



Western Australia

## **Public Health Act 2016**

Compare between:

[20 Sep 2017, 00-e0-00] and [19 Apr 2018, 00-f0-02]





Western Australia

## **Public Health Act 2016**

**An Act to protect, promote and improve the health and wellbeing of the public of Western Australia and to reduce the incidence of preventable illness, and for related purposes.**

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Public Health Act 2016*.

### **2. Commencement**

This Act comes into operation as follows —

- (a) Part 1 (other than sections 3 to 5) — on the day on which this Act receives the Royal Assent;
- (b) the following provisions — on the day after that day —
  - (i) sections 3 to 5;
  - (ii) Part 17;
  - (iii) Part 19 (other than Divisions 1, 3 and 4);
  - (iv) Part 20, but only sections 310 and 322;
- (c) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

### **3. Objects and principles**

- (1) The objects of this Act are —
  - (a) to promote and improve public health and wellbeing and to prevent disease, injury, disability and premature death; and
  - (b) to protect individuals and communities from diseases and other public health risks and to provide, to the extent reasonably practicable, a healthy environment for all Western Australians; and
  - (c) to promote the provision of information to individuals and communities about public health risks; and
  - (d) to encourage individuals and communities to plan for, create and maintain a healthy environment; and

- (e) to provide for the prevention or early detection of diseases and other public health risks, and certain other conditions of health; and
  - (f) to support programmes and campaigns intended to improve public health; and
  - (g) to facilitate the provision of information to decision-making authorities about public health risks and benefits to public health that may result from certain proposals; and
  - (h) to provide for the collection, disclosure and use of information about the incidence and prevalence of diseases and other public health risks in the State, and certain other conditions of health, for research or public health purposes; and
  - (i) to reduce the inequalities in public health of disadvantaged communities; and
  - (j) to provide for functions relating to public health to be performed by the State and local governments.
- (2) In the pursuit of the objects of this Act, regard must be had to the principles set out in the Table.

**Table**

**1. Sustainability principle**

- (1) Sound public health practices and procedures should be adopted as a basis for sustainability for the benefit of all people and the community today, while consideration is given to the public health, social, economic and environmental needs of future generations.
- (2) Public health, social, economic and environmental factors should be considered in decision-making, with the objective of improving community wellbeing and the benefit to future generations.

- (3) Public health practices and procedures should be cost effective and in proportion to the significance of the public health risks and consequences being addressed.

**2. Precautionary principle**

- (1) If there is a public health risk, lack of scientific certainty should not be used as a reason for postponing measures to prevent, control or abate that risk.
- (2) In the application of the precautionary principle, decision-making should be guided by —
  - (a) a careful evaluation to avoid, where practicable, harm to public health; and
  - (b) an assessment of the risk-weighted consequences of the options.

**3. Principle of proportionality**

- (1) Decisions made and actions taken in the administration of this Act to prevent, control or abate a public health risk should be proportionate to the public health risk sought to be prevented, controlled or abated.
- (2) In the application of the principle of proportionality, decision-making and action should be guided by the aim that, where measures that adversely impact on an individual's or business's activities or a community's functioning are necessary, measures that have the least adverse impact are taken before measures with a greater adverse impact.

**4. Principle of intergenerational equity**

The present generation should ensure that public health is maintained or enhanced for the benefit of future generations.

**5. Principle relating to local government**

The functions of local governments in relation to public health should be acknowledged and respected.

- (3) Persons involved in the administration of this Act must perform their functions with due regard to the objects and principles of this Act.

**4. Terms used**

- (1) In this Act, unless the contrary intention appears —
- activity licence* has the meaning given in section 64;
  - appropriate enforcement agency*, in relation to the provision in which the term is used, means the enforcement agency prescribed by the regulations for the purposes of that provision;
  - approved form* means a form approved by the Chief Health Officer;
  - authorised officer* has the meaning given in subsection (2);
  - CEO* has the meaning given in the *Health Legislation Administration Act 1984* section 3;
  - certificate of registration* has the meaning given in section 64;
  - Chief Health Officer* means the person designated as the Chief Health Officer under section 11;
  - child care service* means —
    - (a) an education and care service as defined in the *Education and Care Services National Law (Western Australia)* section 5(1); or
    - (b) a child care service as defined in the *Child Care Services Act 2007* section 4;
  - Commissioner of Police* means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;
  - Department* means the department of the Public Service principally assisting in the administration of this Act;

***departmental officer*** —

- (a) means a public service officer employed in the Department; and
- (b) includes a public service officer appointed for the purposes of, or to assist in the administration of, an Act to which the *Health Legislation Administration Act 1984* applies under section 4 of that Act;

***emergency area*** means the area or areas to which a public health state of emergency declaration applies;

***emergency management*** means the management of the adverse effects of a public health emergency, including —

- (a) prevention — the mitigation or prevention of the probability of the occurrence of a public health emergency, and of the potential adverse effects of a public health emergency; and
- (b) preparedness — the preparation for the response to a public health emergency; and
- (c) response — the combating of the effects of a public health emergency, provision of emergency assistance for casualties, reduction of further damage and help to speed recovery; and
- (d) recovery — the support of communities affected by a public health emergency in the reconstruction and restoration of physical infrastructure, the environment and community, psychosocial and economic wellbeing;

***emergency officer*** means an authorised officer or other person who is authorised by the Chief Health Officer under section 174(2);

***emergency power*** means a power provided for in Part 12 Division 5;

***employed in the Department*** includes seconded to perform functions or services for, or duties in the service of, the Department;



**enforcement agency** means —

- (a) the Chief Health Officer; or
- (b) a local government; or
- (c) a person or body, or a person or body within a class of persons or bodies, prescribed by the regulations for the purposes of this definition;

**enforcement order** means an enforcement order issued under Part 14 Division 3;

**environmental health officer** means an environmental health officer appointed under section 17;

**general public health duty** means the requirement imposed by section 34(1);

**harm** includes physical or psychological harm to individuals, whether of long-term or immediate impact or effect;

**improvement notice** means an improvement notice issued under Part 14 Division 2;

**judicial officer** means a JP or a magistrate;

**material public health risk** —

- (a) means a public health risk involving potential harm to public health that is neither trivial nor negligible; and
- (b) includes a public health risk declared by the regulations to be a material public health risk; but
- (c) does not include a public health risk declared by the regulations not to be a material public health risk;

**medical examination** includes —

- (a) the taking of a sample of blood, urine, tissue or hair, or another biological specimen; and
- (b) the performance of any diagnostic examination or diagnostic procedure;

**medical practitioner** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

**midwife** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* whose name is entered on the Register of Midwives kept under that Law;

**needle and syringe programme** means a programme to do one or more of the following principally for the purpose of preventing the spread of infectious diseases that are carried in the blood —

- (a) to supply people with any of the following —
  - (i) sterile hypodermic syringes;
  - (ii) sterile hypodermic needles;
  - (iii) things that may be used in connection with the administration, by injection, of prohibited drugs (as defined in the *Misuse of Drugs Act 1981* section 3(1)), for example, swabs and spoons;
- (b) to facilitate the safe disposal, after use, of any of the things mentioned in paragraph (a);
- (c) to advise, counsel or disseminate information to people;

**notifiable infectious disease** means an infectious disease declared under section 90 to be a notifiable infectious disease;

**notifiable infectious disease-related condition** means a medical condition declared under section 91 to be a notifiable infectious disease-related condition;

**nurse** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing and midwifery profession whose name is entered on the Register of Nurses kept under that Law;

**nurse practitioner** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* whose name is entered on the Register of Nurses kept under that Law as being qualified to practise as a nurse practitioner;

**officer**, in relation to a body corporate, has the meaning given in section 282(1);

**personal details**, in relation to a person, means —

- (a) the person's full name; and
- (b) the person's date of birth; and
- (c) the address where the person is residing; and
- (d) the address where the person usually resides, if that is different from the address referred to in paragraph (c);

**premises** includes —

- (a) land (whether vacant or not); and
- (b) land covered by water, whether permanently or temporarily or from time to time; and
- (c) the whole or any part of a building or other structure, of whatever type and whether of a permanent or temporary nature; and
- (d) a vehicle;

**prescribed condition of health** has the meaning given in section 148;

**public authority** means —

- (a) an agency as defined in the *Public Sector Management Act 1994* section 3(1); or
- (b) a body, corporate or unincorporate, that is established or continued for a public purpose by the State, regardless of the way it is established; or
- (c) a local government; or
- (d) a regional local government, but only in Part 12 and section 299; or
- (da) a regional subsidiary; or
- (e) the Police Force of Western Australia; or
- (f) a person or body, or a person or body within a class of persons or bodies, prescribed by the regulations for the purposes of this paragraph;

**public health** means the health of individuals in the context of —

- (a) the wider health and wellbeing of the community; and
- (b) the combination of safeguards, policies and programmes designed to protect, maintain, promote and improve the health of individuals and their communities and to prevent and reduce the incidence of illness and disability;

**public health emergency** means an event or circumstance, or a series of events or circumstances, that is causing or contributing to, has caused or contributed to or may cause or contribute to serious adverse effects on public health;

**public health emergency management plan** means a public health emergency management plan prepared under section 165;

**public health official** means —

- (a) a departmental officer; or
- (b) a person employed or engaged in a health service provider (as defined in the *Health Services Act 2016* section 6);

**public health order** means a public health order made under section 116;

**public health risk** means a risk of harm to public health;

**public health risk activity** means —

- (a) an activity declared by the regulations to be a public health risk activity; or
- (b) an activity within a class of activities declared by the regulations to be public health risk activities;

**public health state of emergency** means a public health state of emergency declared under section 167;

**public health state of emergency declaration** means a declaration of a public health state of emergency under section 167;

**remote communication** means any way of communicating at a distance, including by telephone, fax, email and radio;

**sample**, except in section 240(1)(f), means a sample taken, in accordance with accepted medical practice, from any part of the body of a person, including a sample of blood, urine, tissue or hair, or another biological specimen;

**school** means —

- (a) a government school, or a non-government school, as defined in the *School Education Act 1999* section 4; or
- (b) a community kindergarten registered under the *School Education Act 1999* Part 5; or
- (c) the place where a child care service is provided;

**senior next of kin**, in relation to a deceased person, has the meaning given in the *Coroners Act 1996* section 37(5);

**senior police officer** means a police officer who is, or is acting as, a Superintendent or an officer of a rank more senior than a Superintendent;

**serious public health incident power** means a power provided for in section 157(1);

**serious public health risk** —

- (a) means a public health risk involving potential harm to public health that is irreversible, of a high impact or on a wide scale; and
- (b) includes a public health risk declared by the regulations to be a serious public health risk; but
- (c) does not include a public health risk declared by the regulations not to be a serious public health risk;

**test order** means an order made under section 100;

**urgently notifiable infectious disease** means a notifiable infectious disease declared under section 90 to be an urgently notifiable infectious disease;

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***vaccine preventable notifiable infectious disease*** means a notifiable infectious disease declared under section 90 to be a vaccine preventable notifiable infectious disease;

***vehicle*** —

- (a) means any means of transport, whether self-propelled or not, and whether used on land or sea or in the air; and
- (b) without limiting paragraph (a), includes —
  - (i) a caravan, trailer or other land vehicle; and
  - (ii) a vessel;

***vessel*** —

- (a) means any thing used, or capable of being used, in navigation by water, of whatever size and whether or not it has any means of propulsion; and
- (b) without limiting paragraph (a), includes the following —
  - (i) a houseboat, pontoon or raft;
  - (ii) a hovercraft, seaplane or other similar craft;
  - (iii) a submarine or other submersible;

***working day*** means a day other than a Saturday, a Sunday or a public holiday.

- (2) A reference in a provision of this Act to an ***authorised officer*** —
  - (a) is a reference to a person who is an authorised officer by virtue of a designation under section 24, but (except in a provision listed in the Table) only if that designation has effect for the purposes of the provision in which that reference occurs; and
  - (b) includes an authorised officer exercising powers as an emergency officer.

**Table**

Part 2 Division 4	sections 136, 137, 138, 139
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	and 141
Parts 11 and 12	section 226(1)(b)
sections 245, 247, 249, 251, 252, 253, 254, 255, 257, 258 and 259	sections 280, 285 and 297

*[Section 4 amended by No. 26 of 2016 s. 82.]*

**5. Crown bound**

- (1) This Act binds the State and, so far as the legislative power of the State permits, the Crown in all its other capacities.
- (2) Nothing in this Act makes the Crown in any capacity liable to be prosecuted for an offence.
- (3) Subsection (1) is subject to Part 17.

## **Part 2 — Administration**

### **Division 1 — Chief Health Officer**

#### **Subdivision 1 — Functions of Chief Health Officer**

#### **6. Functions of Chief Health Officer**

The Chief Health Officer has the following functions in relation to the administration of this Act —

- (a) to initiate, support and manage public health planning for the State;
- (b) to develop and implement policies and programmes to achieve the objects of this Act;
- (c) to provide advice or recommendations to the Minister or to any other person or body or to the community generally on matters relevant to public health;
- (d) to provide advice or recommendations to the Minister on possible changes to this Act or the regulations that the Chief Health Officer considers appropriate or necessary;
- (e) to perform the functions that are conferred on the Chief Health Officer by or under this Act;
- (f) to administer this Act in accordance with its objects and principles.

[7, 8. *Have not come into operation*<sup>2</sup>.]

#### **9. Chief Health Officer may delegate**

- (1) The Chief Health Officer may delegate any function of the Chief Health Officer under another provision of this Act to a public health official.
- (2) A delegation must be in writing signed by the Chief Health Officer.



- (3) A delegation may expressly authorise the delegate to further delegate the function to another public health official.
- (4) A person performing a function that has been delegated to the person under, or as authorised under, this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Chief Health Officer to act through an officer or agent.

**10. Power to delegate under *Health Legislation Administration Act 1984* section 9 excluded**

The *Health Legislation Administration Act 1984* section 9 does not apply to or in relation to any function of the Chief Health Officer under this Act.

**Subdivision 2 — Designation of Chief Health Officer**

**11. Minister to designate Chief Health Officer**

- (1) The Minister must designate a person as the Chief Health Officer.
- (2) A person cannot be designated as Chief Health Officer unless —
  - (a) the person is a departmental officer; and
  - (b) the person is a medical practitioner; and
  - (c) the Minister is satisfied that the person has appropriate qualifications and experience in public health.

**12. Term of office and remuneration of Chief Health Officer**

- (1) A designation under section 11 —
  - (a) must be made by notice published in the *Gazette*; and
  - (b) must specify the term of the designation, which cannot exceed 5 years.

- (2) Subsection (1)(b) does not prevent a person from serving as Chief Health Officer more than once.
- (3) The Chief Health Officer is entitled to the remuneration determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975*.
- (4) For the purposes of the *Salaries and Allowances Act 1975* and any other written law, the office of Chief Health Officer is to be taken to be prescribed under section 6(1)(e) of that Act for the purposes of section 6 of that Act.

**13. Resignation, vacation of office and removal from office**

- (1) The Chief Health Officer may resign from that office by writing signed and given to the Minister.
- (2) The resignation takes effect on the later of —
  - (a) receipt by the Minister; or
  - (b) the day specified in the resignation.
- (3) A person vacates office as the Chief Health Officer if the person ceases to be —
  - (a) a departmental officer; or
  - (b) a medical practitioner.
- (4) The Minister may remove a person from the office of Chief Health Officer on any of these grounds —
  - (a) mental or physical incapacity;
  - (b) incompetence;
  - (c) neglect of duty;
  - (d) misconduct.
- (5) The removal of a person from office under subsection (4) does not by itself affect the person's employment as a public service officer.

- (6) Subsection (4) does not limit the application of the *Public Sector Management Act 1994* Part 5 to and in relation to any person who holds or has held the office of Chief Health Officer.

**14. Acting Chief Health Officer**

- (1) The CEO may designate a person to act in the office of the Chief Health Officer —
- (a) during a vacancy in the office, whether or not a designation has previously been made under section 11(1); or
  - (b) during a period, or during all periods, when the person holding the office or a person acting in the office under a designation under this section is on leave or is for any other reason unable to perform the functions of the office.
- (2) A person cannot be designated under subsection (1) unless —
- (a) the person is —
    - (i) a departmental officer; and
    - (ii) a medical practitioner;and
  - (b) the CEO is satisfied that the person has appropriate qualifications and experience in public health.
- (3) A designation under subsection (1) —
- (a) must be in writing; and
  - (b) may be expressed to have effect only in the circumstances specified in it.
- (4) A person cannot act under a designation under subsection (1) for longer than 12 months at a time.
- (5) The CEO may revoke a designation under subsection (1) at any time.

**15. Authority of Acting Chief Health Officer**

- (1) The *Interpretation Act 1984* section 49 authorises the performance of the functions of the Chief Health Officer by a person acting under a designation under section 14.
- (2) The validity of anything done by or in relation to a person purporting to act under a designation under section 14 is not to be called into question on any of these grounds —
  - (a) the occasion for the designation had not arisen;
  - (b) there is a defect or irregularity in the designation;
  - (c) the designation had ceased to have effect;
  - (d) the occasion for the person to act had not arisen or had ceased.

**Division 2 — Functions of local governments**

**16. Functions of local governments**

A local government has the following functions in relation to the administration of this Act —

- (a) to initiate, support and manage public health planning for its local government district;
- (b) to develop and implement policies and programmes to achieve the objects of this Act within its local government district;
- (c) to perform the functions that are conferred on local governments by or under this Act;
- (d) to administer and enforce this Act within its local government district in accordance with the objects and principles of this Act.

**17. Appointment of environmental health officers**

- (1) A local government may appoint one or more persons as environmental health officers.

- (2) An appointee may be —
  - (a) a person employed by the local government under the *Local Government Act 1995* section 5.36; or
  - (b) a person engaged by the local government under a contract for services.
- (3) A local government must not appoint a person as an environmental health officer unless the person has the qualifications and experience approved by the Chief Health Officer under section 18.
- (4) Two or more local governments may enter into arrangements for one or more persons to be appointed as environmental health officers for each of those local governments.
- (5) This section does not limit the *Local Government Act 1995* section 5.36.

**18. Chief Health Officer to approve qualifications and experience required by environmental health officers**

- (1) The Chief Health Officer must, by notice published in the *Gazette*, approve the qualifications and experience that persons to be appointed as environmental health officers must have.
- (2) An approval is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (3) The *Interpretation Act 1984* sections 43 (other than subsection (6)) and 44 and Part VIII apply to an approval as if it were subsidiary legislation.

**Division 3 — Functions of enforcement agencies**

**19. Functions of enforcement agencies**

An enforcement agency has the functions in relation to the administration of this Act that are conferred or imposed on the agency by or under this Act.

**20. Conditions on performance of functions by enforcement agencies**

- (1) The Chief Health Officer, after consultation with another enforcement agency, may, in writing, impose conditions or restrictions on the performance of functions under this Act by the enforcement agency.
- (2) The performance by an enforcement agency of functions under this Act is subject to any conditions or restrictions imposed under subsection (1).

**21. Enforcement agency may delegate**

- (1) A power or duty conferred or imposed on an enforcement agency may be delegated —
  - (a) if the enforcement agency is the Chief Health Officer, in accordance with section 9; or
  - (b) if the enforcement agency is a local government, to —
    - (i) the chief executive officer of the local government; or
    - (ii) an authorised officer designated by the local government;or
  - (c) if the enforcement agency is a person or body, or a person or body within a class of persons or bodies, prescribed by the regulations, to an authorised officer designated by the agency.
- (2) A delegation under subsection (1)(b) or (c) must be in writing.
- (3) Without limiting the *Interpretation Act 1984* section 59, the exercise or performance by a delegate of an enforcement agency of a power or duty delegated under subsection (1)(b) or (c) is subject to any condition or restriction imposed under section 20 on the exercise or performance by the enforcement agency of the power or duty.

- (4) Subsection (5) applies if —
  - (a) the regulations expressly authorise a delegated power or duty of an enforcement agency referred to in subsection (1)(b) or (c) to be further delegated; and
  - (b) the delegated power or duty is further delegated to a person or body in accordance with those regulations.
- (5) If this subsection applies, subsection (3) applies to the exercise or performance by the person or body of that power or duty as if it were exercised or performed, and delegated, as described in subsection (3).

**22. Reports by and about enforcement agencies**

- (1) An enforcement agency (other than the Chief Health Officer) must report to the Chief Health Officer, at the intervals that the Chief Health Officer requires, on the performance of functions under this Act by the agency and by persons employed or engaged by the agency.
- (2) In addition to any report required under subsection (1), an enforcement agency must forward to the Chief Health Officer details of any proceedings for an offence under this Act taken by the agency, and those details must be forwarded —
  - (a) within one month after the proceedings have been instituted; and
  - (b) within one month after the proceedings have been finally dealt with.
- (3) The accountable authority of the Department must include in the annual report submitted under the *Financial Management Act 2006* Part 5 —
  - (a) a report on the performance by enforcement agencies (including the Chief Health Officer) of functions under this Act; and
  - (b) the current State public health plan prepared under section 43.

### **Division 4 — Authorised officers**

#### **23. Terms used**

In this Division —

*designate* includes, in relation to a person or class of persons who are not departmental officers, appoint;

*designation* means a designation under section 24(1);

*specified* means specified in a designation.

#### **24. Designation of authorised officers**

- (1) An enforcement agency may designate a person or class of persons as authorised officers —
  - (a) for the purposes of this Act or another specified Act; or
  - (b) for the purposes of the specified provisions of this Act or another specified Act; or
  - (c) for the purposes of the provisions of this Act or another specified Act other than the specified provisions of that Act.
- (2) The Chief Health Officer may designate a person or class of persons under subsection (1) only if the person or, as the case requires, the persons in that class are public health officials.
- (3) An enforcement agency that is a local government may designate under subsection (1) —
  - (a) an environmental health officer or environmental health officers as a class; or
  - (b) a person who is not an environmental health officer or a class of persons who are not environmental health officers; or
  - (c) a mixture of the two.



- (4) Enforcement agencies that are local governments may act jointly in the designation of persons or classes of persons as authorised officers.

**25. Certain authorised officers required to have qualifications and experience**

- (1) An enforcement agency must not designate a person or class of persons under section 24(1) unless the enforcement agency —
- (a) considers that the person or, as the case requires, the persons in that class have appropriate qualifications and experience to perform the particular functions that the person or class of persons are to perform as authorised officers; and
  - (b) has regard to any guidelines issued under section 29.
- (2) This section does not apply to the designation of —
- (a) public health officials, whether individually or as a class; or
  - (b) environmental health officers, whether individually or as a class.

**26. Further provisions relating to designations**

- (1) The power to make a designation includes —
- (a) the power to revoke a designation previously made; and
  - (b) in relation to a person (*person A*) who is designated, the power to designate a person or class of persons to perform functions of person A when it is impractical for person A to perform the functions; and
  - (c) in relation to a class of persons (*class A*) who are designated, the power to designate a person or class of persons to perform functions of persons in class A when it is impractical for persons in class A to perform the functions.
- (2) These must be in writing —

- (a) a designation;
- (b) a revocation of a designation.

**27. Lists of authorised officers to be maintained**

Each enforcement agency must prepare and maintain a list of—

- (a) the persons (if any) who are individually designated as authorised officers by the agency; and
- (b) the classes of persons (if any) who are designated as authorised officers by the agency.

