975	9 May 1975	Section 7: 6 February 1976 (see section 2 and <i>Gazette</i> 6 February 1976 p.273); balance: on assent	
<i>Health Act Amendment Act 1976</i>	101 of 1976	17 November 1976	18 February 1977 (see section 2 and <i>Gazette</i> 18 February 1977 p.467)	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Health Act Amendment Act 1978</i>	47 of 1978	29 August 1978	Sections 3(a) and 30: 21 December 1979 (see section 2 and <i>Gazette</i> 21 December 1979 p.3906); balance: 16 March 1979 (see section 2 and <i>Gazette</i> 16 March 1979 p.676)	
<i>Acts Amendment and Repeal (Valuation of Land) Act 1978, Part VII</i>	76 of 1978	20 October 1978	1 July 1979 (see section 2 and <i>Gazette</i> 11 May 1979 p.1211)	
<i>Health Act Amendment Act 1979</i>	72 of 1979	27 November 1979	27 November 1979	
<i>Acts Amendment (Statutory Designations) and Validation Act 1981, section 4</i>	63 of 1981	13 October 1981	13 October 1981	Section 5: validation
<i>Health Act Amendment Act 1982</i>	30 of 1982	27 May 1982	30 July 1982 (see section 2 and <i>Gazette</i> 30 July 1982 p.2931)	
<i>Human Tissue and Transplant Act 1982, section 36(2)</i>	116 of 1982	8 December 1982	1 March 1983 (see section 2)	
<i>Health Legislation Amendment Act 1984, Part VIII</i>	28 of 1984	31 May 1984	1 July 1984 (see section 2 and <i>Gazette</i> 15 June 1984 p.1629)	Part XXV: savings and transitional <sup>10</sup>
<i>Health Amendment Act 1985</i>	26 of 1985	6 May 1985	6 November 1985 (see section 2)	Section 13: transitional
<i>Acts Amendment (Hospitals) Act 1985, Part II</i>	53 of 1985	5 November 1985	23 January 1987 (see section 2 and <i>Gazette</i> 23 January 1987 p.179)	
<i>Acts Amendment and Repeal (Statutory Bodies) Act 1985, Part II</i>	57 of 1985	28 October 1985	25 November 1985	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985	4 December 1985	1 July 1986 (see section 2 and <i>Gazette</i> 30 June 1986 p.2255)	Section 4: saving and transitional
<i>Commercial Arbitration Act 1985, section 3(1)</i>	109 of 1985	7 January 1986	1 April 1986 (see section 2 and <i>Gazette</i> 28 February 1986 p.605)	Section 3(2): saving and transitional
<i>Health Amendment Act 1986</i>	93 of 1986	10 December 1986	10 December 1986 (see section 2)	
<i>Health Act Amendment Act 1987</i>	80 of 1987	28 November 1987	Sections 4(d), 83 and 90: to be proclaimed <sup>1a</sup> ; balance: 1 January 1988 (see section 2 and <i>Gazette</i> 31 December 1987 p.4567)	
<i>Guardianship and Administration Act 1990, section 123</i>	24 of 1990	7 September 1990	20 October 1992 (see section 2 and <i>Gazette</i> 2 October 1992 p.4811)	
<i>Tobacco Control Act 1990, Part 6</i>	104 of 1990	2 January 1991	8 February 1991 (see section 2(1) and <i>Gazette</i> 8 February 1991 p.575)	Section 38: transitional
<i>Health Amendment Act 1991</i>	59 of 1991	23 December 1991	Sections 3, 4, 5, 20, 21, 22, 23, 24, 28(a): 24 January 1992 (see section 2 and <i>Gazette</i> 24 January 1992 p.349); sections 14, 15, 26, 27 and 28(b), (c) and (d): 1 April 1992 (see section 2 and <i>Gazette</i> 1 April 1992 p.1427);	Section 5(3) and (4): transitional <sup>11</sup> ; section 15: savings and transitional <sup>12</sup>
<i>Health Amendment Act 1991 (continued)</i>			section 25: 1 July 1992 (see section 2 and <i>Gazette</i> 26 June 1992 p.2644);	

Short title	Number and year	Assent	Commencement	Miscellaneous
			Part 3: 4 September 1992 (see section 2 and <i>Gazette</i> 4 September 1992 p.4453); Part 5: 23 December 1992 (see section 2 and <i>Gazette</i> 23 December 1992 p.6209)	
<i>Nurses Act 1992, section 84</i>	27 of 1992	23 June 1992	29 October 1993 (see section 2 and <i>Gazette</i> 29 October 1993 p.5881)	
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993 (see section 2(1))	
<i>Local Government Amendment Act 1994, section 42</i>	27 of 1994	23 June 1994	Deemed operative 1 July 1994 (see section 2)	
<i>Acts Amendment (Public Sector Management) Act 1994, section 3(2)</i>	32 of 1994	29 June 1994	1 October 1994 (see section 2 and <i>Gazette</i> 30 September 1994 p.4948)	
<i>Statutes (Repeals and Minor Amendments) Act 1994, section 4</i>	73 of 1994	9 December 1994	9 December 1994 (see section 2)	
<i>Pawnbrokers and Second-hand Dealers Act 1994, section 100</i>	88 of 1994	5 January 1995	1 April 1996 (see section 2 and <i>Gazette</i> 29 March 1996 p.1495)	
<i>Hospitals Amendment Act 1994, section 18</i>	103 of 1994	11 January 1995	17 December 1997 (see section 2 and <i>Gazette</i> 16 December 1997 p.7313)	
<i>Agricultural and Veterinary Chemicals (Western Australia) Act 1995, section 57</i>	3 of 1995	17 May 1995	24 June 1995 (see section 2 and <i>Gazette</i> 23 June 1995 p.2419)	

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<i>Caravan Park and Camping Grounds Act 1995</i> , section 33	34 of 1995	29 September 1995	1 July 1997 (see section 2)	This amendment does not have effect because the section it would have amended was repealed and substituted by Act No. 14 of 1996 s.4
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995</i> , section 188	73 of 1995	27 December 1995	1 January 1996 (see section 2 and <i>Gazette</i> 29 December 1995 p.6291)	
<i>Sentencing (Consequential Provisions) Act 1995</i> , section 147	78 of 1995	16 January 1996	4 November 1996 (see section 2 and <i>Gazette</i> 25 October 1996 p.5632)	
<i>Coroners Act 1996</i> , section 61	2 of 1996	24 May 1996	7 April 1997 (see section 2 and <i>Gazette</i> 18 March 1997 p.1529)	
<i>Local Government (Consequential Amendments) Act 1996</i> , section 4	14 of 1996	28 June 1996	1 July 1996 (see section 2)	Section 4: Transitional and savings <sup>7</sup>
<i>Health Amendment Act 1996</i>	28 of 1996	22 July 1996	Operative 22 July 1996: sections 7 and 13 operative 23 July 1997 (see section 2(2) and (3))	
<i>Financial Legislation Amendment Act 1996</i> , section 64	49 of 1996	25 October 1996	25 October 1996 (see section 2(1))	
<i>Acts Amendment (Assemblies and Noise) Act 1996</i> , Part 2	50 of 1996	31 October 1996	4 December 1996 (see section 2 and <i>Gazette</i> 3 December 1996 p.6695)	
<i>Dental Amendment Act 1996</i> , section 18	64 of 1996	11 November 1996	1 January 1997 (see section 2 and <i>Gazette</i> 31 December 1996 p.7427)	



<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<i>Transfer of Land Amendment Act 1996</i> , section 153(1) and (2)	81 of 1996	14 November 1996	14 November 1996 (see section 2)	
<i>Acts Amendment (Land Administration) Act 1997</i> , Part 30 and section 142	31 of 1997	3 October 1997	30 March 1998 (see section 2 and <i>Gazette</i> 27 March 1998 p.1765)	
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> , section 68	57 of 1997	15 December 1997	15 December 1997 (see section 2)	
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> , section 39	10 of 1998	30 April 1998	30 April 1998 (see section 2(1))	Section 39(3) does not have effect because the section it would have amended was repealed by Act No. 103 of 1994 s.18. Section 39(8): <sup>13</sup> savings
<i>Acts Amendment (Abortion) Act 1998</i> , sections 7 and 8	15 of 1998	26 May 1998	26 May 1998 (see section 2)	Section 8 transitional <sup>14</sup>
<i>Acts Repeal and Amendment (Births, Deaths and Marriages Registration) Act 1998</i> , section 14	40 of 1998	30 October 1998	14 April 1999 (see section 2 and <i>Gazette</i> 9 April 1999 p.1433)	
<i>Health Amendment Act 1998</i>	62 of 1998	12 January 1999	12 January 1999 (see section 2)	
<i>School Education Act 1999</i> , section 247	36 of 1999	2 November 1999	Proclaimed 1 January 2001 (see section 2 and <i>Gazette</i> 29 December 2000 p.7904)	

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<i>Water Services Coordination Amendment Act 1999, Section 11(5)</i>	39 of 1999	9 November 1999	Proclaimed 19 June 2000 (see section 2 and <i>Gazette</i> 16 June 2000 p.2939)	
<i>Statutes (Repeals and Minor Amendments) Act 2000, section 16</i>	24 of 2000	4 July 2000	4 July 2000 (see section 2)	
<i>Corporations (Consequential Amendments) Act 2001 Pt. 30</i>	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)	
<i>Acts Amendment (Equality of Status) Act 2003 Pt. 26</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)	
<i>Sentencing Legislation Amendment and Repeal Act 2003 s. 71</i>	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)	
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 64</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)	
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)	
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 58<sup>18</sup></i>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)	
<i>Health Legislation Amendment Act 2004 Pt. 2</i>	61 of 2004	24 Nov 2004	24 Nov 2004 (see s. 2)	

#### Proclamations amending Schedule 2

<b>Proclamations</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Health Act 1911</i>	26 Nov 1993 p.6321	26 Nov 1993
<i>Health Act 1911</i>	17 Nov 2000 p.6289	17 Nov 2000

- 1a On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and are not included in this compilation. For the text of the provisions see the endnote referred to after the short title.

**Provisions that have not come into operation**

Short title	Number and year	Assent	Commencement
<i>Health Act Amendment Act 1987 s. 4(d), 83 and 90</i> <sup>15</sup>	80 of 1987	28 Nov 1987	To be proclaimed (see s. 2)
<i>Children and Community Services Act 2004 s. 251</i> <sup>16</sup>	34 of 2004	20 Oct 2004	To be proclaimed (see s. 2)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 142</i> <sup>17</sup>	59 of 2004	23 Nov 2004	To be proclaimed (see s. 2)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 78, 80 and 82</i> <sup>19</sup>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))

N.B. Other proclamations relating to offensive trades are made in the following *Gazettes* —

20 September 1918  
 9 April 1948  
 30 May 1952  
 10 February 1950  
 10 November 1961 (cancelled in *Gazette* 29 November 1985)  
 11 January 1957  
 10 March 1967  
 16 February 1968  
 28 February 1969  
 5 December 1969  
 16 April 1987  
 13 November 1987  
 25 August 1989  
 26 November 1993  
 16 June 1995  
 28 June 1996

N.B. The *Health Act 1911* is affected by the *Justices Act Amendment Act 1932* sections 2 and 6 (No. 26 of 1932); *Poisons Act 1964* section 64(3) (No. 70 of 1964); the *Health Services (Quality Improvement) Act 1994* (No. 80 of 1994).

N.B. Renumbering of sections of the Act and certain Division headings was effected in earlier reprints under section 42 of the *Health Act Amendment Act 1933* (No. 2) (No. 39 of 1933).

<sup>2</sup> The *Licensing Act 1911* was repealed by the *Liquor Act 1970* which was repealed by the *Liquor Licensing Act 1988* (No. 54 of 1988).

<sup>3</sup> The *Health Act Amendment Act 1900* is repealed by section 4 of this Act.

4 Section 53B was repealed by the *Health Act Amendment Act 1933* (No. 38 of 1933), section 6.

5 Repealed by the *Meat Industry Legislation (Amendment and Repeal) Act 1993* (No. 32 of 1993).

6 Under the *Public Sector Management Act 1994* the names of departments can be changed. The head of a department is now the chief executive officer or the chief employee, although the title by which that person is known may be changed. At the time of this reprint the former Department of Agriculture is called Agriculture Western Australia and its administrative head is called the Chief Executive Officer.

7 In relation to the *Health Act 1911*, Schedule 1 to the *Local Government (Consequential Amendments) Act 1996* (No. 14 of 1996) reads as follows —

“

**Savings**

The repeal of any provision by the previous clause does not affect the continuation of any thing done by or under that provision prior to its repeal.

**Transitional**

On the day on which this Act comes into operation a regulation under section 343(5) of the *Health Act 1911* as in force before this Act came into operation, becomes a regulation under section 343A of the *Health Act 1911*.

”

8 Under the *Public Sector Management Act 1994* the names of departments can be changed. At the time of this reprint the former Department of Lands and Surveys is called the Department of Land Administration.

9 Under the *Public Sector Management Act 1994* the names of departments can be changed. At the time of this reprint the former Department of Mines is called the Department of Minerals and Energy.

10 Section 104 of the *Health Legislation Amendment Act 1984* (No. 28 of 1984) reads as follows —

“

**104. Savings and transitional**

- (1) Any order, regulation, rule, by-law, agreement, determination, consent, approval, permit, licence, authorization or any other act or thing made, issued, given or done by the holder of an office referred to in an Act amended by this Act under a duty or power imposed or conferred on the holder of the office by that Act before the commencement day shall continue to have effect after that day as though made, issued, given or done under the amended Act as amended by this Act and shall have effect accordingly.
- (2) Any legal proceedings commenced before the commencement day in the name or with the authorization or consent of an office holder referred to in an amended Act may be continued after that day as though commenced under the amended Act as amended by this Act.

- (3) The Commissioner of Health referred to in section 6(1)(a) of the *Health Legislation Act 1984* shall as soon as reasonably practicable after the commencement day make the reports required to be made under —
- (a) section 9(2) of the *Health Act 1911*;
  - (b) section 13 of the *Hospitals Act 1927*; and
  - (c) section 8(6) of the *Mental Health Act 1962*,
- as in force before the commencement day with respect to the matters referred to in those provisions and in relation to the period with respect to which a report had not been made under those provisions before the commencement day.
- (4) In this section —
- “amended Act”** means an Act amended by this Act;
- “commencement day”** means the day on which this Act comes into operation.

”.

11 Section 5(3) and (4) of the *Health Amendment Act 1991* (No. 59 of 1991) reads as follows —

“

- (3) Any person who at the time of the commencement of this section holds or acts in an office of health surveyor under the principal Act shall notwithstanding any thing in the instrument of his or her appointment be deemed to have been appointed as or to act as, as the case requires, an environmental health officer.
- (4) Any reference in a written law or in any proclamation, document, notice, order or other thing to a health surveyor shall be read and construed as a reference to an environmental health officer and any such written law, document, notice, order or other thing shall have effect accordingly.

”.