**28. When designation as authorised officer ceases**

- (1) A person ceases to be an authorised officer if the designation by virtue of which that person is an authorised officer is revoked or ceases to have effect.
- (2) A designation by the Chief Health Officer ceases to have effect if the person designated ceases to be a public health official.
- (3) A person who is an authorised officer by virtue of being an environmental health officer ceases to be an authorised officer if the person ceases to be an environmental health officer.

**29. Chief Health Officer may issue guidelines about qualifications and experience of authorised officers**

The Chief Health Officer may issue guidelines in relation to the appropriate qualifications and experience for a person or class of persons to be designated as authorised officers.

**30. Certificates of authority**

- (1) An enforcement agency must issue to each person who is an authorised officer by virtue of a designation by the agency a certificate of authority as an authorised officer.
- (2) The certificate of authority must —
  - (a) state that it is issued under this Act; and

- (b) state the name of the person to whom it is issued and bear —
    - (i) a photograph or digital image of that person; and
    - (ii) the person's signature;and
  - (c) state the date, if any, on which it expires; and
  - (d) specify —
    - (i) the Acts or the provisions of the Acts for the purposes of which the person is designated as an authorised officer; and
    - (ii) any provisions of an Act that are excluded from the designation;and
  - (e) specify any conditions or restrictions to which the person's authority is subject; and
  - (f) bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate.
- (3) An authorised officer must produce the certificate of authority —
- (a) if asked to do so by the person in charge of any premises entered under this Act by the authorised officer; or
  - (b) if asked to do so by a person who, under this Act, is required by the authorised officer to produce anything or to answer any question.
- (4) If an enforcement agency is satisfied that obtaining a photograph or digital image of a person to whom a certificate of authority is to be issued, or the person's signature, would unreasonably delay the issuing of the certificate to that person, the enforcement agency may issue a temporary certificate of authority that does not comply with either or both of the requirements of subsection (2)(b).

- (5) A temporary certificate of authority —
- (a) is valid for the period, not exceeding one month, that is stated on the certificate; but
  - (b) otherwise has the same effect as an ordinary certificate of authority issued under this section.

**31. Issuing and production of certificate of authority for purposes of other written laws**

- (1) In this section —

*certificate requirement*, in relation to a written law, means a requirement that persons who are authorised to exercise powers under that written law be issued with an identity card;

*identity card* means a certificate or other document evidencing a person's identity or appointment;

*production requirement*, in relation to a written law, means a requirement that a person who exercises, has exercised, or is about to exercise a power under that written law produce an identity card, whether on request or otherwise.

- (2) This section applies if —

- (a) a person is designated as an authorised officer for the purposes of one or more provisions of another written law; and
- (b) that other written law has a certificate requirement.

- (3) If this section applies —

- (a) it is sufficient compliance with the certificate requirement in the other written law if the certificate of authority issued to that person under section 30 specifies that the person is designated as an authorised officer for the purposes of that other written law or one or more provisions of that other written law; and
- (b) it is sufficient compliance with any production requirement in that other written law if —

- (i) the production requirement relates to a provision for the purposes of which the designation has effect; and
- (ii) the person produces that certificate of authority.

**32. Certificate of authority to be returned**

- (1) A person to whom a certificate of authority is issued under section 30 and who ceases to be an authorised officer must, as soon as practicable, return the certificate to the enforcement agency that issued the certificate.
- (2) A person who contravenes subsection (1) without reasonable excuse, the onus of proving which is on the person, commits an offence.

Penalty for an offence under this subsection: a fine of \$1 000.

**Division 5 — Advisory committees**

**33. Establishment and functions of advisory committees**

- (1) The Chief Health Officer may establish advisory committees to assist the Chief Health Officer in the performance of the Chief Health Officer's functions under this Act.
- (2) The Chief Health Officer may appoint any person the Chief Health Officer thinks fit to any advisory committee established under subsection (1).
- (3) The Chief Health Officer may determine —
  - (a) the term of office of members of an advisory committee; and
  - (b) the functions and procedure of an advisory committee; and
  - (c) after consultation with the Minister for Public Sector Management, any remuneration and allowances to be paid to the members of an advisory committee.

### **Part 3 — General public health duty**

#### **34. General public health duty**

- (1) A person must take all reasonable and practicable steps to prevent or minimise any harm to public health that might foreseeably result from anything done or omitted to be done by the person.
- (2) In determining what is reasonable and practicable for the purposes of subsection (1), regard must be had, amongst other things, to the objects of this Act, and to the following —
  - (a) the potential impact of a failure to comply with the duty;
  - (b) any environmental, social, economic or practical implications;
  - (c) any degrees of risk that may be involved;
  - (d) the nature, extent and duration of any harm;
  - (e) any matter prescribed by the regulations.
- (3) A person will be taken not to be in breach of subsection (1) if the person is acting —
  - (a) in a manner or in circumstances that accord with generally accepted practices taking into account community expectations and prevailing environmental, social and economic practices and standards; or
  - (b) in circumstances prescribed by the regulations.

#### **35. Consequences of failure to comply with general public health duty**

- (1) A failure to comply with the general public health duty does not of itself —
  - (a) give rise to any right or remedy; or
  - (b) constitute an offence.

- (2) However, a failure to comply with the general public health duty may constitute grounds for action to be taken under this Act, including the issue of an improvement notice or enforcement order.

## **Part 4 — Serious public health risks and material public health risks**

### **36. Term used: engage in conduct**

In this Part —

*engage in conduct* means —

- (a) do an act; or
- (b) omit to do an act.

### **37. Offences relating to serious public health risks**

(1) A person must not —

- (a) engage in conduct that the person knows will cause, or is likely to cause, a serious public health risk; or
- (b) engage in conduct in a manner that the person knows will cause, or is likely to cause, a serious public health risk; or
- (c) allow or permit conduct to be engaged in if the person knows that engagement in that conduct will cause, or is likely to cause, a serious public health risk; or
- (d) allow or permit conduct to be engaged in in a manner that the person knows will cause, or is likely to cause, a serious public health risk; or
- (e) allow or permit conduct to continue to be engaged in if the person knows that engagement in that conduct will cause, or is likely to cause, a serious public health risk; or
- (f) allow or permit conduct to continue to be engaged in in a manner that the person knows will cause, or is likely to cause, a serious public health risk.

Penalty for an offence under this subsection: a fine of \$250 000 and imprisonment for 3 years.



Daily penalty for an offence under this subsection: a fine of \$50 000.

- (2) A person must not —
- (a) engage in conduct that the person ought reasonably to know will cause, or is likely to cause, a serious public health risk; or
  - (b) engage in conduct in a manner that the person ought reasonably to know will cause, or is likely to cause, a serious public health risk; or
  - (c) allow or permit conduct to be engaged in if the person ought reasonably to know that engagement in that conduct will cause, or is likely to cause, a serious public health risk; or
  - (d) allow or permit conduct to be engaged in in a manner that the person ought reasonably to know will cause, or is likely to cause, a serious public health risk; or
  - (e) allow or permit conduct to continue to be engaged in if the person ought reasonably to know that engagement in that conduct will cause, or is likely to cause, a serious public health risk; or
  - (f) allow or permit conduct to continue to be engaged in in a manner that the person ought reasonably to know will cause, or is likely to cause, a serious public health risk.

Penalty for an offence under this subsection: a fine of \$100 000 and imprisonment for 2 years.

Daily penalty for an offence under this subsection: a fine of \$20 000.

- (3) A person must not —
- (a) engage in conduct that causes, or will cause, or is likely to cause, a serious public health risk; or
  - (b) engage in conduct in a manner that causes, or will cause, or is likely to cause, a serious public health risk; or

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- (c) allow or permit conduct to be engaged in if engagement in that conduct causes, or will cause, or is likely to cause, a serious public health risk; or
- (d) allow or permit conduct to be engaged in in a manner that causes, or will cause, or is likely to cause, a serious public health risk; or
- (e) allow or permit conduct to continue to be engaged in if engagement in that conduct causes, or will cause, or is likely to cause, a serious public health risk; or
- (f) allow or permit conduct to continue to be engaged in in a manner that causes, or will cause, or is likely to cause, a serious public health risk.

Penalty for an offence under this subsection: a fine of \$50 000.

Daily penalty for an offence under this subsection: a fine of \$10 000.

**38. Offences relating to material public health risks**

- (1) A person must not —
  - (a) engage in conduct that the person knows will cause, or is likely to cause, a material public health risk; or
  - (b) engage in conduct in a manner that the person knows will cause, or is likely to cause, a material public health risk; or
  - (c) allow or permit conduct to be engaged in if the person knows that engagement in that conduct will cause, or is likely to cause, a material public health risk; or
  - (d) allow or permit conduct to be engaged in in a manner that the person knows will cause, or is likely to cause, a material public health risk; or
  - (e) allow or permit conduct to continue to be engaged in if the person knows that engagement in that conduct will cause, or is likely to cause, a material public health risk; or

- (f) allow or permit conduct to continue to be engaged in in a manner that the person knows will cause, or is likely to cause, a material public health risk.

Penalty for an offence under this subsection: a fine of \$100 000 and imprisonment for 2 years.

Daily penalty for an offence under this subsection: a fine of \$20 000.

- (2) A person must not —

- (a) engage in conduct that the person ought reasonably to know will cause, or is likely to cause, a material public health risk; or
- (b) engage in conduct in a manner that the person ought reasonably to know will cause, or is likely to cause, a material public health risk; or
- (c) allow or permit conduct to be engaged in if the person ought reasonably to know that engagement in that conduct will cause, or is likely to cause, a material public health risk; or
- (d) allow or permit conduct to be engaged in in a manner that the person ought reasonably to know will cause, or is likely to cause, a material public health risk; or
- (e) allow or permit conduct to continue to be engaged in if the person ought reasonably to know that engagement in that conduct will cause, or is likely to cause, a material public health risk; or
- (f) allow or permit conduct to continue to be engaged in in a manner that the person ought reasonably to know will cause, or is likely to cause, a material public health risk.

Penalty for an offence under this subsection: a fine of \$75 000.

Daily penalty for an offence under this subsection: a fine of \$15 000.

- (3) A person must not —
- (a) engage in conduct that causes, or will cause, or is likely to cause, a material public health risk; or
  - (b) engage in conduct in a manner that causes, or will cause, or is likely to cause, a material public health risk; or
  - (c) allow or permit conduct to be engaged in if engagement in that conduct causes, or will cause, or is likely to cause, a material public health risk; or
  - (d) allow or permit conduct to be engaged in in a manner that causes, or will cause, or is likely to cause, a material public health risk; or
  - (e) allow or permit conduct to continue to be engaged in if engagement in that conduct causes, or will cause, or is likely to cause, a material public health risk; or
  - (f) allow or permit conduct to continue to be engaged in in a manner that causes, or will cause, or is likely to cause, a material public health risk.

Penalty for an offence under this subsection: a fine of \$40 000.

Daily penalty for an offence under this subsection: a fine of \$8 000.

**39. Defence of due diligence**

- (1) In any proceedings against a person for an offence under this Part, it is a defence to prove that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence.
- (2) The defence provided by subsection (1) does not apply unless it is proved that the person —
  - (a) took reasonable steps to prevent or avoid the circumstances that gave rise to the public health risk, including by putting in place any systems or safeguards that might reasonably be expected to be provided; and

- (b) complied with the requirements of any notice or order under this Act that related to the public health risk; and
  - (c) as soon as becoming aware of the circumstances that gave rise to the public health risk —
    - (i) reported those circumstances to an appropriate enforcement agency; and
    - (ii) took all reasonable steps necessary to prevent or reduce the public health risk.
- (3) If the person is an employer, then in addition to the things that must be proved under subsection (2), it must also be proved that the person —
- (a) had proper systems and safeguards in place to prevent the circumstances that gave rise to the public health risk; and
  - (b) actively promoted and enforced compliance with this Act.

#### **40. Alternative verdicts for certain offences**

- (1) This section applies if, on the trial of a person charged with an offence under a provision in Column 1 of the Table, the court —
- (a) is not satisfied that the person committed the offence; but
  - (b) is satisfied that the person committed an offence under a provision opposite that provision in Column 2 of the Table (a *corresponding provision*).
- (2) In that case, the court may find the person not guilty of the offence charged but guilty of an offence under the corresponding provision, and the person is liable to be punished accordingly.

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**Table**

<b>Column 1: provision under which person is charged</b>	<b>Column 2: corresponding provisions under which person may be found guilty</b>
s. 37(1)	s. 37(2), s. 37(3), s. 38(1)
s. 37(2)	s. 37(3), s. 38(2)
s. 37(3)	s. 38(3)
s. 38(1)	s. 38(2), s. 38(3)
s. 38(2)	s. 38(3)

**41. Determination by court of appropriate punishment**

- (1) In determining the appropriate punishment to impose on a person found guilty of an offence under this Part, the court must have regard to —
  - (a) the extent of the public health risk caused, or likely to have been caused, by the commission of the offence; and
  - (b) the practical measures that could have been taken to prevent, control or abate that risk; and
  - (c) the extent to which the person who committed the offence could reasonably have foreseen that risk; and
  - (d) the extent to which the person who committed the offence had control over the circumstances that gave rise to that risk; and
  - (e) whether, in committing the offence, the person was complying with orders given to the person in the course of his or her employment.
- (2) Nothing in this section limits the powers of a court under the *Sentencing Act 1995*.

*[Parts 5-8 have not come into operation<sup>2</sup>.]*

## **Part 9 — Notifiable infectious diseases and related conditions**

### **Division 1 — Principles and declarations**

#### **87. Principles applying in relation to this Part**

- (1) Section 88 sets out principles that apply for the purposes of the application, operation and interpretation of this Part.
- (2) This section and section 88 do not limit section 3(2).

#### **88. Principles listed**

- (1) The spread of notifiable infectious diseases should be prevented or limited without unnecessarily restricting personal liberty or privacy, and in the application of this principle particular regard should be had to the principle of proportionality set out in section 3(2).
- (2) A person who is at risk of contracting a notifiable infectious disease must take all reasonable precautions to avoid contracting the disease.
- (3) A person who suspects that he or she may have a notifiable infectious disease must ascertain —
  - (a) whether or not he or she has the disease; and
  - (b) what precautions should be taken to prevent others from contracting the disease.
- (4) A person who has a notifiable infectious disease must take all reasonable precautions to ensure that others are not unknowingly placed at risk of contracting the disease.
- (5) To the extent to which the exercise of those rights does not infringe on the wellbeing of others, a person who is at risk of contracting, who suspects that he or she may have, or who has a notifiable infectious disease or a notifiable infectious disease-related condition has these rights —

- (a) to be protected from unlawful discrimination;
  - (b) to have his or her privacy respected;
  - (c) to be given information about the medical and social consequences of the disease or condition and about any proposed medical treatment;
  - (d) in the case of a notifiable infectious disease —
    - (i) to have access to available and appropriate examination and treatment; and
    - (ii) to have that examination and treatment provided free of charge, but only if the requirements set out in subsection (6) are met.
- (6) The right to have an examination or treatment provided free of charge under subsection (5)(d)(ii) applies —
- (a) only if the examination or treatment is provided by a public health official; and
  - (b) only to the extent that the examination or treatment is necessary to prevent the transmission of the disease to another person.

**89. Further provisions relating to application of principles**

- (1) A failure to comply with the principles set out in section 88(2) to (4) does not of itself —
  - (a) give rise to any right or remedy; or
  - (b) constitute an offence.
- (2) However, a failure to comply with one or more of those principles may constitute grounds for action to be taken under this Act, including the issue of a test order or a public health order.
- (3) Section 88(5) does not confer on any person any legal right that is enforceable in a court of law.



- (4) Sections 87 and 88 do not limit the *Equal Opportunity Act 1984* section 66U.

**90. Declaration of notifiable infectious diseases**

- (1) The regulations may declare —
- (a) a disease to be a notifiable infectious disease; or
  - (b) a notifiable infectious disease to be an urgently notifiable infectious disease; or
  - (c) a notifiable infectious disease to be a vaccine preventable notifiable infectious disease.
- (2) The Minister may, if he or she considers it to be necessary in the interests of public health because of urgent circumstances, by order declare —
- (a) a disease to be a notifiable infectious disease; or
  - (b) a notifiable infectious disease to be an urgently notifiable infectious disease; or
  - (c) a notifiable infectious disease to be a vaccine preventable notifiable infectious disease.
- (3) A notifiable infectious disease that is declared to be —
- (a) an urgently notifiable infectious disease may also be declared to be a vaccine preventable notifiable infectious disease; and
  - (b) a vaccine preventable notifiable infectious disease may also be declared to be an urgently notifiable infectious disease.
- (4) If there is any conflict or inconsistency between a declaration by the regulations under subsection (1) and a declaration by the Minister under subsection (2), the Minister's declaration prevails.

**91. Declaration of notifiable infectious disease-related conditions**

- (1) The regulations may declare a medical condition, other than a notifiable infectious disease, to be a notifiable infectious disease-related condition.
- (2) A medical condition cannot be declared to be a notifiable infectious disease-related condition unless it is a medical condition that —
  - (a) is or may be caused by an infectious disease; or
  - (b) is or may be a complication arising from an infectious disease; or
  - (c) arises or may arise out of vaccination for an infectious disease.

**92. Orders by Minister**

- (1) In this section —

**order** means an order under section 90(2).
- (2) An order is subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (3) The *Interpretation Act 1984* section 42 applies to an order as if the order were regulations made under this Act.
- (4) An order comes into operation —
  - (a) on the day on which it is made; or
  - (b) on any later day specified in the order.
- (5) Despite subsection (2), the day on which an order comes into operation may be earlier than the day on which the order is published in the *Gazette*.
- (6) Unless sooner repealed, an order has effect for the period of 6 months, or any lesser period specified in the order, and expires at the end of that period.

## Division 2 — Notification

**93. Term used: responsible pathologist**

In this Division —

*responsible pathologist*, of a pathology laboratory, means the pathologist responsible for the day-to-day operations of the pathology laboratory.

**94. Notification of notifiable infectious diseases and notifiable infectious disease-related conditions**

- (1) If a medical practitioner or nurse practitioner forms the opinion that a patient of the practitioner has, or may have, a notifiable infectious disease or notifiable infectious disease-related condition, the practitioner must notify the Chief Health Officer.
- (2) If a medical practitioner conducts a post mortem examination of a body and forms the opinion that the deceased person had, or may have had, a notifiable infectious disease or notifiable infectious disease-related condition at the time of death, the medical practitioner must notify the Chief Health Officer.
- (3) If the analysis of a sample undertaken at a pathology laboratory indicates that the patient from whom the sample was taken has, or may have, a notifiable infectious disease or notifiable infectious disease-related condition, the responsible pathologist of that pathology laboratory must notify the Chief Health Officer.
- (4) Notification under this section must be given —
  - (a) as soon as is practicable, and in any event —
    - (i) in the case of an urgently notifiable infectious disease, within 24 hours; or
    - (ii) in the case of any other notifiable infectious disease or a notifiable infectious disease-related condition, within 72 hours;

and

- (b) in the approved form (if any).
- (5) Notification under this section, to the extent to which the medical practitioner, nurse practitioner or responsible pathologist has the information —
  - (a) must include the name of the notifiable infectious disease or notifiable infectious disease-related condition; and
  - (b) must include the following information, unless the regulations provide otherwise —
    - (i) the name, residential address, telephone numbers, email address, date of birth and gender of the patient;
    - (ii) the name, business address, telephone numbers and email address of the patient's medical practitioner or nurse practitioner;
  - and
  - (c) must include any other information prescribed by the regulations.
- (6) The information prescribed by the regulations for the purposes of subsection (5) may vary in respect of different notifiable infectious diseases or notifiable infectious disease-related conditions.

**95. Offence of failing to notify Chief Health Officer**

- (1) A person who fails to notify the Chief Health Officer in accordance with section 94 commits an offence.  
Penalty for an offence under this subsection: a fine of \$10 000.
- (2) In any proceedings against a person for an offence under subsection (1) of failing to notify the Chief Health Officer, it is a defence to prove that the person believed on reasonable grounds that another person had given the Chief Health Officer the required notification.

**96. No liability for notifying Chief Health Officer**

If a medical practitioner, nurse practitioner or responsible pathologist in good faith notifies the Chief Health Officer under section 94 —

- (a) no civil or criminal liability is incurred as a result of giving the notification; and
- (b) giving the notification is not to be regarded as —
  - (i) a breach of any duty of confidentiality or secrecy imposed by law; or
  - (ii) a breach of professional ethics, professional standards or any principles of conduct applicable to the person's employment; or
  - (iii) unprofessional conduct.

**Division 3 — Duty to inform**

**97. Practitioners to provide patients with information**

- (1) If a medical practitioner or nurse practitioner forms the opinion that a patient of the practitioner has a notifiable infectious disease or notifiable infectious disease-related condition, the practitioner, as well as complying with the notification requirements under Division 2, must give the patient information about the disease or condition.
- (2) The information to be given to the patient under subsection (1) is —
  - (a) in the case of a notifiable infectious disease, information about —
    - (i) the patient's obligations under section 88(2) to (4); and
    - (ii) the patient's rights under section 88(5); and
    - (iii) preventing the transmission of the disease to any other person;

- and
- (b) in the case of a notifiable infectious disease-related condition, information about the patient's rights under section 88(5); and
  - (c) information about the medical practitioner's or nurse practitioner's obligation under section 94 to notify the Chief Health Officer about the notifiable infectious disease or notifiable infectious disease-related condition; and
  - (d) any information prescribed by the regulations.
- (3) The information prescribed by the regulations for the purposes of subsection (2)(d) may vary in respect of different notifiable infectious diseases or notifiable infectious disease-related conditions.

**98. Offence of failing to provide patient with information**

- (1) A medical practitioner or nurse practitioner who, without reasonable excuse, fails to comply with the requirement in section 97 to give a patient of that practitioner the information required by subsection (2)(a)(i) or (iii) of that section commits an offence.

Penalty for an offence under this subsection: a fine of \$10 000.

- (2) In any proceedings against a person for an offence under subsection (1) of failing to give a patient the information required by section 97, it is a defence to prove that the person believed on reasonable grounds that another person had given the patient the required information.