12 Section 15 of the *Health Amendment Act 1991* (No. 59 of 1991) reads as follows —

“

### 15. Savings and transitional

- (1) In this section —
- “commencement day”** means the day on which section 14 comes into operation;
- “Executive Director, Public Health”** means the Executive Director, Public Health as defined in the principal Act;
- “former provisions”** means Part VI of the principal Act as in force before the commencement day;
- “public building”** means a public building as defined under the former provisions.
- (2) Any permit or other document issued in relation to a public building or any alteration or extension of a public building under the former provisions continues in force for the purposes of the principal Act as in force after the commencement day.

- (3) Any notice relating to a public building given under the former provisions within the period of 30 days prior to the commencement day shall continue to be dealt with by the Executive Director, Public Health as though the former provisions continued in force after that day.
- (4) Notwithstanding anything in subsection (3), the Executive Director, Public Health may direct that any notice relating to a public building given under the former provisions that is pending in the office of the Executive Director, Public Health at the commencement day be dealt with by the local authority in question and cause the notice and any fee paid in connection with the notice to be transmitted to the local authority for that purpose.
- (5) A local authority to which a notice is transmitted under subsection (4) shall deal with the notice as though the notice were an application under Part VI of the principal Act as in force after the commencement day.

”.

13 Section 39(8) of the *Statutes (Repeals and Minor Amendments) Act (No. 2) 1998* (No. 10 of 1998) reads as follows —

“

- (8) Despite subsection (7), a person holding office as Chairman of the Anaesthetic Mortality Committee under section 340BB(3)(a) of the Act immediately before the commencement of this section continues, subject to the Act, to hold office as Chairman for the remainder of the period for which he or she was appointed.

”.

14 Section 8 of the *Acts Amendment (Abortion) Act 1998* (No. 15 of 1998) reads as follows —

“

**8. Review of provisions relating to abortion**

- (1) The Minister administering the *Health Act 1911* is to carry out a review of the operation and effectiveness of the provisions of the *Health Act 1911* and *The Criminal Code* related to abortion as soon as is practicable after the expiration of 3 years from the commencement of this Act<sup>1</sup>.
- (2) The Minister is to prepare a report based on the review made under subsection (1) and cause the report to be laid before each House of Parliament within 4 years after the commencement of this Act.

”.

15 On the date as at which this compilation was prepared, the *Health Amendment Act 1987* s. 4(d), 83 and 90 had not come into operation. They read:

“

**4. Section 3 amended**

Section 3 of the principal Act is amended in subsection (1) —

- (d) by deleting the definitions of “Therapeutic substance” and “Therapeutic use”.

**83. Division 7 of Part VIIA repealed and transitional**

- (1) Division 7 of Part VIIA of the principal Act is repealed.
- (2) Notwithstanding the repeal effected by subsection (1), a licence which was in force under Division 7 of Part VIIA of the principal Act immediately before the commencement of this section shall, subject to the principal Act, continue in force after that commencement for the remainder of the period for which it would, but for that commencement, have been in force and shall during its continuance in force by virtue of this subsection be deemed to be a licence —
  - (a) issued under section 246FK; and
  - (b) referred to in section 246FH(1)(a),of the principal Act.

**90. Part VIIB inserted**

The principal Act is amended by inserting after Part VIIA the following Part —

“

**Part VIIB — Therapeutic devices, goods and substances and cosmetics**

**Division 1 — Preliminary**

**246FA. Interpretation in Part VIIB**

- (1) In this Part, unless the contrary intention appears —
  - “**advertisement**”, in relation to any goods, means advertisement published —
    - (a) in a newspaper, magazine or other publication;
    - (b) in a circular, handbill, poster or other notice;
    - (c) on the goods or any part of the goods, or on any other goods or any part of those other goods;
    - (d) on any label, container or package of the goods or any other goods;
    - (e) orally or by any means of producing or transmitting light or sound; or
    - (f) in any other manner,for the purposes of promoting, directly or indirectly, the sale or use of those goods;
  - “**analysis**”, in relation to any goods, means any bacteriological, biochemical, biological, chemical, electrical, electrochemical, microscopical, pathological, physical or other examination or test for ascertaining the presence or absence of any substance or organism or the composition or other qualities of the goods;

**“automatic machine”** means machine or mechanical device used or capable of being used for the purpose of selling or supplying goods without the personal manipulation or attention of the seller or supplier or his employee or other agent at the time of that sale or supply;

**“container”**, in relation to any goods, means vessel, bottle, tube, tin, box, case, wrapper, cover or other like receptacle or envelope which immediately covers the goods;

**“cosmetic”** means substance that —

- (a) is included in a class of substances the sole or principal use of which is, or ordinarily is, a cosmetic use; or
- (b) is represented to be, or might reasonably be taken to be, for cosmetic use,

and includes goods in respect of which an order under section 246FB(3) is in force declaring those goods to be a cosmetic, but does not include —

- (c) therapeutic goods; or
- (d) goods in respect of which an order under section 246FB(3) is in force declaring those goods not to be a cosmetic;

**“dentist”** has the meaning given by the *Dental Act 1939*;

**“device”** means instrument, apparatus or contrivance, and includes component, part or accessory thereof,

**“expiry date”**, in relation to any goods, means day after which the goods may be expected to cease to conform to any standards applicable thereto;

**“goods for animal use only”**, subject to subsection (2), means goods that —

- (a) bear any particulars that constitute, or might reasonably be taken for, a statement that the goods are intended for animal use and are not intended for human use; or
- (b) are otherwise represented, whether by writing or otherwise, or otherwise purport, to be intended for animal use and not to be intended for human use;

**“label”** includes tag, brand, mark or statement in writing on, or attached to, or used in connection with, any container or package containing any goods;

**“licence”** means valid licence that is issued under this Part and is not cancelled or suspended;



**“manufacture”**, in relation to any goods, means manufacture or preparation of the goods and includes —

- (a) any part of the manufacture or preparation of the goods; and
- (b) the packaging and labelling of the goods;

**“medical practitioner”** has the meaning given by the *Medical Act 1894*;

**“nurse”** means registered nurse within the meaning of the *Nurses Act 1968*;

**“package”**, in relation to any goods, includes every means by which the goods may, for transport or for carriage or for storage or for sale, be cased, covered, enclosed, contained or packed;

**“pharmacist”** means pharmaceutical chemist within the meaning of the *Pharmacy Act 1964*;

**“premises”** includes land, and ship, aeroplane or other vehicle or vessel;

**“public institution”** means —

- (a) any Government Department, public hospital or university within the State; or
- (b) any other institution or establishment declared under subsection (3) to be a public institution for the purposes of this Part;

**“publish”** includes cause, allow or permit to be published;

**“regulations”** means regulations made under section 341 as read with section 246FZI;

**“sale”** includes sale whether by wholesale or retail, and includes dealing in, or agreeing to sell, or offering or exposing for sale, or keeping or having in possession for sale, or sending, forwarding, delivering or receiving for sale or on sale, or authorising, directing, causing, suffering, permitting or attempting any of those acts or things;

**“standards”** means requirements referred to in section 246FM(2);

**“substance”** includes preparation or admixture and all salts and derivatives of any substance;

**“therapeutic device”** means device that is —

- (a) included in a class of devices the sole or principal use of which is, or ordinarily is, a therapeutic use;
- (b) represented to be, or might reasonably be taken to be, for therapeutic use;

- (c) included in a class of devices the sole or principal use of which is, or ordinarily is, a use for the purpose of or in connection with measuring or weighing therapeutic goods by the person using or administering the therapeutic goods; or
- (d) represented to be, or might reasonably be taken to be, for a use of the kind referred to in paragraph (c),

and includes goods in respect of which an order under section 246FB(2) is in force declaring those goods to be a therapeutic device, but does not include —