**Division 4 — Test orders**

**99. Terms used**

In this Division —

*child* means a person who is under 16 years of age;

***incapable person*** means a person who is not a child and —

- (a) who for any reason is unable to give consent to being tested for a notifiable infectious disease; or
- (b) who is unconscious or otherwise unable —
  - (i) to understand a request made to give consent to being tested for a notifiable infectious disease; or
  - (ii) to communicate whether or not he or she consents to being tested for a notifiable infectious disease;

***protected person*** means —

- (a) a child; or
- (b) an incapable person;

***relative***, in relation to an incapable person, means a person who is —

- (a) related, by blood or marriage, to the incapable person; or
- (b) the incapable person's de facto partner;

***relevant counselling***, in relation to a notifiable infectious disease, means counselling —

- (a) that is given by a person whom the Chief Health Officer reasonably believes is suitably qualified and experienced; and
- (b) that provides information about —
  - (i) the risk of the transmission of the disease in the particular circumstances; and
  - (ii) the medical and social consequences of the transmission of the disease; and
  - (iii) how and where testing for the disease could be carried out;

***responsible person*** —

- (a) in relation to a child, means any of the following persons —

- (i) a parent of the child;
  - (ii) a guardian of the child;
  - (iii) another person who has responsibility for the day-to-day care of the child;
  - (iv) if no person mentioned in another subparagraph of this paragraph is available, a person, or a person in a class of persons, prescribed by the regulations for the purposes of this subparagraph;
- (b) in relation to an incapable person, means any of the following persons —
- (i) a relative of the incapable person;
  - (ii) if the incapable person is under 18 years of age, a guardian of the incapable person or another person who has responsibility for the day-to-day care of the incapable person;
  - (iii) a person who is a guardian of the incapable person under the *Guardianship and Administration Act 1990*;
  - (iv) a person who is an enduring guardian of the incapable person under the *Guardianship and Administration Act 1990* and is authorised to perform functions in relation to the incapable person in the circumstances in which this Division applies;
  - (v) a person recognised as the incapable person's representative under the *Disability Services Act 1993* section 32(2);
  - (vi) a person who is a carer (as defined in the *Carers Recognition Act 2004* section 4) in relation to the incapable person;



- (vii) if no person mentioned in another subparagraph of this paragraph is available, a person, or a person in a class of persons, prescribed by the regulations for the purposes of this subparagraph.

**100. Chief Health Officer may make test orders**

- (1) The Chief Health Officer may make a test order in respect of a person (the *relevant person*) if the Chief Health Officer reasonably believes that —
  - (a) an incident has occurred or a circumstance has arisen that could have resulted in —
    - (i) the relevant person, or biological material from the relevant person, directly or indirectly transmitting a notifiable infectious disease to another person; or
    - (ii) a notifiable infectious disease being transmitted to the relevant person;and
  - (b) the relevant person —
    - (i) has been given relevant counselling; or
    - (ii) has been offered relevant counselling, but has refused the offer or has failed to take up the offer within a reasonable time; or
    - (iii) is a protected person;and
  - (c) any of the following apply —
    - (i) if paragraph (b)(i) or (ii) applies, the relevant person has refused to be tested for the disease or has failed to be tested for the disease within a reasonable time;
    - (ii) if paragraph (b)(iii) applies, a person entitled to consent to the relevant person being tested for the disease has refused that consent or has failed

to give that consent within a reasonable time, after being given relevant counselling or, after having been offered relevant counselling, having refused or failed to take up the offer within a reasonable time;

- (iii) if paragraph (b)(iii) applies, it is not practicable in the circumstances to obtain, from someone else, consent to the relevant person being tested for the disease;

and

- (d) testing the relevant person for the disease is necessary for the purposes of determining what steps (if any) need to be taken with respect to the clinical or public health management and, if appropriate, treatment of the relevant person or another person.

- (2) The Chief Health Officer may make a test order in respect of a deceased person if the Chief Health Officer reasonably believes that —

- (a) either —

- (i) before or after the person's death, an incident has occurred or a circumstance has arisen that could have resulted in the deceased person, or biological material from the deceased person, directly or indirectly transmitting a notifiable infectious disease to another person; or

- (ii) before the person's death, an incident has occurred or a circumstance has arisen that could have resulted in a notifiable infectious disease being transmitted to the deceased person;

and

- (b) testing the deceased person for the disease is necessary for the purposes of determining what steps (if any) need to be taken with respect to —

- (i) the public health management of the deceased person; or
  - (ii) the clinical or public health management and, if appropriate, treatment of another person.
- (3) Before making a test order in respect of a deceased person, the Chief Health Officer must consult with the senior next of kin of the deceased, unless the Chief Health Officer reasonably believes that it is not practical in the circumstances to undertake that consultation.

**101. Process for making test order**

- (1) A test order must be in writing and must include the following —
- (a) details of the incident or circumstance to which the order relates;
  - (b) the name of the person to be tested under the order;
  - (c) if the person to be tested under the order is a protected person or a deceased person —
    - (i) in the case of a protected person, the name of a responsible person; or
    - (ii) in the case of a deceased person, the name of the person who has lawful custody of the deceased person's body;
  - (d) the name of the notifiable infectious disease for which the person is to be tested;
  - (e) the kind of sample to be obtained under the order;
  - (f) where and when the sample is to be obtained;
  - (g) a statement that section 109 confers a right to apply to the State Administrative Tribunal for a review of the decision to make the order;

- (h) a statement that the person who is required to comply or facilitate compliance with the order has the right to obtain legal advice and to communicate with a lawyer;
  - (i) a statement that force may be used to enforce the order;
  - (j) a warning that failure to comply or, as the case requires, facilitate compliance with the order is an offence.
- (2) A test order must be served personally on —
- (a) unless paragraph (b) or (c) applies, the person to be tested under the order; or
  - (b) if the person to be tested under the order is a protected person, the responsible person named in the order; or
  - (c) if the person to be tested under the order is a deceased person, the person who has lawful custody of the deceased person's body.
- (3) A test order may be made subject to any reasonable conditions that the Chief Health Officer considers appropriate and specifies in the order.
- (4) The Chief Health Officer may, by further order under section 100, vary or revoke a test order, and the variation or revocation of the order must be served personally on the person on whom the original order was served.
- (5) A test order, or a variation to a test order, does not take effect until it is served personally in accordance with subsection (2) or (4), as the case requires.

**102. Explanation of test order**

- (1) The Chief Health Officer must ensure that a person to be tested under a test order (other than a protected person or a deceased person) is informed in language likely to be readily understood by the person —
- (a) of the person's obligations under section 88(2) to (4);  
and

- (b) of the person's rights under section 88(5); and
  - (c) of the person's right under section 109 to apply to the State Administrative Tribunal for a review of the decision to make the order; and
  - (d) that the person has a right to obtain legal advice and to communicate with a lawyer; and
  - (e) about the purpose and effect of the order; and
  - (f) that force may be used to enforce the order; and
  - (g) that failure to comply with the order is an offence.
- (2) If the person to be tested under a test order is a protected person or a deceased person, the Chief Health Officer must ensure that a suitably modified version of the explanation required by subsection (1) is given to the person on whom the test order is served in accordance with section 101(2).
- (3) Subsections (1) and (2) apply with all necessary changes if a test order is varied.
- (4) Failure to comply with this section does not invalidate a test order.

**103. Effect of test orders**

- (1) A test order (other than an order that relates to a protected person or a deceased person) —
- (a) authorises a sample of the kind specified in the order to be obtained from the person in accordance with the order; and
  - (b) requires the person named in the order to give a sample of the kind specified in the order, or to submit to the taking of a sample of that kind, in accordance with the order.
- (2) A test order that relates to a protected person —

- (a) authorises a sample of the kind specified in the order to be obtained from the protected person in accordance with the order; and
  - (b) requires the responsible person named in the order to take all reasonable steps to enable that sample to be obtained or taken in accordance with the order.
- (3) A test order that relates to a deceased person —
- (a) authorises a sample of the kind specified in the order to be taken from the deceased person's body in accordance with the order; and
  - (b) requires the person who has lawful custody of the deceased person's body to take all reasonable steps to enable that sample to be taken in accordance with the order.
- (4) A test order also authorises the sample to be tested for the notifiable infectious disease named in the order.

**104. Offences of failing to comply with test order**

- (1) A person named in a test order who, without reasonable excuse, fails to comply with the requirement in section 103(1) to give a sample of the kind specified in the order, or to submit to the taking of a sample of that kind, in accordance with the order commits an offence.

Penalty for an offence under this subsection: a fine of \$50 000.

- (2) A responsible person named in a test order who, without reasonable excuse, fails to comply with the requirement in section 103(2)(b) to take all reasonable steps to enable a sample to be obtained or taken in accordance with the order commits an offence.

Penalty for an offence under this subsection: a fine of \$50 000.

- (3) A person who is named in a test order as the person who has lawful custody of a deceased person's body and who, without

reasonable excuse, fails to comply with the requirement in section 103(3)(b) to take all reasonable steps to enable a sample to be taken in accordance with the order commits an offence.

Penalty for an offence under this subsection: a fine of \$50 000.

**105. No payment may be required in relation to testing under test order**

Neither the Chief Health Officer nor any person acting on behalf of the Chief Health Officer, nor any person who obtains or takes a sample under a test order, may require any of the following persons to make any payment (whether in money or money's worth) for or in relation to the obtaining, taking or testing of a sample under a test order —

- (a) the person from whom the sample is obtained or taken;
- (b) if section 100(1)(b)(iii) applies to the person, any responsible person;
- (c) if the person from whom the sample is taken is a deceased person, the person who has lawful custody of the deceased person's body or the deceased person's estate.

**106. Enforcement of test orders**

- (1) An authorised officer may enforce a test order.
- (2) For the purposes of enforcing a test order, an authorised officer may request the assistance of a police officer.
- (3) An authorised officer or police officer may use reasonable force to enforce a test order, including, if necessary —
  - (a) to apprehend the person to be tested under the order (the **relevant person**) and detain the relevant person for as long as is reasonably necessary to enable the test order to be carried out; and
  - (b) to take the relevant person to the place where the test order is to be carried out; and

- (c) to restrain the relevant person to enable the sample that is the subject of the test order to be obtained or taken in accordance with section 110; and
- (d) to remove anything (including underwear) that the relevant person is wearing, if —
  - (i) the removal of the thing is reasonably necessary to enable the sample that is the subject of the test order to be obtained or taken; and
  - (ii) the relevant person is given a reasonable opportunity to remove the thing himself or herself, and refuses or fails to do so.
- (4) Without limiting subsection (3), the force that an authorised officer or police officer may use to enforce a test order includes any force that it is reasonably necessary to use in the circumstances to overcome any resistance to the enforcement of the test order (including the obtaining or taking of the sample that is the subject of the order) that is offered by the relevant person, or that the authorised officer or police officer reasonably suspects will be offered by the relevant person.
- (5) If any action taken under subsection (3) involves the removal of an item of clothing —
  - (a) it must be done with decency and sensitivity and in a manner that gives to the relevant person the degree of privacy and dignity that is consistent with carrying out the test order; and
  - (b) the authorised officer or police officer taking the action and any other person present while it is done (excluding the person who is obtaining or taking the sample that is the subject of the test order) must, if practicable, be of the same gender as the relevant person; and
  - (c) the number of people present while it is done (excluding a person who is present under paragraph (d)) must be no more than is reasonably necessary to ensure that the test



order is carried out effectively and to ensure the safety of all present; and

- (d) if the relevant person is a protected person, it must, if practicable, be done in the presence of a responsible person or some other person who can provide the protected person with support and represent his or her interests.

**107. Warrant to enforce test order**

- (1) If an authorised officer is satisfied that it is necessary to do so to enforce a test order, the authorised officer may apply to a magistrate —
  - (a) for a warrant for the apprehension of the person to be tested under the order; or
  - (b) if the person named in the order is a deceased person, for a warrant authorising entry to the place where the deceased person's body is reasonably believed to be.
- (2) The application —
  - (a) must be made in accordance with sections 247 and 248, and those sections apply with all necessary changes; and
  - (b) must be determined in private.
- (3) If the magistrate is satisfied that there are reasonable grounds for the application to have been made under subsection (1), the magistrate must issue a warrant accordingly.
- (4) The magistrate must cause a record to be made (on the warrant or otherwise) of the matters of fact on which the magistrate has relied to justify the issue of the warrant.
- (5) The warrant authorises the person specified in the warrant (and any police officer accompanying that person under section 108(1)(a)) —
  - (a) to enter, at any time, any place where the person (or as the case requires, the body of the deceased person) to be tested under the test order is reasonably believed to be, using any force that is reasonably necessary to do so; and
  - (b) to search the place for the purpose of finding the person or the person's body, as the case requires; and

- (c) if the person named in the order is not a deceased person, to apprehend the person and —
  - (i) to detain the person for as long as is reasonably necessary to enable the test order to be carried out; and
  - (ii) if necessary, to take that person to the place where the test order is to be carried out;and
- (d) if the person named in the order is a deceased person, to take possession of the body of the person and (if necessary) take it to a place to enable the test order to be carried out.

**108. Further provisions relating to warrant**

- (1) A person executing a warrant issued under section 107 who is not a police officer —
  - (a) may be accompanied by a police officer if necessary for the effective exercise of the powers conferred by the warrant and that section; and
  - (b) must produce the warrant for inspection by a person occupying the place concerned if asked by the person to do so.
- (2) The warrant remains in force —
  - (a) for the period (not exceeding 30 days) specified in the warrant as the period during which it remains in force; or
  - (b) if no period is so specified, for 30 days from the date of its issue.
- (3) However, the warrant ceases to be in force when it is executed.

**109. Review by State Administrative Tribunal**

- (1) A person who is named in a test order as the person to be tested under the order may apply to the State Administrative Tribunal for a review of the decision to make the order.
- (2) If a test order authorises a sample to be taken from a deceased person's body, any of the following persons may apply to the State Administrative Tribunal for a review of the decision to make the order —
  - (a) the person who has lawful custody of the deceased person's body;
  - (b) the senior next of kin of the deceased.
- (3) The State Administrative Tribunal must hear and determine the application as soon as is practicable.

**110. Obtaining or taking samples under test orders**

- (1) A sample that is the subject of a test order —
  - (a) may be obtained or taken only by a medical practitioner, nurse, midwife or other appropriately qualified person; and
  - (b) must be obtained or taken in accordance with accepted medical practice with respect to the obtaining or taking of a sample of that kind.
- (2) This section does not limit section 106.

**111. Test results to be reported**

- (1) If a sample that is the subject of a test order is tested for a notifiable infectious disease, the following persons must ensure that the results of the test are reported to the Chief Health Officer as soon as is practicable —
  - (a) if the sample is tested at a pathology laboratory, the responsible pathologist (as defined in section 93);

- (b) if paragraph (a) does not apply, the pathologist or other person who tested the sample;
  - (c) if the results of the test are reported to the medical practitioner, nurse, midwife or qualified person who took the sample, that medical practitioner, nurse, midwife or qualified person.
- (2) As soon as is practicable after receiving the test results, the Chief Health Officer must give notice of the test results to the following persons —
- (a) the person from whom the sample tested was obtained or taken, unless that person is a protected person or a deceased person;
  - (b) if the person from whom the sample tested was obtained or taken is a protected person, the responsible person named in the test order;
  - (c) if the person from whom the sample tested was taken is a deceased person —
    - (i) the person named in the test order as the person having lawful custody of the deceased person's body; or
    - (ii) if the deceased person died after the sample was taken, the senior next of kin of the deceased;
  - (d) any person to whom a notifiable infectious disease could have been transmitted, as referred to in section 100(1)(a) or (2)(a), but only if the information is necessary —
    - (i) for the clinical or public health management of that person; or
    - (ii) to inform that person that the test results were negative;
  - (e) any medical practitioner, nurse, midwife or other person who requires or might require the information for the purposes of —

- (i) the clinical or public health management of the person from whom the sample tested was obtained or taken or a person to whom paragraph (d) applies; or
- (ii) if the person from whom the sample tested was obtained or taken is a deceased person, the public health management of the deceased person.

**112. Person tested not to be identified**

- (1) When giving notice of test results to a person under section 111(2)(d), the Chief Health Officer —
  - (a) must not include any information that would identify the person from whom the sample tested was obtained or taken; and
  - (b) must warn the person given notice of the test results —
    - (i) of the obligation imposed by subsection (2); and
    - (ii) that breach of that obligation is an offence.
- (2) A person given notice of test results under section 111(2)(d) must not disclose, communicate or make a record of anything in those results that would identify the person from whom the sample tested was obtained or taken.

Penalty for an offence under this subsection: a fine of \$20 000.

**113. No liability for reporting test results**

If a responsible pathologist, pathologist, medical practitioner, nurse, midwife, qualified person or other person in good faith reports to the Chief Health Officer under section 111(1) the results of a test —

- (a) no civil or criminal liability is incurred as a result of making that report; and
- (b) making the report is not to be regarded as —
  - (i) a breach of any duty of confidentiality or secrecy imposed by law; or

- (ii) a breach of professional ethics or standards or any principles of conduct applicable to the person's employment; or
- (iii) unprofessional conduct.

**114. Division not limited by *Mandatory Testing (Infectious Diseases) Act 2014***

Nothing in the *Mandatory Testing (Infectious Diseases) Act 2014* limits or affects this Division.

**Division 5 — Public health orders**

**115. Terms used**

In this Division —

***child*** means a person who is under 18 years of age;

***disability*** has the meaning given in the *Disability Services Act 1993* section 3;

***incapable person*** means a person who is not a child and who has a disability that impairs the person's capacity to make decisions;

***protected person*** means —

- (a) a child; or
- (b) an incapable person;

***relative***, in relation to an incapable person, means a person who is —

- (a) related, by blood or marriage, to the incapable person; or
- (b) the incapable person's de facto partner;

***responsible person*** —

- (a) in relation to a child, means any of the following persons —
  - (i) a parent of the child;
  - (ii) a guardian of the child;

- (iii) another person who has responsibility for the day-to-day care of the child;
- (iv) if no person mentioned in another subparagraph of this paragraph is available, a person, or a person in a class of persons, prescribed by the regulations for the purposes of this subparagraph;
- (b) in relation to an incapable person, means any of the following persons —
  - (i) a relative of the incapable person;
  - (ii) a person who is a guardian of the incapable person under the *Guardianship and Administration Act 1990*;
  - (iii) a person who is an enduring guardian of the incapable person under the *Guardianship and Administration Act 1990* and is authorised to perform functions in relation to the incapable person in the circumstances in which this Division applies;
  - (iv) a person recognised as the incapable person's representative under the *Disability Services Act 1993* section 32(2);
  - (v) a person who is a carer (as defined in the *Carers Recognition Act 2004* section 4) in relation to the incapable person;
  - (vi) if no person mentioned in another subparagraph of this paragraph is available, a person, or a person in a class of persons, prescribed by the regulations for the purposes of this subparagraph.

**116. Chief Health Officer may make public health orders**

- (1) The Chief Health Officer may make a public health order in respect of a person if the Chief Health Officer reasonably believes that —
  - (a) the person —



- (i) has a notifiable infectious disease; or
  - (ii) has been exposed to a notifiable infectious disease, and may develop that disease;
- and
- (b) the person is behaving, or may behave, in a way that (if the person has or develops the disease) will transmit, or is likely to transmit, the disease to another person; and
  - (c) there is a material public health risk; and
  - (d) any of the following applies —
    - (i) the person has been given counselling;
    - (ii) reasonable attempts have been made to give the person counselling;
    - (iii) it is not practicable to give the person counselling before making the order;
- and
- (e) making a public health order is necessary to prevent or minimise the material public health risk posed by the person.
- (2) A public health order must —
- (a) be in writing in the approved form; and
  - (b) name the person to whom it applies; and
  - (c) name the notifiable infectious disease the person is believed to have or to which the person is believed to have been exposed, as the case requires; and
  - (d) set out the details of what the order requires the person to whom it applies to do or refrain from doing; and
  - (e) give details of the circumstances that the Chief Health Officer considers justify making the order; and
  - (f) set out the following information —
    - (i) an explanation of the person's obligations under section 88(2) to (4);

- (ii) an explanation of the person's rights under section 88(5);
    - (iii) a statement that the person has the right under section 127 to apply to the State Administrative Tribunal for a review of the decision to make the order;
    - (iv) a statement that the person has the right to obtain legal advice and to communicate with a lawyer;
  - and
  - (g) state that force may be used to enforce the order; and
  - (h) contain a warning that failure to comply with the order is an offence; and
  - (i) include any matters prescribed by the regulations.
- (3) When making a public health order, the Chief Health Officer must take into account the principle that any requirement of the order restricting the liberty of the person to whom the order applies should be imposed only if it is the only effective way to ensure that public health is not endangered or likely to be endangered.
- (4) A public health order may include ancillary or incidental directions and may be made subject to any reasonable conditions that the Chief Health Officer considers appropriate and specifies in the order.
- (5) The Chief Health Officer may, by further order under this section, vary or revoke a public health order.

**117. Effect of public health orders**

- (1) A public health order may require the person to whom it applies to do one or more of these —
- (a) to refrain from specified conduct, either absolutely or unless specified conditions are satisfied;

- (b) to refrain from carrying out specified activities (for example, without limitation, employment, use of public transport or participation in certain events), either absolutely or unless specified conditions are satisfied;
  - (c) to undergo counselling by a specified person or one or more persons within a specified class of persons;
  - (d) to refrain from visiting a specified place, or a place within a specified class of places, either absolutely or unless specified conditions are satisfied;
  - (e) to refrain from associating with specified persons or specified classes of persons, either absolutely or unless specified conditions are satisfied;
  - (f) to submit to specified supervision;
  - (g) to undergo a specified medical examination, or specified medical treatment, at a specified time and place;
  - (h) to take specified action to prevent or minimise the public health risk posed by the person;
  - (i) to reside at a specified place and, if considered to be appropriate by the Chief Health Officer, to remain isolated at that place;
  - (j) to submit to being detained at a specified place for the purpose of undergoing a medical examination or medical treatment;
  - (k) to submit to being detained or isolated, or detained and isolated, at a specified place.
- (2) A public health order that requires a person to undergo a medical examination authorises —
- (a) the carrying out of that medical examination in accordance with the order; and
  - (b) the testing of any sample obtained or taken in connection with that medical examination.

- (3) A public health order that requires a person to undergo medical treatment authorises —
  - (a) the giving of medical treatment to that person in accordance with the order; and
  - (b) the testing of any sample obtained or taken in connection with that medical treatment.
- (4) Subsections (2) and (3) do not limit what a person can do for the purposes of, or in connection with, the enforcement or administration of a public health order.

**118. Personal service of orders required**

- (1) A public health order, and any variation to or revocation of a public health order, must be served personally on the person to whom it applies.
- (2) However, if the person to whom the public health order applies is a protected person, the public health order, and any variation to or revocation of the order, must be served personally on a responsible person.
- (3) A public health order, or a variation to or revocation of a public health order, does not take effect until it is served personally in accordance with subsection (1) or (2), as the case requires.

**119. Explanation of public health order**

- (1) The Chief Health Officer must ensure that a person to whom a public health order applies is informed in language likely to be readily understood by the person —
  - (a) of the person's obligations under section 88(2) to (4); and
  - (b) of the person's rights under section 88(5); and
  - (c) of the person's right under section 127 to apply to the State Administrative Tribunal for a review of the decision to make the order; and

- (d) that the person has the right to obtain legal advice and to communicate with a lawyer; and
  - (e) about the purpose and effect of the order; and
  - (f) that force may be used to enforce the order; and
  - (g) that failure to comply with the order is an offence.
- (2) If the person to whom a public health order applies is a protected person —
- (a) a suitably modified version of the explanation required by subsection (1) is also to be given to the responsible person on whom the order is personally served in accordance with section 118(2); and
  - (b) without limiting paragraph (a), the explanation must also inform the responsible person of his or her obligations under section 123.
- (3) This section applies, with all necessary changes, to a variation to a public health order.
- (4) Failure to comply with this section does not invalidate a public health order.

**120. Provisions applying if person detained under public health order**

- (1) If a person is detained under section 117(1)(j) or (k) —
- (a) the Chief Health Officer must review the person's detention at intervals not greater than 28 days to determine whether the detention of the person continues to be required; and
  - (b) the person is entitled to obtain legal advice and to communicate with a lawyer; and
  - (c) if the detained person is a protected person, the person is entitled to be represented by a responsible person.

- (2) The Chief Health Officer must ensure that a person who is detained under section 117(1)(j) or (k) is immediately released from that detention if —
- (a) following a review under subsection (1)(a), the Chief Health Officer determines that the detention of the person is no longer required; or
  - (b) in the case of a person who is detained under section 117(1)(j), the medical examination or medical treatment for which the person was detained has been completed; or
  - (c) for any other reason, the detention of the person under the public health order is no longer required.

**121. Minister to be informed of detention or release from detention under public health order**

- (1) The Chief Health Officer must give written notice to the Minister —
- (a) that a person has been detained under section 117(1)(j) or (k); or
  - (b) that following a review under section 120(1)(a), a person is to continue to be detained under section 117(1)(j) or (k); or
  - (c) that a person detained under section 117(1)(j) or (k) has been released from detention.
- (2) A notice under subsection (1) —
- (a) must be given as soon as is practicable; and
  - (b) must include —
    - (i) an identifier (for example a number or code) that uniquely identifies the person detained without disclosing their identity; and
    - (ii) the reasons for the detention, continued detention or release from detention, of the person.

**122. Offence to fail to comply with public health order**

A person in relation to whom a public health order is in effect must not, without reasonable excuse, fail to comply with the order.

Penalty: imprisonment for 12 months or a fine of \$50 000.

**123. Responsible persons to facilitate compliance with public health order**

- (1) If a public health order is personally served on a responsible person in accordance with section 118(2), the responsible person must take all reasonable steps to ensure that the person in relation to whom the public health order is in effect complies with the order.
- (2) A responsible person who, without reasonable excuse, fails to comply with the requirement in subsection (1) commits an offence.

Penalty for an offence under this subsection: a fine of \$50 000.

**124. Enforcement of public health orders**

- (1) An authorised officer may enforce a public health order.
- (2) For the purposes of enforcing a public health order, an authorised officer may request the assistance of a police officer.
- (3) An authorised officer or police officer may use reasonable force to enforce a public health order, including, if necessary —
  - (a) to apprehend and detain the person to whom the order applies (the *relevant person*) and take the relevant person to —
    - (i) a place where a medical examination or medical treatment is to be carried out in accordance with the order; or
    - (ii) the place where the relevant person is required under the order to be;

and

- (b) to detain the relevant person at the place where he or she is required under the order to be; and
  - (c) to restrain the relevant person to enable a medical examination or medical treatment to be carried out; and
  - (d) to remove anything (including underwear) that the relevant person is wearing, if —
    - (i) the removal of the thing is reasonably necessary to enable a medical examination or medical treatment to be carried out; and
    - (ii) the relevant person is given a reasonable opportunity to remove the thing himself or herself, and refuses or fails to do so.
- (4) Without limiting subsection (3), the force that an authorised officer or police officer may use to enforce a public health order includes any force that it is reasonably necessary to use in the circumstances to overcome any resistance to the enforcement of the public health order (including enabling a medical examination or medical treatment to be carried out) that is offered by the relevant person, or that the authorised officer or police officer reasonably suspects will be offered by the relevant person.
- (5) If any action taken under subsection (3) involves the removal of an item of clothing —
- (a) it must be done with decency and sensitivity and in a manner that gives to the relevant person the degree of privacy and dignity that is consistent with carrying out the public health order; and
  - (b) the authorised officer or police officer taking the action and any other person present while it is done (excluding any person who is carrying out any medical examination or medical treatment) must, if practicable, be of the same gender as the relevant person; and



- (c) the number of people present while it is done (excluding a person who is present under paragraph (d)) must be no more than is reasonably necessary to ensure that the public health order is carried out effectively and to ensure the safety of all present; and
- (d) if the relevant person is a protected person, it must, if practicable, be done in the presence of a responsible person or some other person who can provide the protected person with support and represent his or her interests.

**125. Warrant to apprehend person to whom public health order applies**

- (1) If an authorised officer is satisfied that it is necessary to do so to enforce a public health order, the authorised officer may apply to a magistrate for a warrant for the apprehension of the person to whom the order applies.
- (2) The application —
  - (a) must be made in accordance with sections 247 and 248, and those sections apply with all necessary changes; and
  - (b) must be determined in private.
- (3) If the magistrate is satisfied that there are reasonable grounds for the application to have been made under subsection (1), the magistrate must issue a warrant for the apprehension of the person to whom the public health order applies.
- (4) The magistrate must cause a record to be made (on the warrant or otherwise) of the matters of fact on which the magistrate has relied to justify the issue of the warrant.
- (5) The warrant authorises the person specified in the warrant (and any police officer accompanying that person under section 126(1)(a)) —
  - (a) to enter, at any time, any place where the person to whom the public health order applies is reasonably

believed to be, using any force that is reasonably necessary to do so; and

- (b) to search the place for the purpose of finding the person; and
- (c) to apprehend the person and take the person to a place to be dealt with in accordance with the public health order.

**126. Further provisions relating to warrant**

- (1) A person executing a warrant issued under section 125 who is not a police officer —
  - (a) may be accompanied by a police officer if necessary for the effective exercise of the powers conferred by the warrant and that section; and
  - (b) must produce the warrant for inspection by a person occupying the place concerned if asked by the person to do so.
- (2) The warrant remains in force —
  - (a) for the period (not exceeding 30 days) specified in the warrant as the period during which it remains in force; or
  - (b) if no period is so specified, for 30 days from the date of its issue.
- (3) However, the warrant ceases to be in force when it is executed.

**127. Review by State Administrative Tribunal**

- (1) A person to whom a public health order applies (the *applicant*) may apply to the State Administrative Tribunal for a review of —
  - (a) the decision to make the order; or
  - (b) if the order is varied under section 116(5), the decision to vary the order.

- (2) The State Administrative Tribunal must hear and determine the application as a matter of priority and urgency.
- (3) Without limiting the matters that the State Administrative Tribunal may consider in determining the application, the State Administrative Tribunal must consider —
  - (a) the method by which the notifiable infectious disease named in the public health order is transmitted; and
  - (b) the seriousness of the risk that the applicant may transmit that disease to other people; and
  - (c) the past behaviour and likely behaviour of the applicant; and
  - (d) the extent of the restrictions imposed on the applicant.

**128. Restriction on making of further public health order**

- (1) This section applies to a person in respect of whom a public health order is made if the order ceases to have effect —
  - (a) as the result of being revoked by a further order made under section 116; or
  - (b) as the result of —
    - (i) the decision of the State Administrative Tribunal on a review under section 127; or
    - (ii) an appeal from that decision.
- (2) A further public health order may be made in respect of a person to whom this section applies only if the Chief Health Officer reasonably believes that, since the earlier public health order ceased to have effect, there has been a change in the person's health or behaviour that increases the risk of the person transmitting a notifiable infectious disease to another person.

**129. Recognition of interstate public health orders**

- (1) In this section —
- corresponding law* means a provision of a law of another State, a Territory or the Commonwealth that is prescribed by the regulations to be a corresponding law for the purposes of this section;
- order* includes a notice, requirement or direction.
- (2) This section applies if —
- (a) a person is subject to an order under a corresponding law; and
  - (b) the terms of the order provide for matters that could be the subject (wholly or substantially) of a public health order under this Division; and
  - (c) the person enters this State.
- (3) If this section applies, the order to which the person is subject operates in this State, in accordance with this section, as if it were a public health order made under this Division, but with the following modifications —
- (a) the order has the terms set out in the order or applying to it under the law of the jurisdiction in which it was made, with any variations made under subsection (5)(a) or section 116(5);
  - (b) section 127(1)(a) does not apply.
- (4) An order that operates in this State under subsection (3) has no effect until a copy of the order (with or without any variations made under subsection (5)(a)) is served personally in accordance with section 118(1) or (2).
- (5) If an order operates in this State under subsection (3) —
- (a) the Chief Health Officer may, by written notice served in accordance with section 130(2), vary the order as it

operates in this State, but only to the extent reasonably necessary for its effective operation in this State; and

- (b) the order ceases to operate in this State if —
- (i) the order expires or is revoked under the corresponding law; or
  - (ii) the Chief Health Officer revokes the order under section 116(5).

**130. Further provisions applying to interstate public health orders operating in this State**

- (1) Section 119 applies, with all necessary changes, to an order to which section 129 applies as if the order were a public health order made under this Division.
- (2) If a notice is given under section 129(5)(a) varying an order to which section 129 applies —
  - (a) sections 118 and 119 apply, with all necessary changes, to the notice; and
  - (b) the person who is subject to the order may apply to the State Administrative Tribunal under section 127(1)(b) as if the order had been varied under section 116(5).
- (3) The variation, under section 129(5)(a), of an order to which section 129 applies does not prevent the order being varied under section 116(5).
- (4) The fact that an order to which section 129 applies has ceased to operate in this State does not prevent a public health order subsequently being made under this Division in relation to the same person.

**Division 6 — Reporting requirements**

**131. Annual report to include information about test orders and public health orders**

- (1) The accountable authority of the Department must include the following information in each annual report submitted under the *Financial Management Act 2006* Part 5 —
  - (a) information about the number and the types of orders made by the Chief Health Officer under Division 4 or 5 in the financial year to which the annual report relates, and the reasons for making those orders;

- (b) information about the number of orders to which section 129 applies that began to operate in this State as public health orders in the financial year to which the annual report relates, and the reasons for taking steps to make the orders operational in this State.
- (2) The information included in an annual report under subsection (1) must not include any information that identifies, or is likely to identify, any person in respect of whom an order referred to in that subsection was made or relates.

### **Division 7 — Identifying and informing contact persons**

#### **132. Terms used**

In this Division —

***affected person*** —

- (a) means a person who has, or who is reasonably believed to have, a notifiable infectious disease; and
- (b) includes a deceased person who had, or who is reasonably believed to have had, a notifiable infectious disease at the time of his or her death;

***child*** means a person who is under 18 years of age;

***contact person*** —

- (a) in relation to an affected person, means —
  - (i) a person (including a deceased person) who was, or who may have been, a source of the affected person's notifiable infectious disease; or
  - (ii) a person (including a deceased person) who has been, or who may have been, exposed to a notifiable infectious disease by the affected person;
- (b) in relation to an exposed person, means —

- (i) a person (including a deceased person) who exposed, or who may have exposed, the exposed person to a notifiable infectious disease; or
- (ii) a person (including a deceased person) who has been, or who may have been, exposed to a notifiable infectious disease by the exposed person;

***exposed person*** —

- (a) means a person who has been, or who may have been, exposed to a notifiable infectious disease; and
- (b) includes a deceased person who, before his or her death, was or may have been exposed to a notifiable infectious disease;

***relative*** —

- (a) in relation to an affected person or an exposed person, means a person who is —
    - (i) related, by blood or marriage, to the affected person or exposed person; or
    - (ii) the affected person's or exposed person's de facto partner;
- and
- (b) in relation to an affected person or exposed person who is deceased, includes a person who, immediately before the affected person's or exposed person's death, was a person referred to in paragraph (a)(i) or (ii);

***required information*** means the information required by section 133(1) or 134(1), as the case requires.

**133. Requiring information where person believed to have notifiable infectious disease**

- (1) If an authorised officer reasonably believes that a person has a notifiable infectious disease, the authorised officer may require



the affected person to give the authorised officer the following information —

- (a) the affected person's name, residential address, telephone numbers, email address, date of birth and gender;
  - (b) information about any circumstances in which the affected person may have acquired, or been exposed to, the notifiable infectious disease;
  - (c) information about any circumstances in which the affected person may have exposed another person to the notifiable infectious disease;
  - (d) the name, residential address, telephone numbers, email address, date of birth and gender of any person the authorised officer reasonably believes is a contact person in relation to the affected person;
  - (e) any other information prescribed by the regulations.
- (2) The information prescribed by the regulations for the purposes of subsection (1)(e) may vary in respect of different notifiable infectious diseases.

**134. Requiring information where person believed to have been exposed to notifiable infectious disease**

- (1) If an authorised officer reasonably believes that a person has been, or may have been, exposed to a notifiable infectious disease, the authorised officer may require the exposed person to give the authorised officer the following information —
- (a) the exposed person's name, residential address, telephone numbers, email address, date of birth and gender;
  - (b) information about any circumstances in which the exposed person may have been exposed to the notifiable infectious disease;

- (c) information about any circumstances in which the exposed person may have exposed another person to the notifiable infectious disease;
  - (d) the name, residential address, telephone numbers, email address, date of birth and gender of any person the authorised officer reasonably believes is a contact person in relation to the exposed person;
  - (e) any other information prescribed by the regulations.
- (2) The information prescribed by the regulations for the purposes of subsection (1)(e) may vary in respect of different notifiable infectious diseases.

**135. Requiring other persons to give required information**

- (1) This section applies if an authorised officer reasonably believes that a person is an affected person or an exposed person, and —
- (a) the affected person or exposed person, as the case requires —
    - (i) is a child; or
    - (ii) is dead; or
    - (iii) for any other reason does not have the capacity to provide the required information;
- or
- (b) the authorised officer, after making reasonable efforts, has been unable to identify or contact the affected person or exposed person.
- (2) If this section applies, the authorised officer may require any of the following persons to give the required information in relation to the affected person or the exposed person, as the case requires —
- (a) if the affected person or exposed person is a child, a parent or guardian of the child;

- (b) if the affected person or exposed person is believed to be attending, or to have attended, a school, university or other educational institution, a teacher, lecturer, or other member of staff of the school, university or institution;
- (c) a relative of the affected person or exposed person;
- (d) the affected person's or exposed person's employer or former employer;
- (e) any other person the authorised officer reasonably believes may be able to provide the required information.

**136. Authorised officer to produce evidence of authority**

- (1) An authorised officer may exercise the power in section 133, 134 or 135 in relation to another person only if —
  - (a) the authorised officer —
    - (i) first produces evidence of his or her designation as an authorised officer; or
    - (ii) has evidence of his or her designation as an authorised officer displayed so that it is clearly visible to the other person;
  - and
  - (b) the authorised officer first explains to the person that the required information is needed to attempt to prevent or minimise the spread of the notifiable infectious disease.
- (2) However, if for any reason it is not practicable for an authorised officer to comply with a requirement specified in subsection (1) before exercising the power, the authorised officer must comply with that requirement as soon as it is practicable.

**137. Offence to fail to comply with requirement to provide information**

- (1) A person must not, without reasonable excuse, fail to comply with a requirement made by an authorised officer under section 133(1), 134(1) or 135(2).

Penalty for an offence under this subsection: a fine of \$10 000.

- (2) Subsection (1) does not apply unless, when the authorised officer makes the requirement, the authorised officer informs the person that a failure to comply with the requirement may constitute an offence.

**138. Protection from liability**

If a person is required under section 133(1), 134(1) or 135(2) to give information to an authorised officer and gives that information in good faith —

- (a) no civil or criminal liability is incurred in respect of giving the information; and
- (b) giving the information is not to be regarded as —
  - (i) a breach of any duty of confidentiality or secrecy imposed by law; or
  - (ii) a breach of professional ethics, professional standards or any principles of conduct applicable to the person's employment; or
  - (iii) unprofessional conduct.

**139. Informing contact persons**

- (1) This section applies if —
- (a) the Chief Health Officer is notified under section 94 that a contact person may be the source of, or may have been exposed to, a notifiable infectious disease; or
  - (b) in response to a requirement made under section 133(1), 134(1) or 135(2), an authorised officer

receives information that a contact person may be the source of, or may have been exposed to, a notifiable infectious disease.

- (2) If this section applies, the Chief Health Officer or, as the case requires, the authorised officer may take reasonable steps to ensure —
- (a) that the contact person is informed that he or she may be the source of, or may have been exposed to, a notifiable infectious disease; and
  - (b) that the contact person is provided with information about the disease, including information about —
    - (i) the contact person's obligations under section 88(2) to (4); and
    - (ii) the contact person's rights under section 88(5); and
    - (iii) preventing the transmission of the disease to any other person;
- and
- (c) that the contact person is tested and, if necessary, treated for the disease.
- (3) In determining whether or not to take steps under subsection (2) and, if steps are to be taken, what steps, the Chief Health Officer or, as the case requires, the authorised officer must have regard to —
- (a) the degree of the risk of the contact person having the notifiable infectious disease or, as the case requires, having contracted, or contracting, the disease; and
  - (b) any guidelines issued by the Chief Health Officer under section 140; and
  - (c) any other relevant circumstances.
- (4) Without limiting subsection (2), the steps that the Chief Health Officer or authorised officer may take include requesting any of

the following persons to do one or more of the things referred to in that subsection —

- (a) a medical practitioner;
  - (b) a nurse practitioner;
  - (c) any other person whom the Chief Health Officer or authorised officer considers appropriate in the circumstances.
- (5) If the contact person is a child or a person who for any other reason does not have the capacity to understand the information that would otherwise be provided to them under subsection (2)(a) or (b), the Chief Health Officer or, as the case requires, the authorised officer may take steps under subsection (2) to ensure that the information is instead provided to —
- (a) if the contact person is a child, a parent or guardian of the child; or
  - (b) in any other case, a person who is a carer (as defined in the *Carers Recognition Act 2004* section 4) in relation to the contact person.

**140. Chief Health Officer may issue guidelines**

- (1) The Chief Health Officer may issue guidelines in relation to the taking of steps under section 139 to do the things referred to in subsection (2) of that section.
- (2) Without limiting subsection (1), guidelines issued under this section may provide guidance about —
  - (a) the circumstances in which it may or may not be appropriate to request another person to do those things; and
  - (b) any follow-up action that should be taken if another person is requested to do those things.

**141. Protection from liability**

- (1) This section applies if —
- (a) the Chief Health Officer or an authorised officer is authorised under section 139 to take steps to ensure that a contact person (or if section 139(5) applies, some other person) is informed that the contact person may be the source of, or may have been exposed to, a notifiable infectious disease, and either —
    - (i) himself or herself gives that information to the contact person or other person; or
    - (ii) requests another person under section 139(4) to inform the contact person or other person, and gives the person so requested information about the contact person;
- or
- (b) a medical practitioner, nurse practitioner or other person is requested under section 139(4) to inform a contact person or other person that the contact person may be the source of, or may have been exposed to, a notifiable infectious disease.
- (2) If this section applies, and the Chief Health Officer, authorised officer, medical practitioner, nurse practitioner or other person gives the relevant information in good faith —
- (a) no civil or criminal liability is incurred in respect of giving the information; and
  - (b) giving the information is not to be regarded as —
    - (i) a breach of any duty of confidentiality or secrecy imposed by law; or
    - (ii) a breach of professional ethics, professional standards or any principles of conduct applicable to the person's employment; or
    - (iii) unprofessional conduct.

**Division 8 — Regulations relating to immunisation status of children**

**142. Regulations relating to immunisation status of children**

(1) In this section —

*child* means a person who is under 18 years of age;

*immunisation status*, of a child, means the status of —

- (a) having been immunised against, or having acquired immunity by infection from, all or specified vaccine preventable notifiable infectious diseases; or
- (b) not having been immunised against, and not having acquired immunity by infection from, all or specified vaccine preventable notifiable infectious diseases;

*person in charge*, of a school, means the person who has responsibility for the day-to-day management and control of the school.

(2) Without limiting section 304(1), regulations may be made under that subsection —

- (a) requiring information about a child's immunisation status to be given to the person in charge of a school at which the child is to be enrolled or re-enrolled;
- (b) requiring the person in charge of a school to retain for a specified period information about the immunisation status of a child enrolled at the school;
- (c) requiring information given to the person in charge of a school about a child's immunisation status to be kept confidential and stored securely;
- (d) requiring the person in charge of a school, when directed to do so by the Chief Health Officer, to give a report to the Chief Health Officer in respect of information given to the person about the immunisation status of —
  - (i) a child enrolled at the school; or



- (ii) children enrolled at the school;
- (e) requiring the person in charge of a school to give a report to the Chief Health Officer in respect of any child at the school who contracts a vaccine preventable notifiable infectious disease;
- (f) requiring the person in charge of a school, when directed to do so by the Chief Health Officer, to ensure that a child who has not been immunised against a vaccine preventable notifiable infectious disease specified by the Chief Health Officer is not permitted to attend the school for the period specified by the Chief Health Officer;
- (g) requiring the person in charge of a school, when directed to do so by the Chief Health Officer, to close the school for the period specified by the Chief Health Officer to limit or prevent the spread of a vaccine preventable notifiable infectious disease.

### **Division 9 — Advisory Panels**

#### **143. Term used: Advisory Panel**

In this Division —

*Advisory Panel* means a Case Management and Coordination Advisory Panel established under section 144(1).

#### **144. Advisory Panels**

- (1) The Chief Health Officer may establish one or more Case Management and Coordination Advisory Panels.
- (2) The function of an Advisory Panel is to advise the Chief Health Officer on the management of a person who has, or a group of persons who have, a notifiable infectious disease (whether or not a public health order applies to the person or persons).
- (3) An Advisory Panel is to consist of —

- (a) a lawyer; and
  - (b) a person who is considered by the Chief Health Officer to be an expert in infectious diseases; and
  - (c) a person who is considered by the Chief Health Officer to have knowledge of, and experience in representing, community or consumer interests; and
  - (d) any other person who is considered by the Chief Health Officer to be an appropriate member of the Advisory Panel.
- (4) The members of an Advisory Panel are appointed by the Chief Health Officer, on terms and conditions determined by the Chief Health Officer.
- (5) The Chief Health Officer may determine, after consultation with the Minister for Public Sector Management, any remuneration and allowances to be paid to members of an Advisory Panel.

**145. Performance of functions and procedures**

- (1) An Advisory Panel must perform its functions —
- (a) in accordance with any written direction given by the Chief Health Officer as to the scope or performance of its functions in the circumstances of the particular case; and
  - (b) in accordance with any protocols determined under section 146.
- (2) Subject to this Division and the regulations (if any), an Advisory Panel may regulate its own procedure in whatever manner it thinks fit.

**146. Protocols**

- (1) The Chief Health Officer may, in writing, determine protocols that must be complied with by Advisory Panels in the performance of their functions.

- (2) The Chief Health Officer must make any protocols determined under this section publicly available without charge.
- (3) The Chief Health Officer may comply with subsection (2) in any way the Chief Health Officer considers appropriate, including (without limitation) by arranging for the protocols to be made available on a website maintained by or on behalf of the Department.

**147. Access to information**

- (1) Information (including confidential information) may be disclosed to an Advisory Panel in connection with the performance of its functions.
- (2) If a person discloses information to an Advisory Panel under subsection (1) —
  - (a) no civil or criminal liability is incurred as a result of disclosing the information; and
  - (b) disclosing the information is not to be regarded as —
    - (i) a breach of any duty of confidentiality or secrecy imposed by law; or
    - (ii) a breach of professional ethics, professional standards or any principles of conduct applicable to the person's employment; or
    - (iii) unprofessional conduct.
- (3) A member of an Advisory Panel must not make use of or disclose information gained as a result of, or in connection with, the functions of the Advisory Panel except —
  - (a) to the extent necessary for the proper performance of those functions; or
  - (b) as required or authorised under a written or other law; or
  - (c) to a court or tribunal in the course of legal proceedings; or

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- (d) in accordance with an order made, or a subpoena issued, by a court or tribunal; or
- (e) to the extent allowed by the regulations.