- (e) any goods for animal use only; or
- (f) any goods in respect of which an order under section 246FB(2) is in force declaring those goods not be a therapeutic device;

**“therapeutic goods”** means therapeutic substance or therapeutic device, and includes container or package thereof;

**“therapeutic substance”** means substance that is —

- (a) included in a class of substances the sole or principal use of which is, or ordinarily is, a therapeutic use;
- (b) represented to be, or might reasonably be taken to be, for therapeutic use;
- (c) represented to be, or might reasonably be taken to be, for use as an ingredient, or the sole ingredient, in the manufacture of a substance referred to in paragraph (a) or (b), whether or not the substance that is so represented or might reasonably be so taken is to be itself the subject of manufacture or of further manufacture; or
- (d) included in a class of substances the sole or principal use of which is, or ordinarily is, a use of the kind referred to in paragraph (c),

and includes —

- (e) gelatin capsule or other substance enclosing a substance referred to in paragraph (a), (b), (c) or (d), if that capsule or other substance is intended to be consumed or otherwise administered together with the substance so referred to; and
- (f) goods in respect of which an order under section 246FB(1) is in force

declaring those goods to be a therapeutic substance,

but does not include —

- (g) article of food;
- (h) goods for animal use only; or
- (i) goods in respect of which an order under section 246FB(1) is in force declaring those goods not to be a therapeutic substance;

**“therapeutic use”** means use for the purpose of or in connection with —

- (a) preventing, diagnosing, curing or alleviating a disease, ailment, defect or injury in man;
- (b) influencing, inhibiting or modifying a physiological process in man;
- (c) testing the susceptibility of man to a disease or ailment; or
- (d) destroying or inhibiting micro-organisms that may be harmful to man;

**“veterinary surgeon”** means registered veterinary surgeon within the meaning of the *Veterinary Surgeons Act 1960*;

**“wholesale dealing”**, in relation to any goods —

- (a) means sale or supply of the goods in the ordinary course of wholesale dealing for the purposes of resale; and
- (b) includes sale or supply in wholesale quantities in the ordinary course of wholesale dealing and for use in any public institution or in connection with any prescribed profession, business, trade or industry carried on by any person who satisfies the wholesale dealer that he bona fide requires those goods for use, but not for resale, in connection with that profession, business, trade or industry.

- (2) For the purposes of the definition of “goods for animal use only” in subsection (1), goods are deemed to bear any particulars if those particulars are set out on —
  - (a) the goods or any part of the goods;
  - (b) a container or package of the goods or any part of the goods;
  - (c) a label attached to the goods or any part of the goods; or

- (d) a label attached to a container or package of the goods or any part of the goods.
- (3) For the purposes of the definition of “public institution” in subsection (1), the Governor may by order —
  - (a) declare an institution or establishment to be a public institution for the purposes of this Part; and
  - (b) revoke or amend a declaration made under this subsection.

**246FB. Orders as to certain goods**

- (1) The Minister may by order declare any goods specified or described in the order —
  - (a) to be a therapeutic substance; or
  - (b) not to be a therapeutic substance,

if he is of the opinion that, but for the order, doubt would exist or may arise about whether or not those goods are a therapeutic substance.

- (2) The Minister may by order declare any goods specified or described in the order —
  - (a) to be a therapeutic device; or
  - (b) not to be a therapeutic device,

if he is of the opinion that, but for the order, doubt would exist or may arise about whether or not those goods are a therapeutic device.

- (3) The Minister may by order declare any goods specified or described in the order —
  - (a) to be a cosmetic; or
  - (b) not to be a cosmetic,

if he is of the opinion that, but for the order, doubt would exist or may arise about whether or not those goods are a cosmetic.

- (4) The Minister may by order revoke or amend a declaration made under this section.

**246FC. Exemptions**

- (1) The Minister may by order exempt any person or class of persons, or any goods or class of goods, specified or described in the order from all of the provisions of this Part or such of the provisions of this Part as are specified or described in the order.
- (2) An order made under subsection (1) may be made unconditionally or subject to such conditions as are specified or described therein.

- (3) The Minister may by order revoke or amend an exemption granted under subsection (1).

## **Division 2 — Licences**

### **Subdivision 1 — Matters for which licences required**

#### **246FD. Manufacture of therapeutic substances or cosmetics without licence**

- (1) As from the expiry of 3 months after the commencement of this section, the person who conducts or has the control of any premises on which any substance to which this section applies is manufactured for sale commits an offence, unless the manufacture of that substance on those premises is authorized under the terms of a licence.
- (2) This section applies to a substance that is —
- (a) a therapeutic substance; or
  - (b) a cosmetic prescribed as being a substance to which this section applies,

but does not apply to —

- (c) a therapeutic substance prescribed as being a substance to which this section does not apply;
- (d) a therapeutic substance that is manufactured by a medical practitioner or dentist for use in the treatment of a patient under his care; or
- (e) a therapeutic substance that is manufactured by a pharmacist —
  - (i) on premises on which the business of a pharmacist is carried on in open shop;
  - (ii) on the premises of a dispensary carried on by a friendly society registered under the *Friendly Societies Act 1894*; or
  - (iii) on the premises of a public hospital or public institution,for sale (otherwise than by wholesale) on or from those premises.

#### **246FE. Sale by wholesale of therapeutic substances and cosmetics without licence**

- (1) As from the expiry of 3 months after the commencement of this section, a person who sells by wholesale any substance to which this section applies commits an offence, unless that sale is authorized under the terms of a licence.
- (2) This section applies to a substance that is —

- (a) a therapeutic substance; or
- (b) a cosmetic prescribed as being a substance to which this section applies,

but does not apply to a therapeutic substance prescribed as being a substance to which this section does not apply.

**246FF. Manufacture of therapeutic devices without licence**

- (1) As from the expiry of 3 months after the commencement of this section, the person who conducts or has the control of any premises on which any device to which this section applies is manufactured for sale commits an offence, unless the manufacture of that device on those premises is authorized under the terms of a licence.
- (2) This section applies to a therapeutic device prescribed as being a device to which this section applies.

**246FG. Sale by wholesale of therapeutic devices without licence**

- (1) As from the expiry of 3 months after the commencement of this section, a person who sells by wholesale any device to which this section applies commits an offence, unless that sale is authorized under the terms of a licence.
- (2) This section applies to a therapeutic device prescribed as being a device to which this section applies.

**Subdivision 2 — Provisions applicable to licences**

**246FH. Classes of licences which may be issued**

- (1) Licences authorizing —
  - (a) the manufacture for sale of any substance to which section 246FD applies;
  - (b) the sale by wholesale of any substance to which section 246FE applies;
  - (c) the manufacture for sale of any device to which section 246FF applies; or
  - (d) the sale by wholesale of any device to which section 246FG applies,

may be issued under section 246FK.

- (2) Nothing in this Part prevents the issue of one licence authorizing any 2 or more of the types of matters referred to in subsection (1)(a), (b), (c) and (d).

**246FI. Duration of licence**

A licence shall remain in force until cancelled or suspended.

**246FJ. Conditions attaching to licence and variation of licence**

- (1) A licence may be issued unconditionally.
- (2) The Executive Director, Public Health, may attach any conditions to a licence on its issue.
- (3) The Executive Director, Public Health, may, by notice in writing served on the holder of a licence —
  - (a) attach any conditions to the licence after its issue;
  - (b) vary or remove any conditions attached to the licence; or
  - (c) otherwise vary the licence.

**246FK. Application for and issue of licences**

- (1) When an application for a licence is made to the Executive Director, Public Health, in or to the effect of the prescribed form and is accompanied by the prescribed application fee, the Executive Director, Public Health, may —
  - (a) refuse the application; or
  - (b) issue the licence.
- (2) Different application fees may be prescribed for the purposes of subsection (1) for different classes of licences.
- (3) A licence shall be in or to the effect of the prescribed form.
- (4) When an application for a licence is refused, the application fee accompanying that application shall be refunded.

**246FL. Cancellation or suspension of licence**

- (1) The Executive Director, Public Health, may, by notice in writing served on the holder of a licence, cancel or suspend the licence —
  - (a) if the prescribed licence fee is not paid in accordance with the regulations at the prescribed time;
  - (b) if the holder of the licence has been convicted of an offence under this Part or the regulations;
  - (c) if the holder of the licence has not complied with any of the conditions attached to the licence; or

- (d) if the holder of the licence requests in writing that it be cancelled or suspended.
- (2) Different licence fees may be prescribed for the purposes of subsection (1)(a) for different classes of licences.
- (3) The Executive Director, Public Health, may restore any licence that is suspended, notwithstanding that any period during which the suspension is to continue has not expired.
- (4) A licence shall be deemed not to be in force during any period of its suspension.
- (5) When the Executive Director, Public Health, suspends a licence, he shall specify the period during which the suspension is to continue and may specify further such periods from time to time.

### **Division 3 — Standards**

#### **246FM. Standards**

- (1) In this section —
  - “**goods**” means therapeutic goods or cosmetics.
- (2) The regulations may make provision for or with respect to the determination of the requirements to which any goods are to conform when sold.
- (3) Without affecting the generality of subsection (2), a standard in relation to any goods may relate to —
  - (a) the composition, strength, potency, stability, purity, quality, construction or other properties thereof;
  - (b) the quantity thereof;
  - (c) the manner in which they were manufactured;
  - (d) the packaging and labelling thereof; or
  - (e) the manner in which they have been stored, handled or conveyed.
- (4) Without affecting the generality of subsection (2) or (3), a standard in relation to any goods may —
  - (a) prohibit the goods from —
    - (i) containing any prescribed substance; or
    - (ii) containing any prescribed substance in a prescribed quantity or proportion;
  - (b) require prescribed information or statements to appear on the label, container or package of the goods; or



- (c) prohibit prescribed. information or statements from appearing on the label, container or package of the goods.
- (5) Without affecting the generality of subsection (2) or (3), a standard in relation to any goods may require an expiry date, determined in accordance with the regulations, to be stated on the goods or on the label, container or package of the goods.
- (6) The regulations may make provision for or with respect to the determination of the person whose duty it shall be to ensure conformity with any standard before or at the time of sale of the goods to which the standard relates.
- (7) When any goods are sold after the expiry date that is, in accordance with a standard referred to in subsection (5), stated in relation to the goods, the goods shall, except in such circumstances as may be prescribed, be deemed not to conform to that standard.
- (8) When, in accordance with a standard in relation to any goods, any prescribed information or statement appears on the label, container or package of the goods, the goods shall be deemed not to conform to that standard if there is included thereon any comment, reference or explanation that expressly or impliedly contradicts, qualifies or modifies that information or statement.

**246FN. Adoption by reference of standards**

- (1) In this section —
  - “**a prescribed publication**” means —
    - (a) an edition of the British Pharmacopoeia;
    - (b) an edition of the Pharmaceutical Codex;  
or
    - (c) an edition of some other publication,  
(whether published before or after the commencement of this section) that is specified in the regulations, together with any additions or amendments thereto (whether published or made before or after that commencement) that are so specified;
  - “**the British Pharmacopoeia**” means the book of that name published before the coming into operation of Part VII of the *Medicines Act 1968* of the United Kingdom under the direction of the General Medical Council of the United Kingdom or published after that coming into operation in accordance with the provisions of that Part;
  - “**the Pharmaceutical Codex**” means the book of that name published by direction of the Council of the Pharmaceutical Society of Great Britain.

- (2) The regulations may, in making provision for or with respect to the determination of any standards, adopt by reference the whole or any part of any monograph or other material contained in a prescribed publication or any such monograph or other material as modified under subsection (3).
- (3) The regulations may provide for the modification of any monograph or other material adopted under subsection (2).

**246FO. Sale of goods not in conformity with standards**

A person who sells any therapeutic goods or cosmetics that do not conform to any standard applicable thereto commits an offence.

**246FP. Defence**

In any prosecution for an offence under section 246FO in respect of the sale of any therapeutic goods or cosmetics (which goods or cosmetics are in this section referred to as “the goods”) that did not conform to a standard applicable thereto, it shall be a defence if the seller proves that at the time of the sale he had no reason to suppose, and did not in fact suppose, that the goods did not conform to the standard and —

- (a) if the regulations make provision for or with respect to the determination of the person whose duty it is to ensure conformity with that standard in relation to the goods, that it was not his duty to ensure conformity therewith; or
- (b) if the regulations do not make provision for or with respect to the determination of the person whose duty it is to ensure conformity with that standard in relation to the goods, that it was not reasonable to expect that he should have been able to ensure conformity with that standard in so far as the ensuring of conformity therewith related to acts, matters or things outside his control.

**Division 4 — Advertisements and related matters**

**246FQ. Interpretation in Division 4**

In this Division —

“**representation**”, in relation to any therapeutic goods, means representation, whether express or implied, with respect to the use or consumption of the therapeutic goods for the purpose of or in connection with —

- (a) preventing, diagnosing, curing or alleviating a disease, ailment, defect or injury in man;

- (b) influencing, inhibiting or modifying a physiological process in man;
- (c) testing the susceptibility of man to a disease or ailment; or
- (d) destroying or inhibiting any micro-organisms that may be harmful to man.

**246FR. Prohibition of certain representations in advertisements**

- (1) A person who publishes an advertisement in respect of —
  - (a) any therapeutic goods commits an offence if it contains a representation prescribed as a prohibited representation;
  - (b) any prescribed therapeutic goods commits an offence if it contains a representation prescribed as a prohibited representation;
  - (c) any prescribed therapeutic goods commits an offence unless it contains a representation prescribed as a required representation; or
  - (d) any prescribed therapeutic goods commits an offence if it contains a representation other than a representation prescribed as a required representation under paragraph (c).
- (2) A person who publishes an advertisement in respect of any prescribed therapeutic goods commits an offence.
- (3) A person who publishes an advertisement that contains any representation commits an offence if that advertisement contains any comment, reference or explanation that expressly or impliedly contradicts, qualifies or modifies any representation prescribed for the purposes of subsection (1).
- (4) The regulations may prescribe in relation to any prescribed therapeutic goods or all therapeutic goods a representation for the purposes of subsection (1)(a), (b) and (c) notwithstanding that the regulations prescribe a representation in relation to those therapeutic goods for the purposes of all other or another of those paragraphs.
- (5) Nothing in subsection (1) or (2) applies in respect of any representation contained in an advertisement that is contained in any journal the circulation of which is intended to be limited to persons who are medical practitioners, pharmacists, dentists, veterinary surgeons or nurses or who are engaged in the business of selling by wholesale therapeutic goods, or that is contained in any other document that is intended to be published exclusively to or among any such persons.

- (6) Nothing in this section affects the operation of any other provision of this Part that relates to standards with respect to the labelling of therapeutic goods.