Penalty for an offence under this subsection: a fine of \$20 000.

*[Part 10 has not come into operation <sup>2</sup>.]*

## **Part 11 — Serious public health incident powers**

### **Division 1 — Authorisation to exercise serious public health incident powers**

**152. Authorisation to exercise serious public health incident powers**

- (1) The Chief Health Officer may, for the purposes of preventing, controlling or abating a serious public health risk, authorise an authorised officer to exercise any of the serious public health incident powers.
- (2) The serious public health incident powers conferred on an authorised officer by an authorisation under subsection (1) are in addition to, and do not limit —
  - (a) the powers conferred on the person as an authorised officer under Part 16; or
  - (b) the powers the person may have under another written law or other law.
- (3) The Chief Health Officer may vary or revoke an authorisation under subsection (1).

**153. Authorisation to state certain matters**

An authorisation under section 152(1) must —

- (a) state that the authorisation is given under this Division; and
- (b) generally describe the serious public health risk to which it relates; and
- (c) if the serious public health risk has arisen, name or describe the place at which the serious public health risk has arisen; and
- (d) specify the time at which the authorisation is given; and

- (e) specify the serious public health incident powers that may be exercised under the authorisation; and
- (f) specify the period during which the authorisation continues in force.

**154. Authorisation may be given orally or in writing**

- (1) In this section —  
*authorisation* means an authorisation under section 152(1) or the variation or revocation of an authorisation under section 152(3).
- (2) An authorisation may be given orally or in writing.
- (3) If the authorisation is given orally, the Chief Health Officer must confirm it in writing as soon as is practicable.

**Division 2 — Serious public health incident powers**

**155. Terms used**

In this Division —

*child* means a person who is under 18 years of age;

*disability* has the meaning given in the *Disability Services Act 1993* section 3;

*impaired person* means a person who has a disability that impairs the person's capacity to make decisions;

*relative*, in relation to an impaired person, means a person who is —

- (a) related, by blood or marriage, to the impaired person; or
- (b) the impaired person's de facto partner;

*responsible person*, in relation to an impaired person, means —

- (a) a relative of the impaired person; or
- (b) a person who is a guardian of the impaired person under the *Guardianship and Administration Act 1990*; or

- (c) a person who is an enduring guardian of the impaired person under the *Guardianship and Administration Act 1990* and is authorised to perform functions in relation to the impaired person in the circumstances in which this Division applies; or
- (d) a person recognised as the impaired person's representative under the *Disability Services Act 1993* section 32(2); or
- (e) a person who is a carer (as defined in the *Carers Recognition Act 2004* section 4) in relation to the impaired person; or
- (f) a person, or a person in a class of persons, prescribed by the regulations for the purposes of this definition.

**156. Operation of this Division**

- (1) A person may exercise a power conferred on an authorised officer under this Division if the person is authorised by the Chief Health Officer to exercise the power under section 152(1).
- (2) However, the power can be exercised only —
  - (a) if the serious public health risk to which the authorisation relates has arisen; and
  - (b) while that serious public health risk continues.
- (3) Subsection (2) does not limit section 190(1)(p).

**157. Serious public health incident powers**

- (1) An authorised officer may do all or any of these —
  - (a) close any premises;
  - (b) direct any person to enter, not to enter, or to leave any premises;
  - (c) direct any person to remain at any premises for any period specified by the officer;

- (d) enter any premises and search for and seize anything for the purpose of investigating, preventing, controlling or abating the serious public health risk;
  - (e) require a person to provide information or answer questions for the purpose of investigating, preventing, controlling or abating the serious public health risk;
  - (f) enter and inspect any premises for the purpose of preventing, controlling or abating the serious public health risk;
  - (g) require any premises to be cleaned or disinfected for the purpose of preventing, controlling or abating the serious public health risk;
  - (h) require the destruction or disposal of anything for the purpose of preventing, controlling or abating the serious public health risk;
  - (i) direct any person to remain quarantined from other persons for any period, and in any reasonable manner, specified by the officer;
  - (j) direct any person to undergo medical observation, medical examination or medical treatment or to be vaccinated, as specified by the officer;
  - (k) take, or direct another person to take, any action that the authorised officer considers is reasonably necessary to prevent, control or abate the serious public health risk.
- (2) A power under subsection (1) to enter any premises may be exercised without a warrant or the consent of the occupier of the premises or, in the case of a vehicle, the owner of the vehicle.
- (3) The period specified under subsection (1)(c) or (i) must not be more than 24 hours unless the Chief Health Officer has authorised a longer period to be specified in relation to the person.



**158. Enforcement of requirement to undergo medical observation, medical examination**

- (1) If an authorised officer gives a direction to a person under section 157(1)(j) to undergo medical observation, medical examination or medical treatment or to be vaccinated, an authorised officer or police officer may use reasonable force to ensure that the direction is complied with, including, if necessary —
- (a) to apprehend and detain the person to whom the direction applies (the *relevant person*) and take the relevant person to a place where the person is required to undergo medical observation, medical examination or medical treatment or to be vaccinated in accordance with the direction; and
  - (b) to detain the relevant person at the place where he or she is required to undergo medical observation, medical examination or medical treatment or to be vaccinated in accordance with the direction; and
  - (c) to restrain the relevant person —
    - (i) to enable a medical observation, medical examination or medical treatment to be carried out; or
    - (ii) to enable the relevant person to be vaccinated;and
  - (d) to remove anything (including underwear) that the relevant person is wearing, if —
    - (i) the removal of the thing is reasonably necessary to enable a medical examination or medical treatment to be carried out or, as the case requires, to enable the person to be vaccinated; and

- (ii) the relevant person is given a reasonable opportunity to remove the thing himself or herself, and refuses or fails to do so.
- (2) A direction under section 157(1)(j) to undergo medical examination or medical treatment or to be vaccinated authorises —
  - (a) in the case of a direction to undergo medical examination —
    - (i) the carrying out of that medical examination in accordance with the direction; and
    - (ii) the testing of any sample obtained or taken in connection with that medical examination;and
  - (b) in the case of a direction to undergo medical treatment —
    - (i) the giving of medical treatment to the relevant person in accordance with the direction; and
    - (ii) the testing of any sample obtained or taken in connection with that medical treatment;and
  - (c) in the case of a direction to be vaccinated, the vaccination of the relevant person.
- (3) If any action taken under subsection (1) involves the removal of an item of clothing —
  - (a) it must be done with decency and sensitivity and in a manner that gives to the relevant person the degree of privacy and dignity that is consistent with ensuring compliance with the direction; and
  - (b) the authorised officer or police officer taking the action and any other person present while it is done (excluding any person who is carrying out any medical examination or medical treatment or vaccinating the relevant person)

must, if practicable, be of the same gender as the relevant person; and

- (c) the number of people present while it is done (excluding a person who is present under paragraph (d)) must be no more than is reasonably necessary to ensure that the direction is complied with effectively and to ensure the safety of all present; and
- (d) if the relevant person is a child or an impaired person, it must, if practicable, be done in the presence of a responsible person or some other person who can provide the child or impaired person with support and represent his or her interests.

(4) This section does not limit section 161.

**159. Provisions relating to requirement to remain at premises or remain quarantined**

- (1) Before an authorised officer gives a direction under section 157(1)(c) or (i) to a person, or an authorised officer or a police officer detains a person under section 158, the authorised officer or police officer must briefly explain, in language likely to be readily understood by the person —
  - (a) the reason why it is necessary for the person to remain at the premises or, as the case requires, to remain quarantined from other persons or to be detained; and
  - (b) that the person is entitled to obtain legal advice and to communicate with a lawyer; and
  - (c) that the person has a right under section 163 to apply to the State Administrative Tribunal for a review of the decision to give the direction or, as the case requires, the decision to detain the person.
- (2) However, if in the particular circumstances in which the power to give the direction or, as the case requires, to detain the person is to be exercised, it is not practicable to give the explanation required by subsection (1) before the power is exercised, the

authorised officer or police officer must do so as soon as is practicable.

- (3) If the person to whom a direction under section 157(1)(c) or (i) relates or, as the case requires, the person who is to be detained, or is being detained, under section 158 is a child or an impaired person, the authorised officer or police officer must ensure that a suitably modified version of the explanation required by subsection (1) is given to —
- (a) in the case of a child —
    - (i) a parent or guardian of the child; or
    - (ii) another person who has responsibility for the day-to-day care of the child; or
    - (iii) if no person mentioned in another subparagraph of this paragraph is available, a person, or a person in a class of persons, prescribed by the regulations for the purposes of this subparagraph;
  - (b) in the case of an impaired person, a responsible person.
- (4) Failure to comply with this section does not invalidate a direction given under section 157(1)(c) or (i) or the detention of a person under section 158.

**160. Review of requirement to remain at premises or remain quarantined**

- (1) If a person is directed under section 157(1)(c) or (i) to remain at any premises for more than 24 hours or, as the case requires, to remain quarantined from other persons for more than 24 hours, or a person is detained under section 158 for more than 24 hours —
- (a) the Chief Health Officer must review the direction or, as the case requires, the detention decision at intervals not greater than 24 hours to determine whether or not it is still necessary for the person to remain at the premises

- or, as the case requires, to remain quarantined or be detained; and
- (b) the person is entitled to obtain legal advice and to communicate with a lawyer; and
  - (c) if the person is a child, the child is entitled to be represented by —
    - (i) a parent or guardian of the child; or
    - (ii) another person who has responsibility for the day-to-day care of the child; or
    - (iii) if no person mentioned in another subparagraph of this paragraph is available, a person, or a person in a class of persons, prescribed by the regulations for the purposes of this subparagraph;
- and
- (d) if the person is an impaired person, the impaired person is entitled to be represented by a responsible person.
- (2) A person to whom a direction under section 157(1)(c) or (i) relates or who is detained under section 158 must be immediately permitted to leave the premises at which the person was directed to remain or, as the case requires, immediately released from quarantine or detention if —
- (a) following a review under subsection (1)(a), the Chief Health Officer determines that it is no longer necessary for the person to remain at the premises or, as the case requires, to remain quarantined or detained; or
  - (b) for any other reason, it is no longer necessary for the person to remain at the premises or, as the case requires, to remain quarantined or detained.

**161. Authorised officer may be given assistance, and may use force**

- (1) An authorised officer exercising a serious public health incident power may be assisted by a police officer or other person.

- (2) An authorised officer exercising a serious public health incident power conferred by section 157(1)(a), (b), (d) or (f), and any police officer or other person who is assisting an authorised officer to exercise that power, may use whatever force is reasonably necessary to exercise the power.
- (3) If a person does not comply with a requirement of, or a direction given by, an authorised officer exercising a serious public health incident power, an authorised officer and any police officer or other person who is assisting an authorised officer to exercise that power may do all things that are reasonably necessary to enforce compliance with the requirement or direction, using any force that is reasonable in the circumstances.
- (4) Without limiting subsection (3), the force that an authorised officer or police officer or person assisting may use includes any force that it is reasonably necessary to use in the circumstances to overcome any resistance to the enforcement of compliance with the requirement or direction (including enabling a medical examination or medical treatment to be carried out or a vaccination to be given) that is offered by the person to whom the requirement or direction applies, or that the authorised officer or police officer or person assisting reasonably suspects will be offered by that person.

**162. Failure to comply with requirements and directions**

- (1) A person must not, without reasonable excuse, fail to comply with a requirement of, or a direction given by, an authorised officer exercising a serious public health incident power.  
Penalty for an offence under this subsection: a fine of \$20 000.
- (2) Subsection (1) does not apply unless, when the authorised officer makes the requirement or gives the direction, the authorised officer informs the person that a failure to comply with the requirement or direction may constitute an offence.

- (3) A person must comply with a requirement or direction referred to in subsection (1) despite the provisions of any other written law, and —
- (a) no civil or criminal liability is incurred as a result of that compliance; and
  - (b) complying with the requirement or direction is not to be regarded as —
    - (i) a breach of any duty of confidentiality or secrecy imposed by law; or
    - (ii) a breach of professional ethics, professional standards or any principles of conduct applicable to the person's employment; or
    - (iii) unprofessional conduct.

**163. Review by State Administrative Tribunal**

- (1) This section applies to the following directions and decisions (*reviewable decisions*) —
- (a) a direction under section 157(1)(c) that a person remain at any premises;
  - (b) a direction under section 157(1)(i) that a person remain quarantined from other persons;
  - (c) a decision to detain a person under section 158.
- (2) A person to whom a reviewable decision applies may apply to the State Administrative Tribunal for a review of the decision.
- (3) The State Administrative Tribunal must hear and determine the application as a matter of priority and urgency.

## **Part 12 — Public health emergencies**

### **Division 1 — Relationship to *Emergency Management Act 2005***

#### **164. Relationship to *Emergency Management Act 2005***

- (1) Nothing in this Part prevents the making of an emergency situation declaration or a state of emergency declaration under the *Emergency Management Act 2005*.
- (2) The making of a declaration referred to in subsection (1) does not prevent the making of a public health state of emergency declaration under this Part.
- (3) Nothing in this Part limits the operation of the *Emergency Management Act 2005* section 8(1).

### **Division 2 — Public health emergency management plans**

#### **165. Public health emergency management plans**

- (1) The Chief Health Officer must prepare one or more public health emergency management plans, as the Chief Health Officer considers necessary.
- (2) In preparing a public health emergency management plan, the Chief Health Officer must have regard to State emergency management policies prepared under the *Emergency Management Act 2005* section 17 and State emergency management plans prepared under section 18 of that Act.
- (3) A public health emergency management plan, and any amendment to a public health emergency management plan, has effect when it is signed by the Chief Health Officer.
- (4) The Chief Health Officer may review, amend or replace a public health emergency management plan whenever the Chief Health Officer considers it appropriate.



- (5) The Chief Health Officer may arrange for a public health emergency management plan to be tested whenever the Chief Health Officer considers it appropriate.
- (6) For the purposes of subsection (2), the person holding office as the chairman of the State Emergency Management Committee under the *Emergency Management Act 2005* must ensure that the Chief Health Officer is provided with copies of State emergency management policies and State emergency management plans.

**166. Directions to, and duties of, public authorities**

- (1) If a public authority is given, or is to be given, a role and responsibilities under a public health emergency management plan, the Chief Health Officer may in writing direct the public authority, in relation to that role and those responsibilities, to assist the Chief Health Officer —
  - (a) in the preparation of the public health emergency management plan; or
  - (b) in the review of the public health emergency management plan; or
  - (c) in the amendment or replacement of the public health management emergency plan; or
  - (d) in the testing of the public health emergency management plan.
- (2) The Chief Health Officer may issue guidelines to help public authorities respond to a direction under subsection (1).
- (3) A public authority must comply with a direction under subsection (1) within the time and in the manner specified in the direction.
- (4) A public authority that is given a role and responsibilities under a public health emergency management plan must comply with the public health emergency management plan.

**Division 3 — Public health state of emergency declarations**

**167. Minister may make public health state of emergency declaration**

- (1) The Minister may, in writing, declare that a public health state of emergency exists in the whole of the State or in any area or areas of the State.
- (2) The Minister cannot make a public health state of emergency declaration unless the Minister —
  - (a) has considered the advice of the Chief Health Officer, given after the Chief Health Officer has consulted with the person holding the office of State Emergency Coordinator under the *Emergency Management Act 2005*; and
  - (b) is satisfied that a public health emergency has occurred, is occurring or is imminent; and
  - (c) is satisfied that extraordinary measures are required to prevent or minimise loss of life or prejudice to the safety, or harm to the health, of persons.
- (3) A public health state of emergency declaration —
  - (a) must include —
    - (i) details of the public health emergency that is the basis of the declaration; and
    - (ii) the time when, and date on which, the declaration is made; and
    - (iii) details as to whether the declaration applies to the whole of the State or to one or more specified areas of the State;and
  - (b) may limit the powers that may be exercised during the period for which the declaration is in force.

- (4) The making of a public health state of emergency declaration does not prevent the making of further public health state of emergency declarations in relation to the same or a different public health emergency.

**168. Duration of public health state of emergency declaration**

A public health state of emergency declaration —

- (a) has effect on and from the time it is made, or any later time specified in the declaration; and
- (b) if it is not extended under section 170 or sooner revoked under section 171, remains in force until the end of the 6<sup>th</sup> day after the day on which it first has effect.

**169. Amendment of public health state of emergency declaration**

- (1) The Minister may by written declaration amend a public health state of emergency declaration by —
- (a) limiting or further limiting the powers that may be exercised during the remainder of the period for which the declaration is in force;
  - (b) removing or reducing, for the remainder of the period for which the declaration is in force, any limitation previously imposed under paragraph (a) or section 167(3)(b) or 170(3)(a);
  - (c) reducing or expanding the area or areas of the State to which the declaration applies during the remainder of the period for which the declaration is in force.
- (2) Section 167(2) applies in relation to a declaration amending a public health state of emergency declaration in the same way that it applies to the original public health state of emergency declaration.
- (3) A declaration amending a public health state of emergency declaration has effect on and from the time it is made.

**170. Extension of public health state of emergency declaration**

- (1) The Minister may by written declaration extend, or from time to time further extend, the duration of a public health state of emergency declaration.
- (2) Section 167(2) applies in relation to a declaration extending, or further extending, the duration of a public health state of emergency declaration in the same way that it applies to the original public health state of emergency declaration.
- (3) The declaration may —
  - (a) limit or further limit the powers that may be exercised during the period by which the duration is extended;
  - (b) remove or reduce, during the period by which the duration is extended, any limitation previously imposed under paragraph (a) or section 167(3)(b) or 169(1)(a);
  - (c) reduce or expand the area or areas of the State to which the declaration applies during the period by which the duration is extended.
- (4) A declaration extending, or further extending, the duration of a public health state of emergency declaration —
  - (a) must state the period by which the duration of the public health state of emergency declaration is extended; and
  - (b) remains in force until the end of the period stated under paragraph (a) unless the public health state of emergency declaration is sooner revoked under section 171.
- (5) Each extension, or further extension, of the duration of a public health state of emergency declaration cannot exceed 14 days, but there is no limit on the number of extensions as long as subsection (2) is complied with.
- (6) A declaration extending, or further extending, the duration of a public health state of emergency declaration has effect on and from the time it is made.

**171. Revocation of public health state of emergency declaration**

- (1) The Minister may revoke a public health state of emergency declaration at any time.
- (2) The revocation must be made by written declaration and must include the time when, and date on which, it is made.
- (3) A declaration under this section has effect on and from the time it is made, or any later time specified in the declaration.
- (4) Despite any other written law, the revocation of a public health state of emergency declaration does not affect —
  - (a) any penalty or punishment incurred or imposed, or liable to be incurred or imposed, before the revocation; or
  - (b) any investigation or legal proceedings in respect of a penalty or punishment of that kind.

**172. Notice of declaration**

- (1) Notice of a declaration made under section 167, 169, 170 or 171 must be —
  - (a) published for general information as soon as is practicable after the declaration is made in any manner that the Minister considers to be appropriate having regard to the circumstances and what is practicable; and
  - (b) published in the *Gazette* as soon as is practicable after the declaration is made.
- (2) A failure to publish notice of the declaration does not affect the validity of the declaration.

**173. Limitation of stay of operation of public health state of emergency declaration**

- (1) In any proceedings for judicial review or in any other proceedings, a court or tribunal is not authorised to make an interlocutory order that has the effect of staying the operation of a public health state of emergency declaration.

- (2) This section does not limit judicial review for jurisdictional error.

**Division 4 — Authorisation to exercise emergency powers**

**174. Authorisation to exercise emergency powers during public health state of emergency**

- (1) In this section —
- health professional** —
- (a) has the meaning given in the *Civil Liability Act 2002* section 5PA; and
  - (b) includes a person registered under the law of another place that is substantially similar to the *Health Practitioner Regulation National Law (Western Australia)*.
- (2) For the purposes of emergency management during a public health state of emergency, the Chief Health Officer may authorise all or any of the following to exercise any of the emergency powers while the public health state of emergency declaration is in force —
- (a) an authorised officer or an authorised officer within a specified class of authorised officers;
  - (b) a health professional or a health professional within a specified class of health professionals.
- (3) An authorisation under subsection (2) is subject to any limitation in a declaration under section 167(3)(b) or 169 or 170.
- (4) The emergency powers conferred on an authorised officer by an authorisation under subsection (2) are in addition to, and do not limit —
- (a) the powers conferred on the person as an authorised officer under Part 16; or

- (b) the powers the person may have under another written law or other law.
- (5) Each enforcement agency must prepare and maintain a list of authorised officers designated by the agency who are emergency officers as the result of being authorised under subsection (2).
- (6) The Chief Health Officer may vary or revoke an authorisation under subsection (2).

**175. Authorisation to state certain matters**

An authorisation under section 174(2) must —

- (a) state that the authorisation is given under this Division; and
- (b) generally describe the public health state of emergency to which it relates; and
- (c) if the public health emergency has occurred, name or describe the place at which the emergency has occurred; and
- (d) specify the time at which the authorisation is given; and
- (e) specify the emergency powers that may be exercised under the authorisation; and
- (f) specify the period during which the authorisation continues in force.

**176. Authorisation may be given orally or in writing**

- (1) In this section —  
*authorisation* means an authorisation under section 174(2) or the variation or revocation of an authorisation under section 174(6).
- (2) An authorisation may be given orally or in writing.
- (3) If the authorisation is given orally, the Chief Health Officer must confirm it in writing as soon as is practicable.

## **Division 5 — Emergency powers**

### **177. Terms used**

In this Division —

**child** means a person who is under 18 years of age;

**disability** has the meaning given in the *Disability Services Act 1993* section 3;

**emergency management purposes** means the purposes of emergency management during a public health state of emergency;

**impaired person** means a person who has a disability that impairs the person's capacity to make decisions;

**relative**, in relation to an impaired person, means a person who is —

- (a) related, by blood or marriage, to the impaired person; or
- (b) the impaired person's de facto partner;

**responsible person**, in relation to an impaired person, means —

- (a) a relative of the impaired person; or
- (b) a person who is a guardian of the impaired person under the *Guardianship and Administration Act 1990*; or
- (c) a person who is an enduring guardian of the impaired person under the *Guardianship and Administration Act 1990* and is authorised to perform functions in relation to the impaired person in the circumstances in which section 187(1) or 192(1) applies; or
- (d) a person recognised as the impaired person's representative under the *Disability Services Act 1993* section 32(2); or
- (e) a person who is a carer (as defined in the *Carers Recognition Act 2004* section 4) in relation to the impaired person; or



- (f) a person, or a person in a class of persons, prescribed by the regulations for the purposes of this definition.

**178. Operation of this Division**

A person may exercise a power conferred on an emergency officer under this Division if the person is authorised by the Chief Health Officer to exercise the power under section 174(2).

**179. Powers to obtain identifying particulars**

- (1) For the purposes of the *Criminal Investigation (Identifying People) Act 2002* —
  - (a) the office of emergency officer is prescribed for the purposes of section 5 of that Act; and
  - (b) a holder of that office may exercise the powers in Part 3 of that Act in relation to an offence or suspected offence under this Act during a public health state of emergency.
- (2) Without limiting subsection (1), an emergency officer may, where reasonably required for emergency management purposes, require a person to give the emergency officer any or all of the person's personal details.
- (3) If an emergency officer reasonably suspects that a personal detail given by a person in response to a requirement under subsection (2) is false, the emergency officer may require the person to produce evidence of the correctness of the detail.

**180. Powers relating to movement and evacuation**

For emergency management purposes, an emergency officer may —

- (a) direct or, by direction, prohibit, the movement of persons, animals and vehicles within, into, out of or around the emergency area or any part of the emergency area; or

- (b) direct the evacuation and removal of persons, animals and vehicles from the emergency area or any part of the emergency area; or
- (c) close any road, access route or area of water in or leading to the emergency area.

**181. Powers to use vehicles**

- (1) In this section —  
*authorisation* includes a licence, registration, approval, permit, exemption, certificate or other form of authority.
- (2) For emergency management purposes, an emergency officer may use a vehicle in any place and in any circumstance despite any provision of any written law that requires —
  - (a) the emergency officer to have an authorisation to use that vehicle or to use that vehicle in that place or in that circumstance; or
  - (b) an authorisation for the use of that vehicle or for the use of that vehicle in that place or in that circumstance.

**182. Powers to control or use premises or property**

- (1) For emergency management purposes, an emergency officer may take control of, or make use of, any premises or property.
- (2) The premises or property may be in, or outside, the emergency area.
- (3) For the purpose of exercising a power under this section, an emergency officer may do all or any of these —
  - (a) enter or, if necessary, break into and enter, any premises;
  - (b) search any premises and anything found in or on the premises;
  - (c) open a container or other thing in the premises;
  - (d) seize anything found in or on the premises, or any other property;

- (e) direct the owner or occupier or the person apparently in charge of the premises or, as the case requires, the person apparently in charge of the property, to give the emergency officer reasonable assistance to exercise the emergency officer's powers under this section.
- (4) Subsection (3) does not limit section 190 or Division 7.
- (5) If an emergency officer takes control of or makes use of any premises or property under this section, the emergency officer must ensure that, as soon as is reasonably practicable in the circumstances, and no later than 7 days after the premises or property are taken control of or made use of, a written notice is given to the owner, occupier or person formerly in charge of the premises or property stating —
  - (a) that the premises or property have been taken control of or made use of under this section; and
  - (b) the name of the emergency officer who has taken control of or made use of the premises or property.

**183. Powers in relation to drugs and vaccines**

- (1) For emergency management purposes, an emergency officer may take control of, or make use of, any vaccine or drug.
- (2) The vaccine or drug may be in, or outside, the emergency area.
- (3) For the purpose of exercising a power under this section, an emergency officer may exercise any of the powers conferred by section 182.
- (4) Without limiting subsection (1) or (3), for the purpose of exercising a power under this section, an emergency officer may direct the manufacturer, importer, distributor, supplier, wholesaler or retailer of any vaccine or drug, or other person who has possession or control of any vaccine or drug —
  - (a) not to sell, distribute or otherwise dispose of the vaccine or drug except in accordance with conditions (if any) specified by the emergency officer; or

- (b) to store the vaccine or drug in any premises specified by the emergency officer; or
  - (c) to deliver the vaccine or drug to any person or premises specified by the emergency officer; or
  - (d) to do or refrain from doing, in relation to the vaccine or drug, anything specified by the emergency officer; or
  - (e) to give the emergency officer reasonable assistance to exercise the emergency officer's powers under this section.
- (5) This section does not limit section 182 or 190 or Division 7.
- (6) This section overrides the *Poisons Act 1964*, the *Medicines and Poisons Act 2014* and the *Misuse of Drugs Act 1981*.

**184. Powers in relation to quarantine and medical or other procedures**

- (1) For emergency management purposes, an emergency officer may direct a person to do all or any of these —
- (a) to remain in an area specified by the officer for any period specified by the officer;
  - (b) to remain quarantined from other persons for any period, and in any reasonable manner, specified by the officer;
  - (c) to undergo medical observation, medical examination or medical treatment or to be vaccinated, as specified by the officer;
  - (d) to undergo decontamination procedures within any reasonable period, and in any reasonable manner, specified by the officer.
- (2) The period specified under subsection (1)(a) or (b) must not be more than 24 hours unless the Chief Health Officer has authorised a longer period to be specified in relation to the person.

**185. Enforcement of requirement to undergo medical observation or medical or other procedure**

- (1) If an emergency officer gives a direction to a person under section 184(1)(c) to undergo medical observation, medical examination or medical treatment or to be vaccinated, an emergency officer or police officer may use reasonable force to ensure that the direction is complied with, including, if necessary —
- (a) to apprehend and detain the person to whom the direction applies (the *relevant person*) and take the relevant person to a place where the person is required to undergo medical observation, medical examination or medical treatment or to be vaccinated in accordance with the direction; and
  - (b) to detain the relevant person at the place where he or she is required to undergo medical observation, medical examination or medical treatment or to be vaccinated in accordance with the direction; and
  - (c) to restrain the relevant person —
    - (i) to enable a medical observation, medical examination or medical treatment to be carried out; or
    - (ii) to enable the relevant person to be vaccinated;and
  - (d) to remove anything (including underwear) that the relevant person is wearing, if —
    - (i) the removal of the thing is reasonably necessary to enable a medical examination or medical treatment to be carried out or, as the case requires, to enable the person to be vaccinated; and

- (ii) the relevant person is given a reasonable opportunity to remove the thing himself or herself, and refuses or fails to do so.
- (2) A direction under section 184(1)(c) to undergo medical examination or medical treatment or to be vaccinated authorises —
  - (a) in the case of a direction to undergo medical examination —
    - (i) the carrying out of that medical examination in accordance with the direction; and
    - (ii) the testing of any sample obtained or taken in connection with that medical examination;and
  - (b) in the case of a direction to undergo medical treatment —
    - (i) the giving of medical treatment to the relevant person in accordance with the direction; and
    - (ii) the testing of any sample obtained or taken in connection with that medical treatment;and
  - (c) in the case of a direction to be vaccinated, the vaccination of the relevant person.
- (3) If any action taken under subsection (1) involves the removal of an item of clothing —
  - (a) it must be done with decency and sensitivity and in a manner that gives to the relevant person the degree of privacy and dignity that is consistent with ensuring compliance with the direction; and
  - (b) the emergency officer or police officer taking the action and any other person present while it is done (excluding any person who is carrying out any medical examination or medical treatment or vaccinating the relevant person)

- must, if practicable, be of the same gender as the relevant person; and
- (c) the number of people present while it is done (excluding a person who is present under paragraph (d)) must be no more than is reasonably necessary to ensure that the direction is complied with effectively and to ensure the safety of all present; and
  - (d) if the relevant person is a child or an impaired person, it must, if practicable, be done in the presence of a responsible person or some other person who can provide the child or impaired person with support and represent his or her interests.
- (4) This section does not limit section 199.

**186. Further provisions relating to requirement to remain in area or remain quarantined**

- (1) Before an emergency officer gives a direction under section 184(1)(a) or (b) to a person, the emergency officer must briefly explain, in language likely to be readily understood by the person —
  - (a) the reason why it is necessary for the person to remain in the area or, as the case requires, to remain quarantined from other persons; and
  - (b) that the person is entitled to obtain legal advice and to communicate with a lawyer; and
  - (c) that the person has a right under section 194 to apply to the State Administrative Tribunal for a review of the decision to give the direction.
- (2) However, if in the particular circumstances in which the power to give the direction is to be exercised, it is not practicable to give the explanation required by subsection (1) before the power is exercised, the emergency officer must do so as soon as is practicable.

- (3) If the person to whom a direction under section 184(1)(a) or (b) relates is a child or an impaired person, the emergency officer must ensure that a suitably modified version of the explanation required by subsection (1) is given to —
- (a) in the case of a child —
    - (i) a parent or guardian of the child; or
    - (ii) another person who has responsibility for the day-to-day care of the child; or
    - (iii) if no person mentioned in another subparagraph of this paragraph is available, a person, or a person in a class of persons, prescribed by the regulations for the purposes of this subparagraph;
  - (b) in the case of an impaired person, a responsible person.
- (4) Failure to comply with this section does not invalidate a direction given under section 184(1)(a) or (b).

**187. Review of requirement to remain in area or remain quarantined**

- (1) If a person is directed under section 184(1)(a) or (b) to remain in an area for more than 24 hours or, as the case requires, to remain quarantined from other persons for more than 24 hours —
- (a) the Chief Health Officer must review the direction at intervals not greater than 24 hours to determine whether or not it is still necessary for the person to remain in the area or, as the case requires, to remain quarantined; and
  - (b) the person is entitled to obtain legal advice and to communicate with a lawyer; and
  - (c) if the person is a child, the child is entitled to be represented by —
    - (i) a parent or guardian of the child; or
    - (ii) another person who has responsibility for the day-to-day care of the child; or



- (iii) if no person mentioned in another subparagraph of this paragraph is available, a person, or a person in a class of persons, prescribed by the regulations for the purposes of this subparagraph;
  - and
  - (d) if the person is an impaired person, the impaired person is entitled to be represented by a responsible person.
- (2) A person to whom a direction under section 184(1)(a) or (b) relates must be immediately permitted to leave the area in which the person was directed to remain or, as the case requires, immediately released from quarantine if —
- (a) following a review under subsection (1)(a), the Chief Health Officer determines that it is no longer necessary for the person to remain in the area or, as the case requires, to remain quarantined; or
  - (b) for any other reason, it is no longer necessary for the person to remain in the area or, as the case requires, to remain quarantined.

**188. Information sharing**

- (1) In this section —
- relevant information** means —
- (a) the personal details of a person; or
  - (b) information about the whereabouts of a person; or
  - (c) information about the state of health of a person; or
  - (d) information of a kind prescribed by the regulations;
- welfare services** means the provision for persons affected by a public health emergency of any of these —
- (a) accommodation;
  - (b) catering;
  - (c) clothing and personal items;

- (d) registration and inquiry services for the purpose of enabling individuals to be traced, families to be reunited and inquiries answered;
  - (e) financial assistance.
- (2) For emergency management purposes, an emergency officer may disclose relevant information —
  - (a) to a public authority; and
  - (b) if the regulations so provide —
    - (i) to a person or body engaged by a public authority to provide welfare services; and
    - (ii) in accordance with those regulations.
- (3) For emergency management purposes, if the regulations so provide, a public authority, person or body to which or whom relevant information is disclosed under subsection (2) may further disclose the information in accordance with those regulations.
- (4) For emergency management purposes, an emergency officer may request a public authority that holds relevant information to disclose the information to the emergency officer.
- (5) If information is disclosed, in good faith, under subsection (2) or (3) or in compliance with a request under subsection (4) —
  - (a) no civil or criminal liability is incurred in respect of the disclosure; and
  - (b) the disclosure is not to be regarded as —
    - (i) a breach of any duty of confidentiality or secrecy imposed by law; or
    - (ii) a breach of professional ethics or standards or any principles of conduct applicable to a person's employment; or
    - (iii) unprofessional conduct.

- (6) The Chief Health Officer must establish procedures for the disclosure of information under subsection (2)(a).

**189. Regulations about information sharing for purposes of section 188**

The regulations may include provisions about —

- (a) the circumstances in which information may be disclosed under section 188; and
- (b) the public authorities, persons and bodies to which or whom information may be disclosed under that section; and
- (c) the conditions subject to which information may be disclosed under that section; and
- (d) the receipt, use and storage of information disclosed under that section; and
- (e) the restriction of access to information disclosed under that section.

**190. Other emergency powers**

- (1) For emergency management purposes, an emergency officer may do all or any of these —
  - (a) enter or, if necessary, break into and enter, any premises in the emergency area;
  - (b) search any premises in the emergency area and anything found in or on the premises;
  - (c) take into any premises in the emergency area the persons, machinery, equipment or materials the emergency officer reasonably requires for exercising a power under this Division;
  - (d) authorise the transportation, storage and disposal of bodies of deceased persons anywhere (whether inside or outside the emergency area);
  - (e) contain an animal, substance or thing in the emergency area;

- (f) remove or destroy any animal, vegetation, substance or thing in the emergency area;
  - (g) remove, dismantle, demolish or destroy any premises in the emergency area;
  - (h) disconnect or shut off any electricity, gas, water or fuel supply, or any drainage facility, or any other service, in the emergency area;
  - (i) take and use fuel, gas, electricity or water in the emergency area;
  - (j) direct the owner or occupier or the person apparently in charge of any place in the emergency area to close that place to the public for the period specified in the direction;
  - (k) turn off, disconnect, dismantle or shut down any machinery, equipment or other thing in the emergency area;
  - (l) open a container or other thing in the emergency area;
  - (m) excavate land or form tunnels in the emergency area;
  - (n) build earthworks or temporary structures, or erect barriers, in the emergency area;
  - (o) remove to, or, subject to section 191, detain in, any place or premises that the emergency officer thinks proper any person who obstructs or threatens to obstruct emergency management activities;
  - (p) without limiting any other emergency power, exercise any serious public health incident power;
  - (q) direct a person to give the emergency officer reasonable assistance to exercise the emergency officer's powers under this Division.
- (2) An emergency officer may enter any premises in the emergency area without a warrant or the consent of the occupier of the premises or, in the case of a vehicle, the owner of the vehicle.

- (3) Without limiting subsection (1)(q), an emergency officer exercising an emergency power under this Division may be assisted by a police officer or other person.
- (4) Subsection (1)(d) overrides —
  - (a) the *Cemeteries Act 1986* section 11; and
  - (b) the *Cremation Act 1929*.

**191. Further provisions relating to power to detain under section 185(1) or 190(1)(o)**

- (1) Before an emergency officer or police officer detains a person under section 185(1) or 190(1)(o), the emergency officer or police officer must briefly explain, in language likely to be readily understood by the person —
  - (a) the reason why it is necessary to detain the person; and
  - (b) that the person is entitled to obtain legal advice and to communicate with a lawyer; and
  - (c) that the person has a right under section 194 to apply to the State Administrative Tribunal for a review of the decision to detain the person.
- (2) However, if in the particular circumstances in which the power to detain the person is to be exercised, it is not practicable to give the explanation required by subsection (1) before the power is exercised, the emergency officer or police officer must do so as soon as is practicable.
- (3) If the person who is to be detained, or is being detained, under section 185(1) or 190(1)(o) is a child or an impaired person, the emergency officer or police officer must ensure that a suitably modified version of the explanation required by subsection (1) is given to —
  - (a) in the case of a child —
    - (i) a parent or guardian of the child; or
    - (ii) another person who has responsibility for the day-to-day care of the child; or

- (iii) if no person mentioned in another subparagraph of this paragraph is available, a person, or a person in a class of persons, prescribed by the regulations for the purposes of this subparagraph;
  - (b) in the case of an impaired person, a responsible person.
- (4) Failure to comply with this section does not invalidate the detention of a person under section 185(1) or 190(1)(o).

**192. Review of detention**

- (1) If a person is detained under section 185(1) or 190(1)(o) —
  - (a) the Chief Health Officer must review the person’s detention at intervals not greater than 24 hours to determine whether the detention of the person continues to be required; and
  - (b) the person is entitled to obtain legal advice and to communicate with a lawyer; and
  - (c) if the detained person is a child, the child is entitled to be represented by —
    - (i) a parent or guardian of the child; or
    - (ii) another person who has responsibility for the day-to-day care of the child; or
    - (iii) if no person mentioned in another subparagraph of this paragraph is available, a person, or a person in a class of persons, prescribed by the regulations for the purposes of this subparagraph;and
  - (d) if the detained person is an impaired person, the impaired person is entitled to be represented by a responsible person.
- (2) A person who is detained under section 185(1) or 190(1)(o) must be immediately released from that detention if —

- (a) following a review under subsection (1)(a), the Chief Health Officer determines that the detention of the person is no longer required; or
- (b) for any other reason, the detention of the person is no longer required.

**193. Minister to be informed of detention or release from detention**

- (1) The Chief Health Officer must give written notice to the Minister —
  - (a) that a person has been detained under section 185(1) or 190(1)(o); or
  - (b) that following a review under section 192(1)(a) a person is to continue to be detained under section 185(1) or 190(1)(o); or
  - (c) that a person detained under section 185(1) or 190(1)(o) has been released from detention.
- (2) A notice under subsection (1) —
  - (a) must be given as soon as is practicable; and
  - (b) must include —
    - (i) an identifier (for example a number or code) that uniquely identifies the person detained without disclosing their identity; and
    - (ii) the reasons for the detention, continued detention or release from detention, of the person.

**194. Review by State Administrative Tribunal**

- (1) This section applies to the following directions and decisions (*reviewable decisions*) —
  - (a) a direction under section 184(1)(a) that a person remain in an area specified by an emergency officer;



- (b) a direction under section 184(1)(b) that a person remain quarantined from other persons;
  - (c) a decision to detain a person under section 185(1) or 190(1)(o).
- (2) A person to whom a reviewable decision applies may apply to the State Administrative Tribunal for a review of the decision.
  - (3) The State Administrative Tribunal must hear and determine the application as a matter of priority and urgency.

### **Division 6 — Other powers exercisable during public health state of emergency**

#### **195. Powers of police relating to closure of places, movement and evacuation**

- (1) For the purposes of emergency management during a public health state of emergency, any police officer present in the emergency area may direct the owner, occupier or the person apparently in charge of any place in the emergency area to close that place to the public for the period specified in the direction.
- (2) During a public health state of emergency, any police officer present in the emergency area may exercise any of the powers of an emergency officer under section 180.
- (3) A police officer must not exercise a power under subsection (1) or (2) in a manner that is contrary to or in conflict with the exercise of a power by an emergency officer under section 180 or 190(1)(j).

#### **196. Power of Chief Health Officer to direct public authorities during public health state of emergency**

- (1) During a public health state of emergency, the Chief Health Officer is responsible for coordinating any activities of public authorities that the Chief Health Officer considers necessary or

desirable to coordinate for responding to the public health emergency.

- (2) For the purposes of that coordination, the Chief Health Officer may —
- (a) direct any public authority to do or not to do any act, or to perform or not to perform any function; and
  - (b) appoint an officer of a public authority to have overall control of particular activities carried out by public authorities in response to the public health emergency, where a number of public authorities are involved.
- (3) If a direction is given to a public authority under subsection (2)(a) —
- (a) the public authority must comply with the direction within the time and in the manner, if any, specified in the direction; and
  - (b) the direction prevails to the extent of any conflict or inconsistency with any written law or other law, but subject to section 164(3).
- (4) This section does not authorise the Chief Health Officer —
- (a) to direct the Police Force of Western Australia, or any police officer, to do or not to do any act, or to perform or not to perform any function; or
  - (b) to appoint a police officer to have control of particular activities under subsection (2)(b), except with the agreement of the Commissioner of Police or a senior police officer.

**197. Chief Health Officer may authorise persons to administer, manufacture, supply or prescribe poisons**

- (1) In this section —  
*poison* —

- (a) until the commencement of the *Medicines and Poisons Act 2014* section 3, has the meaning given in the *Poisons Act 1964* section 5(1); and
  - (b) after the commencement of the *Medicines and Poisons Act 2014* section 3, has the meaning given in that section.
- (2) For the purposes of emergency management during a public health state of emergency —
- (a) the Chief Health Officer may authorise a person, or class of persons, to administer, manufacture, supply or prescribe a poison; and
  - (b) a person authorised under paragraph (a) may administer, manufacture, supply or prescribe a poison.
- (3) The Chief Health Officer may give directions in relation to the exercise of a power under subsection (2)(b).
- (4) When exercising a power under subsection (2)(b), a person must comply with —
- (a) the terms and conditions of the authorisation (if any); and
  - (b) any directions of the Chief Health Officer given under subsection (3).
- (5) This section overrides the *Poisons Act 1964*, the *Medicines and Poisons Act 2014* and the *Misuse of Drugs Act 1981*.

**198. Further provisions relating to authority to administer, manufacture, supply or prescribe poisons**

- (1) In this section —
- authorisation** means an authorisation given under section 197(2)(a);
- direction** means a direction given under section 197(3).
- (2) An authorisation —

- (a) is subject to any limitation in a declaration under section 167(3)(b) or 169 or 170; and
  - (b) must state that it is given under section 197; and
  - (c) must generally describe the public health state of emergency to which it relates; and
  - (d) must specify —
    - (i) the person, or class of persons, to whom it applies; and
    - (ii) the poison, or class of poisons, to which it applies; and
    - (iii) the terms and conditions (if any) to which it is subject.
- (3) The Chief Health Officer may vary or revoke an authorisation or a direction.
- (4) Authorisations and directions, and variations and revocations of authorisations or directions —
- (a) may be given orally or in writing; but
  - (b) if given orally, must be put in writing as soon as is practicable.
- (5) A failure to put an authorisation or direction, or a variation of an authorisation or direction, in writing does not invalidate the authorisation, direction or variation or anything done under the authorisation or direction.
- (6) The powers that an authorisation confers on a person are in addition to, and do not limit, the powers that the person may have under another written law or other law.

### **Division 7 — General provisions**

#### **199. General provisions regarding powers**

- (1) In this section —

**emergency officer** includes a police officer assisting in the exercise of an emergency power under section 190(3) or exercising a power under section 195.

- (2) If a person does not comply with a direction given under this Part, an emergency officer may do all things that are reasonably necessary to ensure compliance with the direction, using any force that is reasonable in the circumstances.
- (3) An emergency officer may exercise a power under this Part with the help, and using the force, that is reasonable in the circumstances.
- (4) The powers of an emergency officer under this Part are in addition to, and do not limit, the powers the person may have under another written law or other law.

**200. General provisions regarding directions**

- (1) A direction may be given under this Part orally or in writing.
- (2) A direction given orally must be confirmed in writing within 2 working days after it is given, unless within that period it is complied with or cancelled.
- (3) Failure to comply with subsection (2) does not invalidate the direction.

**201. Direction under *Emergency Management Act 2005* prevails over inconsistent direction under this Part**

If a direction given under this Part is in conflict or inconsistent with a direction given under the *Emergency Management Act 2005* Part 6, the direction given under that Part of that Act prevails to the extent to which the directions are in conflict or inconsistent.

**202. Failure to comply with directions**

- (1) A person must not, without reasonable excuse, fail to comply with a direction given by an emergency officer or police officer —
- (a) under section 180, 182, 183, 184, 190 or 195; or
  - (b) otherwise in connection with the exercise of any power conferred on the officer under Division 5 or 6.

Penalty for an offence under this subsection: a fine of \$20 000.

- (2) Subsection (1) does not apply unless, when the emergency officer or police officer gives the direction, the officer informs the person that a failure to comply with the direction may constitute an offence.
- (3) A person must comply with a direction referred to in subsection (1) despite the provisions of any other written law, and —
- (a) no civil or criminal liability is incurred as a result of that compliance; and
  - (b) complying with the direction is not to be regarded as —
    - (i) a breach of any duty of confidentiality or secrecy imposed by law; or
    - (ii) a breach of professional ethics or standards or any principles of conduct applicable to the person's employment; or
    - (iii) unprofessional conduct.