**246FS. Advertisement to contain name, address, etc.**

- (1) Except as provided by the regulations, a person who publishes an advertisement for any therapeutic goods and does not include in that advertisement the name and address of the person authorizing the publication of that advertisement and such other information as may be prescribed commits an offence.
- (2) Nothing in this section —
  - (a) applies in respect of any advertisement that is published orally or by any means of producing or transmitting light or sound; or
  - (b) affects the operation of any other provision of this Part that relates to standards with respect to the labelling of therapeutic goods.

**246FT. Order prohibiting false or misleading representations or names**

- (1) When the Executive Director, Public Health, is of the opinion that —
  - (a) a representation, if made in respect of therapeutic goods; or
  - (b) a claim, if made in respect of a cosmetic,would be false or misleading, he may, by order in writing served on a person specified or described in that order, prohibit that person from publishing any advertisement that contains the representation or claim (whether express or implied) made in respect of any such therapeutic goods or cosmetic.
- (2) When the Executive Director, Public Health, is of the opinion that the name of any therapeutic goods or cosmetic, if sold or advertised under that name, would be misleading, he may, by order in writing served on a person specified or described in that order, prohibit that person from selling the therapeutic goods or cosmetic under that name or from publishing any advertisement advertising the therapeutic goods or cosmetic under that name.
- (3) An order made under this section takes effect from a date specified therein, which date shall be not earlier than 7 days after the service of that order.
- (4) A person who publishes any advertisement in contravention of an order in force under this section commits an offence.

- (5) A person who sells any therapeutic goods or cosmetic in contravention of an order in force under this section commits an offence.
- (6) An order may be made under this section in relation to a representation whether or not that representation may be made under section 246FR.
- (7) A person who commits an offence under section 246FR or this section in respect of a representation contained in an advertisement is not liable to be punished for an offence under the other of those sections in respect of the same representation contained in the advertisement.

#### **Division 5 — Inspection and seizure of goods**

##### **246FU. Powers of public health officials under this Part**

- (1) This section applies to goods —
  - (a) which are therapeutic goods or cosmetics and are for sale or are (whether or not those goods are to be the subject of further manufacture) intended for sale, other than goods that are prescribed as being goods to which this section does not apply; or
  - (b) which a public health official believes on reasonable grounds are goods referred to in paragraph (a).
- (2) For the purpose of ascertaining whether the provisions of this Part or the regulations are being complied with, a public health official may, on production of his certificate of appointment —
  - (a) enter, inspect or search, at any reasonable time, any premises which he believes on reasonable grounds are used for or with respect to the manufacture, distribution, conveyance, storage, handling or sale of goods;
  - (b) require the production of and inspect and make copies of, or take extracts from, any books or documents relating to the manufacture of or any dealings in any goods;
  - (c) require the production of any goods;
  - (d) open and examine any receptacle, container or package which he believes on reasonable grounds may contain goods;
  - (e) examine any goods;
  - (f) seize and remove for analysis portions or samples of goods; or
  - (g) subject to subsection (3), seize any goods,to which this section applies.

- (3) Without affecting his powers under subsection (2)(f) and notwithstanding anything contained in this section, a public health official shall not seize goods under subsection (2)(g) —
  - (a) unless the public health official believes on reasonable grounds that there has been a contravention of any of the provisions of this Part or the regulations with respect to the goods; and
  - (b) in the case of goods that are in the possession, care, custody or control of any manufacturer of those goods, unless the public health official also believes on reasonable grounds that the goods are for sale or are, without further manufacture other than packaging or labelling, intended for sale.

**246FV. Release of seized goods**

- (1) Subject to subsection (5), goods seized under section 246FU shall be released on the expiry of the prescribed period after that seizure unless —
  - (a) the forfeiture of the goods is consented to under section 246FZ; or
  - (b) a Local Court orders under section 246FW that the goods be forfeited.
- (2) Goods seized under section 246FU may be released before the expiry of the prescribed period.
- (3) The release of any goods under subsection (1) or (2) shall be made —
  - (a) by or at the direction of the public health official who seized them or of the Executive Director, Public Health; and
  - (b) to the owner of the goods or the person in whose possession, care, custody or control they were at the time of the relevant seizure.
- (4) Nothing in this section requires the release of any goods or any part thereof damaged or destroyed in the course of an analysis thereof.
- (5) A Local Court may, in any particular case, extend the period referred to in subsection (1).

**246FW. Order that seized goods be forfeited**

- (1) A Local Court may order that, on the expiry of any period specified in that order, any goods seized under section 246FU and specified in that order be forfeited to the Crown.
- (2) An order made under this section shall not have effect in respect of any goods released under section 246FV.

**246FX. Making of orders under this Division**

- (1) If the regulations provide for the manner of making an application for an order under section 246FW in any case or class of cases, the order shall be applied for in that manner.
- (2) Before a Local Court makes an order under section 246FW, the Local Court may require such notice as it thinks fit to be given to such persons as it thinks fit.

**246FY. Storage of and interference with seized goods**

- (1) Subject to any direction of the Executive Director, Public Health, goods seized under this Division may, at the option of the public health official who seized them, be —
  - (a) kept or stored on the premises on which they were seized; or
  - (b) taken to such other place as the public health official who seized them thinks fit to be kept or stored,until released or disposed of under this Division.
- (2) A person who removes, alters or interferes in any way with goods seized under this Division without the authority of a public health official or the Executive Director, Public Health, commits an offence.

**246FZ. Forfeiture of goods with consent**

When a public health official has seized any goods under section 246FU and the owner of the goods or the person in whose possession, care, custody or control they were at the time of the seizure consents in writing to their forfeiture, the goods are thereupon forfeited to the Crown.

**246FZA. Disposal of forfeited goods**

Any goods forfeited to the Crown under this Division may be disposed of in such manner as the Executive Director, Public Health, generally or in any particular case or class of cases, directs.

**246FZB. Obstruction of public health official**

A person who —

- (a) wilfully delays or obstructs a public health official in the exercise of any of the powers of the public health official under this Part commits an offence; or
- (b) fails to produce any goods, books or documents which he is required to produce under this Part commits an offence, unless those goods, books

or documents are not in his possession, care, custody or control.

**246FZC. Analysis**

- (1) A public health official may submit any goods seized under section 246FU(2)(f) or (g) to an analyst for analysis.
- (2) When an analysis has been made by an analyst or under his personal supervision in respect of any goods submitted therefor under subsection (1), the analyst may issue a certificate setting out the results of the analysis.
- (3) When a certificate has been issued under subsection (2) setting out the results of an analysis made in respect of any goods, the owner of the goods or the person in whose possession, care, custody or control they were at the time of their seizure shall, on payment of the prescribed fee, be entitled to be supplied with a copy of the certificate.
- (4) A person who, for trade purposes or advertisement, uses any analysis made for the purposes of this Part commits an offence.

**Division 6 — Miscellaneous**

**Subdivision 1 — General**

**246FZD. Executive Director, Public Health, may require information about therapeutic goods or cosmetics**

- (1) The Executive Director, Public Health, may, by notice in writing served on any person who manufactures in, or imports into, this State, or sells, any therapeutic goods or cosmetics, require that person to furnish, in writing, to the Executive Director, Public Health, or such other person as is specified in that notice, within such period, not being less than 14 days, as may be specified therein, such information relating to the therapeutic goods or cosmetics as is referred to in that notice.
- (2) A notice referred to in subsection (1) may be served on any person whether or not the therapeutic goods or cosmetics referred to in that notice are therapeutic goods or cosmetics in respect of which information has previously been furnished.
- (3) Any person on whom a notice referred to in subsection (1) is served who does not comply with that notice within the period specified in that notice commits an offence.
- (4) Any person on whom a notice referred to in subsection (1) is served who, in purported compliance with that notice, knowingly furnishes any information



that is false or misleading in a material particular commits an offence.

**246FZE. Selling therapeutic goods by automatic machines prohibited**

A person who —

- (a) whether on or about his premises or elsewhere —
  - (i) installs any automatic machine for sale or supply of any therapeutic goods; or
  - (ii) sells or supplies any therapeutic goods by means of any automatic machines;
- (b) allows, permits or suffers any automatic machine referred to in paragraph (a) to be installed on his premises;
- (c) places or allows, permits or suffers to be placed any therapeutic goods in any automatic machine on his premises or under his control; or
- (d) allows, permits or suffers any person to purchase or be supplied with or otherwise obtain any therapeutic goods by means of any automatic machine on the premises or under the control of that first-mentioned person,

commits an offence.

**246FZF. Hawking, etc., of therapeutic goods**

- (1) A person who sells in any street or from house to house or hawks or peddles or distributes free or as samples in any street or public place or from house to house any therapeutic goods commits an offence.
- (2) Subsection (1) does not apply to the free distribution of clinical samples of therapeutic goods to a medical practitioner, pharmacist, dentist or veterinary surgeon by a person engaged in the manufacture of, or wholesale dealing in, therapeutic goods, if that distribution is made to the medical practitioner, pharmacist, dentist or veterinary surgeon personally or by posting a letter or parcel containing the goods addressed to him.
- (3) The regulations may make provision for or with respect to the conditions to be complied with in respect of the free distribution of clinical samples of therapeutic goods, as referred to in subsection (2), and, without affecting the generality of this subsection, may provide that any of the prescribed provisions of this Part and the regulations shall apply to and in respect of those samples as if their distribution or intended distribution were a sale or intended sale.

**246FZG. Prohibition of sale or supply of certain therapeutic devices**

The regulations may prohibit or regulate the sale or supply of a therapeutic device that is of a class of therapeutic devices specified or described in the regulations.

**246FZH. Service of notices, etc.**

A notice referred to in section 246FJ(3), 246FL(1) or 246FZD(1), or an order made under section 246FT, may be served on a person —

- (a) by delivering it personally to the person;
- (b) by delivering it to the place last known to the Executive Director, Public Health, as the place of abode or business of the person and by leaving it there with some person for him; or
- (c) by posting it in an envelope duly stamped and addressed to the person at the place last known to the Executive Director, Public Health, as the place of abode or business of the person.

**Subdivision 2 — Regulations and orders**

**246FZI. Regulations**

The Governor may make regulations under section 341 for or with respect to —

- (a) any forms to be used for the purposes of this Part;
- (b) the procedure for the calling of meetings of the Drug Advisory Committee and the conduct of business at those meetings;
- (c) prescribing the conditions to be complied with concerning the situation and construction of premises used for the manufacture or storage of therapeutic goods or cosmetics, securing the sanitation of those premises, and the provision of facilities for protecting those therapeutic goods or cosmetics from contamination or deterioration;
- (d) prescribing the conditions to be complied with in the manufacture, distribution, conveyance, storage or handling of therapeutic goods or cosmetics;
- (e) methods of analysis of therapeutic goods or cosmetics to determine conformity with standards;
- (f) the delivery up of licences issued under this Part and the issue of substitute or duplicate licences;

- (g) requiring persons engaged in the manufacture, distribution, conveyance, storage, handling or sale of therapeutic goods or cosmetics to keep records; and
- (h) all matters which by this Part are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Part.

**246FZJ. Provisions applicable to regulations and orders**

- (1) Regulations and orders made under this Part may be made so as to differ according to time, place and circumstances.
- (2) A regulation or order made under this Part may authorize any matter or thing to be from time to time determined, applied or any regulated by any person or body specified therein.
- (3) Any goods may be specified or described in a regulation or order made under this Part by reference to any act, matter or thing specified or described in that regulation or order, and, without affecting the generality of subsections (1) and (2), may be specified or described by reference to any one or more of the following —
  - (a) the common or scientific name of the goods;
  - (b) any class of goods;
  - (c) the composition of the goods;
  - (d) the use or intended use of the goods;
  - (e) the purpose for which the goods may be used;
  - (f) any dealing or proposed dealing in respect of the goods; or
  - (g) the manner in which the goods are packed.
- (4) A regulation or order made under this Part may be made so as to apply to or in respect of —
  - (a) any matter, or all matters, or any class of matters, specified or described in that regulation or order; or
  - (b) all matters, or any class of matters, specified or described in that regulation or order, other than any matter or class of matters so specified or described that is expressed to be excluded.
- (5) When any provision of this Part authorizes any matter to be prescribed or to be specified or described in any regulation or order made under this Part, subsection (4) applies, without affecting the generality of that subsection, to a regulation or order prescribing or specifying or describing that matter.

- (6) Nothing in this section affects the application of the *Interpretation Act 1984* to regulations and orders made under this Part.
- (7) In subsections (4) and (5) —  
“**matter**” means goods, representation or act, or any other matter or thing.

### **Subdivision 3 — Legal proceedings**

#### **246FZK. Proceedings for offences**

Proceedings for an offence under this Part or the regulations shall be taken before a court of petty sessions constituted by a magistrate sitting alone.

#### **246FZL. Appeal to District Court in certain cases**

- (1) A person aggrieved —
  - (a) by a decision of the Executive Director, Public Health, under Subdivision 2 of Division 2; or
  - (b) by an order made by the Executive Director, Public Health, under section 246FT,may, in the manner prescribed by rules of court and within the time so prescribed, appeal against that decision or order to the District Court.
- (2) An appeal made under this section —
  - (a) shall not be entertained unless at least 10 days’ notice, in writing, of the appeal has been given to the Executive Director, Public Health; and
  - (b) shall be by way of a re-examination and re-assessment of the facts on which the decision or order appealed against was made.
- (3) The District Court may confirm the decision or order appealed against under this section or give such directions in the matter as seem proper or otherwise determine the matter.
- (4) The decision of the District Court on an appeal made under this section shall be final, and shall be binding on the Executive Director, Public Health, and the appellant, and shall be carried into effect accordingly.

#### **246FZM. Evidence**

- (1) In any legal proceedings under this Part, a certificate purporting to be signed by the Executive Director, Public Health, or an officer of the Department authorized generally or specially by the Executive Director, Public Health, to do so, and to certify that the person specified therein was or was not the holder of a licence on any day, or during any period, specified

therein shall be admissible in evidence and shall be *prima facie* evidence of the fact so certified.

- (2) In any legal proceedings under this Part, a certificate purporting to be signed by a public health official and to certify that any matter specified therein is a copy of, or extract from, any book or document made or taken by him under this Part shall be admissible in evidence without production of the book or document.
- (3) In any legal proceedings under this Part, a certificate purporting to be signed by an analyst and setting out the results of an analysis of any goods under section 246FZC shall be *prima facie* evidence of the identity of the goods analysed and of the result of that analysis, and that that analysis was carried out in such manner as may be specified therein.

**246FZN. Offence by employer when employee has committed offence**

- (1) When an employee (in this section called “**the employee**”) of an employer (in this section called “**the employer**”) commits an offence under this Part or the regulations, the employer commits the same offence if it is proved that he —
  - (a) knowingly authorized or permitted; or
  - (b) did not exercise due diligence to prevent,the commission of that offence by the employee.
- (2) The employer may be proceeded against and convicted under subsection (1) whether or not the employee has been proceeded against or been convicted under this Part or the regulations.
- (3) Nothing in subsection (1) prejudices or affects any liability imposed by this Part or the regulations on any person by whom an offence under this Part or the regulations is actually committed.