## **Part 13 — Compensation and insurance**

### **Division 1 — Compensation**

#### **203. Entitlement to compensation**

- (1) Subject to this Division, a person is entitled to be paid just and reasonable compensation by the State for any loss or damage suffered by the person because of the exercise, or purported exercise, of —
  - (a) a serious public health incident power; or
  - (b) an emergency power; or
  - (c) a power under Part 12 Division 6 or section 199.
- (2) Compensation is not payable to the person for loss or damage to the extent to which —
  - (a) an amount for the loss or damage is recovered or recoverable by the person under a policy of insurance; or
  - (b) any act or omission of the person contributed to the loss or damage.
- (3) Compensation is not payable to the person for loss or damage if the loss or damage would have happened in any event irrespective of the exercise, or purported exercise, of the power.

#### **204. Applying for compensation**

- (1) A person may apply to the Minister for compensation for any loss or damage suffered by the person as described in section 203(1).
- (2) The application must be made in writing within 90 days after the person suffers the loss or damage.
- (3) The application must —
  - (a) state details of the person's loss or damage; and

- (b) state the amount of compensation claimed and the grounds for the amount claimed; and
  - (c) be accompanied by any further information required by the regulations.
- (4) The applicant must provide any other relevant information required by notice given under section 205 to decide the application.
- (5) Despite subsection (2), the Minister may accept a person's application for compensation made more than 90 days after the person suffers the loss or damage if the Minister is satisfied that it would be reasonable in all the circumstances to accept the application.

**205. Lapsing of application**

- (1) In this section —  
*information* includes a record relating to information.
- (2) If an application for compensation is made under this Division, the Minister may direct the applicant to provide information to decide the application by giving the applicant a notice stating —
  - (a) the required information; and
  - (b) the time by which the information must be given to the Minister; and
  - (c) that, if the information is not given to the Minister by the stated time, the application will lapse.
- (3) The stated time must be reasonable and, in any case, at least 21 days after the notice is given.
- (4) The Minister may give the applicant a further notice extending or further extending the time if the Minister is satisfied that it would be reasonable in all the circumstances to give the extension.



- (5) A notice may be given under subsection (4) even if the time to which it relates has passed.
- (6) If the applicant does not provide the information required under subsection (2) within the stated time or any extension of it, the application lapses.

**206. Notice of decision**

As soon as is practicable after deciding the application, the Minister must give the applicant a written notice stating —

- (a) the decision and the reasons for it; and
- (b) if the Minister decides to pay compensation —
  - (i) details of the amount and how the amount was assessed; and
  - (ii) if the amount is less than the amount claimed, that the applicant may apply for a review of the decision, and how the applicant may apply for the review;

and

- (c) if the Minister decides not to pay compensation, that the applicant may apply for a review of the decision, and how the applicant may apply for the review.

**207. Review of decision as to payment of compensation**

An applicant who is dissatisfied with a decision of the Minister to refuse to pay compensation or to pay the decided amount of compensation may apply to the State Administrative Tribunal for a review of the decision.

**208. False compensation claim**

A person must not in or in relation to a claim for compensation under this Division —

- (a) make a statement that the person knows to be false or misleading in a material particular to the Minister or any other person; or

(b) otherwise mislead the Minister or any other person.

Penalty: a fine of \$10 000.

### **Division 2 — Insurance**

#### **209. Extension of policy of insurance**

- (1) This section applies to a policy of insurance for loss of or damage to property if —
  - (a) the property is lost or, as the case requires, damage is caused to the property because of the exercise by a person in good faith of a serious public health incident power, an emergency power or a power under Part 12 Division 6 or section 199; and
  - (b) the power is exercised for the purpose of protecting —
    - (i) the property from loss or damage; or
    - (ii) a person or an animal from death or injury.
- (2) For the purposes of the policy of insurance —
  - (a) the loss or damage is, by the operation of this section, to be taken to be loss or damage caused by the happening of an event for which the policy provides insurance cover; and
  - (b) in determining the amount that the insurer is obliged to apply or pay in repairing, replacing or reinstating the property —
    - (i) the provisions of the policy are to be applied so that they produce the result most favourable to the insured; and
    - (ii) any exclusions or limitations on the liability of the insurer to indemnify the insured (other than any excess for which the insurer is not liable on a claim under the policy) otherwise applying under the policy are to be disregarded.

- (3) A term of a policy of insurance that purports to vary or exclude the operation of subsection (2) is void.

*[Part 14 has not come into operation<sup>2</sup>.]*

## **Part 15 — Inquiries**

### **227. Terms used**

In this Part —

*inquirer* means a person conducting an inquiry;

*inquiry* means an inquiry conducted under section 228.

### **228. Chief Health Officer may conduct inquiry**

- (1) The Chief Health Officer may, on the Chief Health Officer's own initiative or at the request of the Minister, conduct an inquiry into any matter relating to public health.
- (2) An inquiry may be conducted by the Chief Health Officer personally, or by a person appointed in writing by the Chief Health Officer for the purpose.
- (3) A person appointed by the Chief Health Officer to conduct an inquiry —
  - (a) is to be paid the remuneration and allowances (if any) that are prescribed by the regulations; and
  - (b) must conduct the inquiry in accordance with any directions given in writing by the Chief Health Officer.

### **229. Preliminary matters**

- (1) Before conducting an inquiry, the Chief Health Officer must —
  - (a) inform the Minister in writing of the Chief Health Officer's intention to do so; and
  - (b) state in writing the terms of reference of the inquiry; and
  - (c) if the inquiry is to be conducted by someone other than the Chief Health Officer, state in writing which (if any) of the powers set out in section 232 the inquirer is to have for the purposes of the inquiry.
- (2) The Chief Health Officer may at any time, in writing —

- (a) amend the terms of reference of an inquiry; or
  - (b) amend the statement of powers required by subsection (1)(c).
- (3) If the Chief Health Officer does either of the things mentioned in subsection (2), the Chief Health Officer must inform the Minister in writing what the Chief Health Officer has done.

**230. Procedure**

- (1) In conducting an inquiry the inquirer —
- (a) must act with as little formality as possible; and
  - (b) is not bound by the rules of evidence and may inform himself or herself on any matter in any manner the inquirer considers appropriate; and
  - (c) may receive written or oral submissions; and
  - (d) may consult any person the inquirer considers appropriate.
- (2) Subject to this Part and the regulations, the inquirer may determine the procedure to be followed at, or in connection with, an inquiry.

**231. Hearings**

- (1) The inquirer may hold hearings for the purposes of an inquiry.
- (2) Hearings must be held in public.
- (3) However, the inquirer may direct that a hearing, or any part of a hearing, be held in private if the inquirer is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason.
- (4) The inquirer has a discretion as to whether any person may appear at a hearing in person or be represented by another person.

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**232. Inquirer's powers in relation to inquiry**

- (1) For the purposes of an inquiry, the inquirer (if the Chief Health Officer) —
  - (a) may, by written notice, require the attendance of a person at a place and time specified in the notice; and
  - (b) may, by written notice, require a person to produce at a place and time specified in the notice a document that is in the possession or under the control of that person; and
  - (c) may inspect any document produced and retain it for any reasonable period that the inquirer thinks fit, and may make copies of it or any of its contents; and
  - (d) may require a person to take an oath or make an affirmation and may administer an oath or affirmation to a person; and
  - (e) may require a person to answer any question put to that person.
- (2) For the purposes of an inquiry, the inquirer (if not the Chief Health Officer) has whichever of the powers set out in subsection (1) that the statement in writing required by section 229(1)(c) states that the inquirer is to have for that purpose.
- (3) A person required by a notice under this section to attend or to produce a document is entitled to be paid the allowances (if any) for the person's travelling and other expenses that are prescribed by the regulations.

**233. Failure to comply with requirements of notice**

- (1) A person must not, without lawful excuse, refuse or fail —
  - (a) to attend as required by a notice under section 232; or
  - (b) to produce a document as required by a notice under section 232.

Penalty for an offence under this subsection: a fine of \$10 000.

- (2) A person must not, without lawful excuse, refuse or fail —
- (a) to be sworn or make an affirmation when required to do so under section 232; or
  - (b) to answer a question when required to do so under section 232.

Penalty for an offence under this subsection: a fine of \$10 000.

**234. Incriminating answers or documents**

- (1) It is not a lawful excuse for the purposes of section 233 for an individual to refuse to answer a question or produce a document on the ground that the answer or the document might tend to incriminate the individual or make the individual liable to a penalty.
- (2) However, an answer given or a document produced by an individual in compliance with a requirement under section 232 is not admissible in evidence in any proceedings, other than proceedings for an offence under section 236.

**235. Disruption of inquiry**

A person must not —

- (a) wilfully insult an inquirer when the inquirer is conducting an inquiry; or
- (b) wilfully interrupt or wilfully obstruct the conduct of an inquiry.

Penalty: a fine of \$10 000.

**236. False information**

During an inquiry a person must not give an answer or other information to the inquirer if the person knows that the answer or information is false or misleading in a material particular.

Penalty: a fine of \$10 000.

**s. 237**

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**237.      Protection for certain purposes**

- (1) A person (the *informant*) is not liable in any way for any loss or damage suffered by another person because the informant has given information or produced a document, in good faith, to an inquirer for the purposes of an inquiry.
- (2) An action in tort does not lie against an inquirer, or any person acting under the direction of an inquirer, for anything the inquirer or person has done or omitted to do, in good faith, for the purposes of an inquiry or an inquirer's report under section 238.
- (3) Nothing in this section limits section 297.

**238.      Reports**

- (1) As soon as is practicable after completing an inquiry, the inquirer must prepare a written report relating to the inquiry and give the report to the Minister.
- (2) The report must include —
  - (a) the inquirer's findings and conclusions from conducting the inquiry; and
  - (b) any recommendations that the inquirer wishes to make arising from the inquiry and the reasons for those recommendations; and
  - (c) any other matters prescribed by the regulations.
- (3) As soon as is practicable after receiving the report, the Minister must cause a copy of it to be laid before each House of Parliament.



## Part 16 — Powers of entry, inspection and seizure

### Division 1 — Entry, inspection and seizure

**239. Term used: reasonably suspects**

In this Division —

*reasonably suspects* has the meaning given in the *Criminal Investigation Act 2006* section 4.

**240. Powers of authorised officers**

- (1) For the purposes of this Act, an authorised officer may, at any reasonable time, do any one or more of these —
  - (a) enter and inspect any premises —
    - (i) in respect of which a registrable activity is registered under Part 8 Division 2; or
    - (ii) at which a licensable activity is carried on that is authorised by an activity licence granted under Part 8 Division 3; or
    - (iii) to which an improvement notice or an enforcement order relates;
  - (b) enter and inspect any premises at which the authorised officer reasonably suspects an offence under this Act has been or is being committed;
  - (c) enter and inspect any premises that the authorised officer reasonably suspects are used in connection with a public health risk;
  - (d) enter and inspect any premises in which the authorised officer reasonably suspects there are any documents that relate to a public health risk or to an offence under this Act;
  - (e) open and examine any equipment;
  - (f) take samples of anything that the authorised officer reasonably suspects may be connected with a public

health risk or may be used as evidence that an offence under this Act has been or is being committed, and for that purpose operate any machinery, equipment or other thing or facilities situated on the premises or brought into the premises by the authorised officer;

- (g) examine any documents referred to in paragraph (d), make copies of those documents or any part of them and, for that purpose, take away and retain any of those documents or any part of them for any time that may be reasonably necessary;
- (h) analyse, examine or test any samples taken under paragraph (f);
- (i) stop any vehicle that the authorised officer is authorised by this subsection to enter, or require that a person in charge of the vehicle —
  - (i) stop the vehicle; or
  - (ii) not move the vehicle; or
  - (iii) move the vehicle a reasonable distance to a place specified by the authorised officer;
- (j) open, or require to be opened, any container or other thing that the authorised officer reasonably suspects to contain anything connected with a public health risk;
- (k) make any recording (by whatever means) of images or sounds, or both, that the authorised officer considers necessary;
- (l) take any readings or other measurements, and make sketches or drawings or any other type of record;
- (m) require a person to provide information or answer questions in connection with the authorised officer's functions under this Act or to produce any document or thing that an authorised officer is authorised to examine under this Act;

- (n) require a person to give the authorised officer any or all of the person's personal details, and, if the authorised officer reasonably suspects that a personal detail given by the person is false, require the person to produce evidence of the correctness of the detail;
  - (o) generally make any investigations or inquiries that may be necessary to ascertain whether a public health risk exists or an offence under this Act has been or is being committed.
- (2) An authorised officer may at any time enter and inspect any premises if the authorised officer reasonably suspects —
- (a) there is an immediate public health risk connected with those premises; and
  - (b) the entry is necessary to enable the authorised officer to investigate, prevent, control or abate the risk.
- (3) This section does not authorise entry into any premises, or any part of any premises, being used solely for residential purposes, except —
- (a) where subsection (2) applies; or
  - (b) with the informed consent of the occupier of the premises; or
  - (c) under the authority of a warrant issued under section 249.
- (4) For the purposes of subsection (3)(b), an occupier of premises gives informed consent if the occupier consents after being informed by the authorised officer —
- (a) of the powers that the authorised officer wants to exercise in respect of the premises; and
  - (b) of the reason why the authorised officer wants to exercise those powers; and
  - (c) that the occupier can refuse to consent to the authorised officer doing so.

- (5) An authorised officer exercising a power under this section may be assisted by a police officer or other person.

**241. Stopping of vehicles**

- (1) For the purpose of stopping a vehicle under section 240(1)(i), an authorised officer may use any means that are reasonably necessary in the circumstances to do so, including means that hinder or obstruct the passage of other vehicles.
- (2) Subsection (1) does not authorise the use of means that are intended or are likely to cause death or serious bodily harm to any person, whether or not in a vehicle.
- (3) An authorised officer who stops a vehicle in order to exercise a power in respect of the vehicle —
- (a) may detain the vehicle for a reasonable period in order to exercise the power; and
  - (b) may move the vehicle to a place suitable to exercise the power.

**242. Incriminating information or answers**

- (1) An individual is not excused from complying with a requirement under section 240 to provide information or answer questions, or to produce any document or thing, on the ground that the information, answer, document or thing might incriminate the individual or make the individual liable to a penalty.
- (2) However, any information or answer provided, or document or thing produced, by an individual in compliance with a requirement under section 240 is not admissible in evidence in any proceedings, other than proceedings for an offence under section 253, 254 or 255.

**243. Liability for complying with requirement to provide information, answer question or produce document or thing**

A person must comply with a requirement under section 240 to provide information or answer questions, or to produce any document or thing, despite the provisions of any other written law, and —

- (a) no civil or criminal liability is incurred as a result of that compliance; and
- (b) complying with the direction is not to be regarded as —
  - (i) a breach of any duty of confidentiality or secrecy imposed by law; or
  - (ii) a breach of professional ethics or standards or any principles of conduct applicable to the person's employment; or
  - (iii) unprofessional conduct.

**244. Power of seizure**

- (1) In this section —

***record*** —

- (a) means any record of information, irrespective of how the information is recorded or stored or able to be recovered; and
- (b) includes —
  - (i) any thing from which images, sounds or writings can be reproduced, with or without the aid of anything else; and
  - (ii) any thing on which information is recorded or stored, whether electronically, magnetically, mechanically or by some other means;

***relevant to an offence***, in relation to a thing, has the meaning given in the *Criminal Investigation Act 2006* section 5;

***thing*** includes —

- (a) any vehicle, plant or machinery; and
  - (b) any record; and
  - (c) any substance; and
  - (d) anything in, on or connected to a thing.
- (2) This section applies —
- (a) if an authorised officer has entered any premises under section 240; or
  - (b) in any other circumstances in which an authorised officer is performing functions under this Act.
- (3) An authorised officer may seize any thing relevant to an offence under this Act if the officer reasonably suspects —
- (a) the thing may be forfeited under Division 2; or
  - (b) it is necessary to seize the thing for one or more of these purposes —
    - (i) to prevent it from being concealed, disturbed or lost;
    - (ii) to preserve its evidentiary value;
    - (iii) to prevent it from being used in the commission of another offence under this Act.

**245. Application of *Criminal Investigation Act 2006***

- (1) For the purposes of the *Criminal Investigation Act 2006* —
- (a) the office of authorised officer is a public officer; and
  - (b) a holder of that office may exercise the powers in Parts 6 and 13 of that Act.
- (2) For the purposes of subsection (1), the *Criminal Investigation Act 2006* Part 13 applies as if the power to seize a thing under section 244 were a power to seize the thing under that Act.

**246. Application for warrant to enter premises**

- (1) An authorised officer may apply to a judicial officer for a warrant in respect of any premises —
  - (a) if the authorised officer reasonably suspects that there is, or may be within the next 72 hours, a particular thing (including a document) that may provide evidence that an offence under this Act has been committed or is being committed; or
  - (b) otherwise for the purposes of exercising powers under section 240.
- (2) An authorised officer may apply for a warrant in respect of any premises even if the authorised officer has power to enter the premises without a warrant.

**247. How application made**

- (1) A reference in this section to making an application includes a reference to giving information in support of the application.
- (2) An application under section 246 must be made by the authorised officer in person unless —
  - (a) the warrant is needed urgently; and
  - (b) the applicant reasonably believes that a judicial officer is not available within a reasonable distance of the applicant.
- (3) If subsection (2)(a) and (b) apply —
  - (a) the application may be made to a judicial officer by remote communication; and
  - (b) the judicial officer may grant the application only if satisfied about the matters in subsection (2)(a) and (b).
- (4) An application under section 246 must be made in writing unless —
  - (a) the application is made by remote communication; and

- (b) it is not practicable to send the judicial officer written material.
- (5) If subsection (4)(a) and (b) apply —
  - (a) the application may be made orally; and
  - (b) the judicial officer must make a written record of the application and any information given in support of it.
- (6) An application under section 246 must be made on oath unless —
  - (a) the application is made by remote communication; and
  - (b) it is not practicable for the judicial officer to administer an oath to the applicant.
- (7) If subsection (6)(a) and (b) apply —
  - (a) the application may be made in an unsworn form; and
  - (b) if the judicial officer issues a warrant, the applicant is as soon as is practicable to send the judicial officer an affidavit verifying the application and any information given in support of it.

**248. Further provisions relating to application for warrant**

- (1) If, on an application made by remote communication under section 247, a judicial officer issues a warrant, the judicial officer must, if practicable, send a copy of the original warrant to the applicant by remote communication, but otherwise —
  - (a) the judicial officer must send the applicant by remote communication any information that must be set out in the warrant; and
  - (b) the applicant must complete a form of a warrant with that information and give the judicial officer a copy of the form as soon as is practicable after doing so; and
  - (c) the judicial officer must attach the copy of the form to the original warrant and any affidavit received from the



applicant and make them available for collection by the applicant.

- (2) The copy of the original warrant sent, or the form of the warrant completed, as the case may be, under subsection (1) has the same force and effect as the original warrant.
- (3) If an applicant contravenes section 247(7)(b) or subsection (1)(b), any evidence obtained under the warrant is not admissible in proceedings in a court.

**249. Issue of warrant**

- (1) The judicial officer may, if satisfied that there are reasonable grounds for doing so, issue a warrant to the authorised officer.
- (2) The judicial officer must cause a record to be made (on the warrant or otherwise) of the matters of fact on which the judicial officer has relied to justify the issue of the warrant.

**250. Duration of warrant**

- (1) A warrant remains in force —
  - (a) for the period (not exceeding 30 days) specified in the warrant as the period during which it remains in force; or
  - (b) if no period is so specified, for 30 days from the date of its issue.
- (2) However, the warrant ceases to be in force when it is executed.

**251. Execution of warrant**

- (1) A warrant may be executed by —
  - (a) the authorised officer to whom it was issued; or
  - (b) any other person who the enforcement agency concerned has designated as an authorised officer.
- (2) A warrant authorises an authorised officer —

- (a) to enter the premises concerned, using any force against any person or thing that it is reasonably necessary to use in the circumstances —
    - (i) to execute the warrant; and
    - (ii) to overcome any resistance to executing the warrant that is offered, or that the authorised officer reasonably suspects will be offered, by any person;and
  - (b) to search those premises for the thing (including the document), or to exercise powers in relation to those premises for the purposes, in respect of which the warrant was issued.
- (3) An authorised officer executing a warrant —
- (a) may be accompanied by a police officer if necessary for the effective exercise of the powers conferred by the warrant and this section; and
  - (b) must produce the warrant for inspection by a person occupying the premises concerned if asked by the person to do so.
- (4) This section does not limit the powers conferred on an authorised officer under any other provision of this Part.

**252. Use of force**

- (1) If under section 251(2) an authorised officer uses force, the force may be such as causes damage to the property of another person.
- (2) Any use of force under section 251(2) against a person is subject to *The Criminal Code* Chapter XXVI.

**253. Failure to comply with requirements of authorised officers**

- (1) A person must not, without reasonable excuse, fail to comply with a requirement of an authorised officer under this Division.  
Penalty for an offence under this subsection: a fine of \$10 000.
- (2) Subsection (1) does not apply unless, when the authorised officer makes the requirement, the authorised officer informs the person that a failure to comply with the requirement may constitute an offence.

**254. False information**

A person must not, in connection with a requirement made or direction given by an authorised officer under this Act, provide any information or produce any document that the person knows is false or misleading in a material particular.  
Penalty: a fine of \$10 000.

**255. Obstructing, impersonating or threatening authorised officers**

- (1) A person must not resist, obstruct or attempt to obstruct an authorised officer in the performance of the authorised officer's functions under this Act.  
Penalty for an offence under this subsection: a fine of \$10 000.
- (2) A person must not falsely represent, by words or conduct, that the person is an authorised officer.  
Penalty for an offence under this subsection: a fine of \$10 000.
- (3) A person must not threaten or intimidate an authorised officer in the performance of the authorised officer's functions under this Act.  
Penalty for an offence under this subsection: a fine of \$10 000.

**Division 2 — Items seized by authorised officers**

**256. Application of *Criminal and Found Property Disposal Act 2006***

- (1) The *Criminal and Found Property Disposal Act 2006* applies to and in relation to —
  - (a) anything that is seized under section 244; and
  - (b) anything that is forfeited to the State or a local government under section 261.
- (2) For the purposes of the *Criminal and Found Property Disposal Act 2006* as applied by subsection (1), each enforcement agency is a prescribed agency.

**257. Seized items**

- (1) Any item seized under this Part may, at the option of the authorised officer who seized the item or of any authorised officer acting in his or her place, be detained in the premises where it was found or be removed to another place and detained there.
- (2) If the item is to be detained in the premises where it was found, the authorised officer —
  - (a) may place it in a room, compartment or cabinet in those premises; and
  - (b) may mark, fasten and seal the door or opening providing access to that room, compartment or cabinet; and
  - (c) must ensure that the item is marked in a way that indicates that it has been seized under this Act.

**258. Notification of seizure**

An authorised officer who seizes any item under this Part must, as soon as is practicable after the seizure, give the person from whom the item was seized written notification of the seizure that includes —

- (a) a description of the item seized; and
- (b) the reason for the seizure; and
- (c) an explanation of the person's right to make an application to the appropriate court under the *Criminal and Found Property Disposal Act 2006* section 11 in respect of the seized item; and
- (d) the address of the place where the item is held if the item has been removed from the premises where it was seized; and
- (e) the name of the enforcement agency that designated the authorised officer.