**246FZO. Offences by bodies corporate**

When a body corporate is convicted of an offence under this Part or the regulations, every director and every officer concerned in the management of the body corporate commits the same offence if he knowingly authorized or permitted the commission of that offence.

”  
”

16

On the date as at which this compilation was prepared, the *Children and Community Services Act 2004* s. 251, which gives effect to Sch. 2 cl. 12, had not come into operation. It reads as follows:

“

**251. Other Acts amended**

Other Acts are amended as set out in Schedule 2.

”.

Schedule 2 cl. 12 reads as follows:

“

**Schedule 2 — Amendments to other Acts**

[s. 251]

**12. Health Act 1911 amended**

- (1) The amendments in this clause are to the *Health Act 1911*.
- (2) Section 308 is repealed.
- (3) Section 309(1) is amended as follows:
  - (a) by deleting “definitions” and inserting instead —  
“ definition ”;
  - (b) by deleting the definition of “Industrial School”;
  - (c) in the definition of “Prisoner” by deleting “or subject to detention in an industrial school”.
- (4) Section 309(2) is amended by deleting “or industrial school”.
- (5) Section 312 is amended by deleting “, 308”.

”.

17

On the date as at which this compilation was prepared, the *Courts Legislation Amendment and Repeal Act 2004* s. 142, which gives effect to Sch. 2, had not come into operation. It reads as follows:

“

**142. Other amendments to various Acts**

Each Act listed in Schedule 2 is amended as set out in that Schedule immediately below the short title of the Act.

”.

Schedule 2 cl. 23 reads as follows:

“

**Schedule 2 — Other amendments to Acts**

**23. Health Act 1911**

s. 36(1)	Delete “a magistrate sitting as a court of petty sessions within the district.” and insert instead — “ the Magistrates Court at the place nearest to or in the district. ”.
s. 36(2)	Delete “magistrate” and insert instead — “ court ”.

s. 36(3)	Delete “magistrate” and insert instead — “ court, constituted by a magistrate, ”. Delete “he” and insert instead — “ it ”.
s. 246Y(6)	Delete “a Local Court” and insert instead — “ the Magistrates Court ”.
s. 246Y(8)	Delete “A Local Court to which an appeal has been made under subsection (6) —” and insert instead — “ The Magistrates Court — ”.
s. 246ZG(1)	Delete “a Local Court” and insert instead — “ the Magistrates Court ”.
s. 246ZG(3)	Delete “A Local Court to which an application is made under subsection (1)” and insert instead — “  On receipt of an application made under subsection (1), the Magistrates Court  ”.
s. 246ZG(4)	Delete “Local Court concerned” and insert instead — “ Magistrates Court ”. In paragraph (a) delete “that Local Court” and insert instead — “ the court ”.

18 The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

19 On the date as at which this compilation was prepared, the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 78 & 80, which give effect to Sch. 1 & 2, and s. 82 had not come into operation. They read as follows:

“

**78. Various Acts amended (Sch 1)**

Each Act listed in Schedule 1 is amended as set out in that Schedule immediately below the short title of the Act.

”.

Schedule 1 cl. 13 reads as follows:

“

**Schedule 1 — Amendments to various Acts**

[s. 78]

**13. Health Act 1911**

s. 14 s. 246ZR(1)	Delete “ <i>Criminal Procedure (Summary) Act 1902</i> ” and insert instead — “ <i>Criminal Procedure Act 2004</i> ”.
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s. 231(5)	Delete “the provisions of section 43 of the <i>Criminal Procedure (Summary) Act 1902</i> , but subject to those of section 51 of that Act, join both matters in the same complaint.” and insert instead — “ Schedule 1 clause 2(2) and (3) of the <i>Criminal Procedure Act 2004</i> , join both matters in the one prosecution notice. ”
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“

**80. Various Acts amended (Sch 2)**

Each Act listed in Schedule 2 is amended as set out in that Schedule immediately below the short title of the Act.

”

Schedule 2 cl. 66 reads as follows:

“

**Schedule 2 — Amendments to change terminology**

[s. 80]

**66. Health Act 1911**

s. 199(18)	Delete “on the complaint of” and insert instead — “ by ”.
s. 227(11)	Delete “The court before which any complaint is made, or any appeal is heard,” and insert instead — “ A court hearing a prosecution or an appeal ”.
s. 227(14)	Delete “complaint” and insert instead — “ prosecution ”.
s. 246ZR(1)(a)	Delete “complainant” and insert instead — “ prosecutor ”.
s. 246ZR(6)	Delete “proceeding on a complaint” and insert instead — “ prosecution for an offence ”. Delete “or complaint”.
s. 246ZR(7)	Repeal the subsection.
s. 246ZX(2)(a)	Delete “complainant” in the 2 places it occurs and in each place insert instead (in the corresponding type) — “ prosecutor ”. Delete “return day of the summons” and insert instead — “ trial date set for the charge ”. After the paragraph insert — “ and ”.
s. 246ZX(2)	Delete paragraphs (b) and (c) and insert instead — “ (b) forthwith commence a prosecution for the alleged offence against the alleged offender in the court. ”



s. 246ZX(3)	Repeal the subsection and insert instead — “ (3) If the accused complies with subsection (2), the court shall ensure that a court hearing notice is issued to the alleged offender together with such other documents as the court determines and that the charge against the accused and the charge against the alleged offender are listed for trial on the same date. ”.
s. 246ZX(4)	Repeal the subsection.
s. 246ZX(5)	Delete “complaints” and insert instead — “ charges ”.
s. 246ZX(5)(a)	Delete “complainant” and insert instead — “ prosecutor ”.
s. 246ZX(5)(b)	In subparagraph (ii), delete “dismiss the complaint against the defendant” and insert instead — “ find the accused not guilty of the charge ”.
s. 246ZZ(1)(h)	Delete “complaint” and insert instead — “ prosecution notice ”. Delete “complainant” and insert instead — “ prosecutor ”.
s. 289G(1)	Delete “taken” and insert instead — “ commenced ”.
s. 289G(2)	Repeal the subsection and insert instead — “ (2) If a prosecution for an offence against the regulations purports to be commenced with the written consent of the Executive Director, Public Health, it is to be presumed, in the absence of proof to the contrary, that the prosecution has been so commenced. ”.
s. 298(2)	Delete “complaint was laid” and insert instead — “ prosecution was commenced ”.
s. 354(8)	Delete “complainant” and insert instead — “ prosecutor ”.
s. 359	Delete “information, complaint, or summons” and insert instead — “ prosecution ”.
s. 377(11)	Delete “complaint” and insert instead — “ prosecution notice ”.

“

## 82. References to “defendant” changed to “accused”

Each provision listed in Table 2, 3 or 4 to this section is amended by deleting any expression listed in Table 1 column 1 in each place it occurs (whether in ordinary type, italics, bold or capitals) and in each place inserting instead (in corresponding type) the expression opposite the deleted expression in Table 1 column 2.

**Table 1**

<b>Delete</b>	<b>Insert instead</b>
A defendant	An accused
a defendant	an accused
a defendant's	an accused's
defendant	accused
defendants	accused
Defendants'	Accused's
Defendants	Accused
the defendant	the accused
the defendant's	the accused's

**Table 2 — Various provisions**

<i>Health Act 1911</i>	s. 182 s. 214(2) s. 217(4), (5) & (6) s. 227(10) & (14) s. 230 s. 232(1), (2) & (3) s. 246R(2) & (3) s. 246ZN s. 246ZP(1) s. 246ZS(1) s. 246ZX(1), (2), & (5)(a) & (b)(i) s. 298(2) s. 354(8) s. 377(11)
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