**259. Immediate destruction or disposal of things seized**

An authorised officer who has seized an item under this Part may cause the item to be destroyed or otherwise disposed of despite any provision to the contrary in this Part if the authorised officer is satisfied that the item —

- (a) poses an immediate risk to health or property; or
- (b) is perishable and has become rotten or has otherwise deteriorated; or
- (c) is perishable and is likely to become rotten or perish before it can be dealt with under another provision of this Part.

**260. Return of seized item**

If, before any item seized under this Part is forfeited under this Division, the enforcement agency concerned becomes satisfied that there has been no contravention of this Act of which the item is evidence, the enforcement agency must, as soon as is practicable, cause the item to be delivered to —

- (a) the person from whom it was seized; or
- (b) any other person who appears to the enforcement agency to be entitled to it.

**261. Forfeiture of item**

An item seized under this Part is forfeited to the State or, if the enforcement agency concerned is a local government, to the local government —

- (a) on the expiry of the period of 10 days after the day on which the seizure took place, if the item has not been dealt with under section 260 and no application under the *Criminal and Found Property Disposal Act 2006* section 11 for an order for the release of the item has been made within that period; or
- (b) if an application for an order for the release of the item has been made under the *Criminal and Found Property Disposal Act 2006* section 11 within that period but the application has been refused or has been withdrawn before a decision on the application has been made, on the date on which the application is refused or withdrawn.

**262. Cost of destruction or disposal of forfeited item**

- (1) A person who was the owner of an item immediately before its forfeiture under this Division is liable for any costs incurred by or on behalf of the enforcement agency concerned in connection with the lawful destruction or disposal of the item, including any transport or storage costs.
- (2) The amount of those costs is to be taken to be a debt due to the enforcement agency, or to the State if the enforcement agency is the Chief Health Officer, from that person and is recoverable in a court of competent jurisdiction.
- (3) In any proceedings for the recovery of the debt, a certificate signed by the enforcement agency stating the amount of any costs and the manner in which they were incurred is evidence of the matters certified.

**263. Return of forfeited item**

- (1) This section applies if —
  - (a) an item seized under this Part —
    - (i) is forfeited under this Division; but
    - (ii) has not been destroyed or otherwise disposed of in a manner that would prevent its return;
  - and
  - (b) the enforcement agency becomes satisfied that no contravention of this Act has been committed in relation to the item.
- (2) If this section applies, the item must, as soon as is practicable, be delivered to the person from whom it was seized, or any other person who appears to the enforcement agency concerned to be entitled to it.
- (3) On the item being so delivered, any proprietary and other interests in the item that existed immediately before its forfeiture are restored.

**264. Compensation**

- (1) A person may apply to the enforcement agency concerned for compensation for an item seized under this Part, but only if —
  - (a) the period allowed by section 261(a) for lodging an application under the *Criminal and Found Property Disposal Act 2006* section 11 for an order for the release of the item has expired and no application has been lodged; or
  - (b) any application for such an order lodged within that period has been refused or has been withdrawn before a decision on the application has been made.
- (2) On an application made under this section, the enforcement agency concerned must pay the compensation that is just and reasonable in relation to any item seized under this Part if —

- (a) no contravention of this Act has been committed in relation to the item; and
  - (b) the item cannot be returned or has in consequence of the seizure depreciated in value.
- (3) The enforcement agency must give to the person from whom the item was seized and any person seeking compensation under this section written notification of —
- (a) the decision to pay or to refuse to pay compensation under this section; and
  - (b) if compensation is to be paid, the decision as to the amount of compensation that is just and reasonable.
- (4) If the enforcement agency has not decided an application for compensation under this section within 30 working days after receiving the application, the enforcement agency is to be taken, on the expiry of that period, to have refused to pay any compensation.
- (5) If an enforcement agency decides to pay compensation under this section in relation to an item, the compensation must be paid to the person from whom the item was seized or any other person who appears to the enforcement agency to be entitled to it.

**265. Review of decisions relating to compensation**

A person from whom an item was seized under this Part, or any other person who has sought compensation under section 264, who is dissatisfied with a decision by an enforcement agency under that section as to the refusal to pay compensation or as to the amount of compensation may apply to the State Administrative Tribunal for a review of the decision.



## Part 17 — Crown exemptions

### Division 1 — Preliminary

**266. Terms used**

In this Part —

**agency** has the meaning given in the *Public Sector Management Act 1994* section 3(1);

**compliance plan** means a plan of the kind described in section 273(2);

**Crown** means —

- (a) the State; or
- (b) the Crown in any of its other capacities;

**Crown authority** means

- (a) an agency; or
- (b) a non-SES organisation; or
- (c) a Minister that is a body corporate;

**exemption** means an exemption issued under section 267;

**exemption-holder** means —

- (a) the Crown authority to which an exemption is issued; or
- (b) if an exemption is issued to the Crown, the Minister in whose name the exemption is issued;

**Minister** means a Minister of the Crown in right of the State;

**non-SES organisation** has the meaning given in the *Public Sector Management Act 1994* section 3(1).

**Division 2 — Ministerial exemptions for Crown and Crown authorities**

**267. Minister may exempt Crown or Crown authority from certain provisions**

- (1) The Minister may, by notice published in the *Gazette*, exempt the Crown or a Crown authority from the application of —
  - (a) one or more provisions of this Act; or
  - (b) one or more provisions of the regulations; or
  - (c) a combination of those things.
- (2) An exemption cannot exempt the Crown or a Crown authority from the application of any of the following —
  - (a) Part 9, which relates to notifiable infectious diseases and related conditions;
  - (b) Part 11, which relates to serious public health incident powers;
  - (c) Part 12, which relates to public health emergencies;
  - (d) Part 15, which relates to inquiries;
  - (e) Part 16, which relates to powers of entry, inspection and seizure;
  - (f) Part 18, which relates to liability, evidentiary and procedural matters;
  - (g) Part 19, which relates to miscellaneous matters.
- (3) The Minister can exempt the Crown or a Crown authority from the application of a provision of this Act or of the regulations only if the Minister is satisfied that the Crown or, as the case requires, the Crown authority is unable to take the steps necessary to comply with the provision, whether because of a lack of financial or other resources or for any other reason.

- (4) For the purposes of deciding whether or not to issue an exemption, the Minister —
- (a) must obtain the advice and recommendations of the Chief Health Officer in relation to the matter; and
  - (b) must have regard to that advice and those recommendations, but does not have to act in accordance with that advice and those recommendations.
- (5) The Minister may attach conditions to an exemption.

**268. Duration of exemption**

- (1) An exemption takes effect as follows —
- (a) if the exemption does not state when it takes effect, on the day after the day on which notice of it is published in the *Gazette*;
  - (b) on a later day specified by the Minister in the exemption.
- (2) An exemption can be issued for any period of not more than 10 years.
- (3) An exemption expires at the end of the period for which it is issued, unless it is sooner revoked.
- (4) An exemption cannot be amended to extend its duration, but that does not prevent the issue of a new exemption with the same terms or different terms.

**269. Content of exemption**

- (1) An exemption that is not issued in the name of a Crown authority must be issued in the name of a Minister on behalf of the Crown.
- (2) An exemption must specify the following —
- (a) the exemption-holder;

- (b) the provisions of this Act, or of the regulations, or both, to which the exemption applies;
- (c) the terms of the exemption;
- (d) the conditions attached to the exemption (if any);
- (e) the period for which the exemption is issued.

**270. Effect of exemption**

- (1) The effect of an exemption is that, to the extent of the terms of the exemption, the provisions of this Act or the regulations to which the exemption applies are not binding on —
  - (a) the exemption-holder; or
  - (b) the Crown, to the extent that non-compliance with those provisions by the exemption-holder would otherwise give rise to any right or remedy against the Crown.
- (2) Failure to comply with a condition of an exemption —
  - (a) does not deprive the exemption-holder, the Crown or any other person of the protection of the exemption; and
  - (b) does not give rise to any criminal or civil liability; and
  - (c) does not of itself give rise to any right or remedy.

**271. Minister to consult before amending or revoking exemption**

- (1) Before amending or revoking an exemption, the Minister must —
  - (a) give notice to the exemption-holder of the Minister's intention to amend or revoke the exemption; and
  - (b) give the exemption-holder a reasonable opportunity to make submissions on the matter.
- (2) This section does not apply in relation to —
  - (a) any amendment requested by the exemption-holder; or
  - (b) the revocation of an exemption at the request of the exemption-holder.

**272. Application of *Interpretation Act 1984* to exemptions**

- (1) An exemption is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (2) The *Interpretation Act 1984* sections 43 (other than subsection (6)) and 44 and Part VIII apply to an exemption as if it were subsidiary legislation.

**Division 3 — Compliance plans**

**273. Exemption may require compliance plan**

- (1) The Minister may attach a condition to an exemption requiring the exemption-holder to develop a compliance plan within a period specified in the exemption.
- (2) A compliance plan sets out the steps that the exemption-holder will take, by the time the exemption expires, to achieve full or partial compliance with the provisions of this Act or the regulations to which the exemption applies.
- (3) A failure to implement a compliance plan, whether in whole or in part, does not of itself give rise to any right or remedy.
- (4) This section does not limit section 267(5) or 270.

**274. Development and approval of compliance plan**

- (1) An exemption-holder that is required to develop a compliance plan must develop it in consultation with the Chief Health Officer.
- (2) On completing the development of a compliance plan, the exemption-holder must submit the plan to the Minister for approval.
- (3) Before approving a compliance plan, the Minister must consult with the Minister responsible for the exemption-holder (the ***responsible Minister***), unless the exemption-holder is a Minister.

- (4) If a compliance plan is submitted to the Minister for approval, the Minister may —
- (a) approve the compliance plan without modification; or
  - (b) approve the compliance plan with any modifications that the exemption-holder and the responsible Minister (if any) agree to make; or
  - (c) refuse to approve the compliance plan and direct the exemption-holder to submit a revised compliance plan for approval.

**275. Annual review of compliance plan**

- (1) An exemption-holder that has a compliance plan must review it at least annually.
- (2) The report required by section 278(1)(b) must include information about the results of the most recent review of the compliance plan carried out under this section.

**276. Amendment or replacement of compliance plan**

- (1) An exemption-holder may at any time —
  - (a) amend a compliance plan; or
  - (b) replace a compliance plan with a new compliance plan.
- (2) Section 274 applies with all necessary changes in relation to the amendment or replacement of a compliance plan as if it were the development of a compliance plan.

#### **Division 4 — Publication and reporting obligations**

**277. Exemption-holder to make exemption and compliance plan publicly available**

- (1) An exemption-holder must ensure that the following are readily available to the public, without charge —
  - (a) all current exemptions held by the exemption-holder;
  - (b) an up-to-date version of all current compliance plans developed by the exemption-holder and approved by the Minister.
- (2) An exemption-holder —
  - (a) must make those documents publicly available by means of a website maintained by or on behalf of the exemption-holder; and
  - (b) may make those documents publicly available by any other means the exemption-holder considers appropriate.

**278. Annual report to include information about exemption and compliance plan**

- (1) The annual report submitted by the accountable authority of a Crown authority under the *Financial Management Act 2006* Part 5 must include —
  - (a) the details of each exemption held by the Crown authority during any part of the year to which the report relates; and
  - (b) if a compliance plan developed by the Crown authority and approved by the Minister was in place during any part of the year to which the report relates, a report about progress on the implementation of the plan during that year.
- (2) If an exemption-holder does not have an accountable authority that can comply with subsection (1) in relation to that exemption-holder, the annual report submitted by the

accountable authority of the Department under the *Financial Management Act 2006* Part 5 must include, in relation to that exemption-holder, the information set out in subsection (1).

- (3) To enable the accountable authority of the Department to comply with subsection (2) in relation to an exemption-holder, the exemption-holder must provide the accountable authority with all the information necessary for that purpose.



## **Part 18 — Liability, evidentiary and procedural provisions**

### **Division 1 — Civil liability**

#### **279. Contraventions not breach of statutory duty**

A contravention of this Act is not actionable as a breach of statutory duty.

### **Division 2 — Criminal liability**

#### **280. Commencing proceedings**

Proceedings for an offence under this Act may be commenced —

- (a) by the Chief Health Officer or by an authorised officer authorised in writing by the Chief Health Officer; or
- (b) by an enforcement agency other than the Chief Health Officer.

#### **281. Offences by employees — liability of employer**

- (1) If an employee contravenes any provision of this Act, the employer is to be taken to have contravened the same provision whether or not the employee contravened the provision —
  - (a) without the employer's authority; or
  - (b) contrary to the employer's orders or instructions.
- (2) In proceedings against an employer for such a contravention, it is a defence to prove that the employer —
  - (a) had no knowledge of the contravention; and
  - (b) could not, by the exercise of due diligence, have prevented the contravention.
- (3) An employer may be proceeded against and convicted under a provision in accordance with this section whether or not the

employee has been proceeded against or convicted under that provision.

**282. Liability of officers of body corporate for offence by body corporate**

(1) In this section —

*officer*, in relation to a body corporate, has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9.

(2) This section applies to —

- (a) sections 37 and 38; and
- (b) a provision of the regulations that is prescribed for the purposes of this section.

(3) If a body corporate is guilty of an offence to which this section applies, an officer of the body corporate is also guilty of the offence unless the officer took all reasonable steps to prevent the commission of the offence by the body corporate.

(4) The officer has the onus of proving that the officer took all reasonable steps to prevent the commission of the offence by the body corporate.

(5) In determining whether things done or omitted to be done by the officer constitute reasonable steps, a court must have regard to —

- (a) what the officer knew, or ought to have known, about the commission of the offence by the body corporate; and
- (b) whether the officer was in a position to influence the conduct of the body corporate in relation to the commission of the offence; and
- (c) any other relevant matter.

**283. Further provisions relating to liability of officers of body corporate**

- (1) Section 282 does not affect the liability of a body corporate for any offence.
- (2) Section 282 does not affect the operation of *The Criminal Code* chapters II, LVII, LVIII and LIX in relation to an officer or any other person.
- (3) An officer of a body corporate may be charged with, and convicted of, an offence in accordance with section 282 whether or not the body corporate is charged with, or convicted of, the principal offence committed by the body corporate.
- (4) If an officer of a body corporate who is charged with an offence in accordance with section 282 claims that the body corporate would have a defence if it were charged with the offence —
  - (a) the onus of proving the defence is on the officer; and
  - (b) the standard of proof required is the standard that would apply to the body corporate in relation to the defence.
- (5) Subsection (4) does not limit any other defence available to the officer.

**284. Liability of employees and agents**

It is not a defence in proceedings for an offence under this Act that the accused person was, at the time of the commission of the offence, an employee or agent of another person.

**285. Disclosure by witnesses**

- (1) In any proceedings for an offence under this Act, a witness for the prosecution is not compelled to disclose the fact that the witness received information, the nature of the information received or the name of the person from whom the information was received.

- (2) An authorised officer appearing as a witness in any proceedings is not compelled to produce any document containing any confidential matter made or received in his or her capacity as an authorised officer.
- (3) Despite subsections (1) and (2), a court hearing proceedings for an offence under this Act may order the disclosure of any matter, or the production of a document, referred to in those subsections if the court considers that it is necessary in the interests of justice.

**286. Documentary evidence of certain matters**

- (1) In this section —  
*relevant officer* means —
  - (a) the Chief Health Officer; or
  - (b) the chief executive officer of a local government; or
  - (c) for an enforcement agency other than the Chief Health Officer or a local government, the person prescribed by the regulations in respect of the enforcement agency.
- (2) In any proceedings for an offence under this Act —
  - (a) production of a copy of a code or other document that has been adopted by the regulations, purporting to be signed by the Chief Health Officer certifying that the copy is a true copy as at a specified date or during a specified period, is evidence of the contents of the code or other document as at that date or during that period; and
  - (b) a document purporting to be a copy of any licence, registration, approval, order, direction, notice or authority under this Act is evidence of that licence, registration, approval, order, direction, notice or authority; and

- (c) a document purporting to be signed by the relevant officer and certifying any of the following matters is evidence of the matter certified —
- (i) that at a specified time or during a specified period, there was or was not in force any licence, registration, approval, order, direction, notice or authority in relation to a specified person or persons or specified premises;
  - (ii) that at a specified time or during a specified period, a licence, registration, approval, order, direction, notice or authority was or was not subject to specified conditions;
  - (iii) as to the receipt or otherwise of any notice, application or payment;
  - (iv) that any amount of fees, charges or other money is payable under this Act by a specified person and has not been paid at the date of the certificate.

**287. Court may order costs and expenses**

Without affecting any other power of a court to award costs, a court that hears proceedings for an offence under this Act has power to make the orders that it thinks fit in respect of the costs and expenses of and incidental to the examination, seizure, detention, storage, analysis, destruction or other disposition of anything the subject of those proceedings.

**288. Court may order forfeiture**

A court that convicts a person of an offence under this Act may, in addition to any penalty imposed or order made in respect of the conviction, order the forfeiture to the State of anything that was used in the commission of the offence.

**289. Court's powers in relation to registration and licences**

- (1) If the holder of a certificate of registration is convicted by any court of an offence under this Act, the court may by order, in addition to any penalty imposed or order made in respect of the conviction, do one or more of the following —
  - (a) impose any condition on the registration of the relevant registrable activity, for any period specified in the order;
  - (b) suspend the registration of the relevant registrable activity for whatever period, not exceeding 3 months, the court thinks fit;
  - (c) cancel the registration of the relevant registrable activity;
  - (d) disqualify the holder of the certificate of registration from holding a certificate of registration for whatever period the court thinks fit or permanently.
- (2) If the holder of an activity licence is convicted by any court of an offence under this Act, the court may by order, in addition to any penalty imposed or order made in respect of the conviction, do one or more of the following —
  - (a) impose any condition on the licence, for any period specified in the order;
  - (b) suspend the licence for whatever period, not exceeding 3 months, the court thinks fit;
  - (c) cancel the licence;
  - (d) disqualify the holder of the licence from holding an activity licence for whatever period the court thinks fit or permanently.
- (3) When making an order under this section, a court may, if it thinks fit, defer the operation of the order pending an appeal.

**290. Further provisions relating to orders under section 289**

- (1) If, under section 289, a court makes an order imposing a condition on the registration of a registrable activity or an

activity licence, or suspending or cancelling the registration of a registrable activity or an activity licence —

- (a) the order has the same effect as if the condition had been imposed, or the registration or activity licence had been suspended or cancelled, under Part 8; but
  - (b) nothing in section 75 or 85 applies in relation to the imposition of the condition or, as the case requires, the suspension or cancellation of the registration or licence.
- (2) A person who is disqualified under section 289 from holding a certificate of registration cannot during the period of disqualification apply for, or be issued with, a certificate of registration.
- (3) A person who is disqualified under section 289 from holding an activity licence cannot during the period of disqualification apply for, or be issued with, an activity licence.

*[Division 3 (s. 291-293) has not come into operation 2.]*

## **Part 19 — Miscellaneous**

*[Division 1 has not come into operation <sup>2</sup>.]*

### **Division 2 — General**

#### **297. Protection from liability for wrongdoing**

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) If this section provides that an action does not lie against a person for doing anything, the State and an enforcement agency are also relieved of any liability that they might otherwise have had for the doing of the thing by the person.
- (4) A person who, at the request or direction of an authorised officer or emergency officer or a person authorised under section 197(2)(a), assists the officer or person to exercise a power under this Act is to be taken to be performing a function under this Act for the purposes of this section.
- (5) In this section, a reference to the doing of anything includes a reference to an omission to do anything.



**Division 3 — Provisions relating to information**

**298. Disclosure and use of information provided under Part 9 or 10**

- (1) In this section —  
*specified information* means —
  - (a) information relating to a notifiable infectious disease or notifiable infectious disease-related condition that is notified or given under Part 9; or
  - (b) information relating to a prescribed condition of health that is notified or given under Part 10.
- (2) Specified information may be disclosed or used in accordance with the regulations —
  - (a) for the purpose of monitoring, preventing, controlling or abating a public health risk; or
  - (b) for the general protection, promotion or improvement of public health; or
  - (c) for the purpose of monitoring or evaluating the effectiveness of measures taken to prevent, control or abate a public health risk; or
  - (d) for medical or epidemiological research, whether that research is conducted by persons who are public health officials or other persons; or
  - (e) for any purpose relating to funding, managing, planning, monitoring or evaluating public health services; or
  - (f) for any purpose relating to reporting, at the State or Commonwealth level, on public health services; or
  - (g) for any other purpose relating to public health that is prescribed by the regulations.
- (3) If specified information is disclosed or used, in good faith, in accordance with the regulations —

- (a) no civil or criminal liability is incurred in respect of the disclosure or use; and
- (b) the disclosure or use is not to be regarded as —
  - (i) a breach of any duty of confidentiality or secrecy imposed by law; or
  - (ii) a breach of professional ethics or standards or any principles of conduct applicable to a person's employment; or
  - (iii) unprofessional conduct.

**299. Information sharing**

- (1) In this section —

**designate** includes, in relation to a person or class of persons who are not departmental officers, appoint;

**designated officer** means —

- (a) a public health official designated under subsection (2); or
- (b) an officer of an enforcement agency (other than the Chief Health Officer) authorised by the agency for the purposes of this section;

**guidelines** means guidelines issued under section 300;

**information sharing agency** means any of these —

- (a) a public authority;
- (b) a department or agency (however described) of the government of the Commonwealth, of another State, of a Territory or of another country;
- (c) a body, corporate or unincorporate, that is established or continued for a public purpose under a law of the Commonwealth, another State or a Territory;
- (d) the World Health Organization;

**officer**, of an information sharing agency, means —

- (a) an officer or employee in or of the agency; or

- (b) if the agency is the Police Force of Western Australia, a member of the Police Force of Western Australia;

**relevant information** means information that is relevant to the administration or enforcement of this Act or that is otherwise relevant to public health;

**World Health Organization** has the meaning given in the *World Health Organization Act 1947* (Commonwealth).

- (2) The Chief Health Officer may designate a public health official as a designated officer for the purposes of this section.
- (3) A public health official may, in accordance with the guidelines, disclose relevant information —
- (a) to another public health official; or
  - (b) to an officer of an enforcement agency (other than the Chief Health Officer); or
  - (c) to an officer of an information sharing agency.
- (4) An officer of an enforcement agency (other than the Chief Health Officer) may, in accordance with the guidelines, disclose relevant information —
- (a) to a public health official; or
  - (b) to an officer of another enforcement agency (other than the Chief Health Officer); or
  - (c) to an officer of an information sharing agency.
- (5) A designated officer may, in accordance with the guidelines, request any of the following to disclose relevant information to the designated officer —
- (a) an enforcement agency;
  - (b) a public authority;
  - (c) a department or agency (however described) of the government of the Commonwealth, of another State, of a Territory or of another country;

- (d) a body, corporate or unincorporate, that is established or continued for a public purpose under a law of the Commonwealth, another State or a Territory;
  - (e) the World Health Organization.
- (6) If information is disclosed, in good faith, under subsection (3) or (4), or by an enforcement agency or a public authority in compliance with a request under subsection (5) —
- (a) no civil or criminal liability is incurred in respect of the disclosure; and
  - (b) the disclosure is not to be regarded as —
    - (i) a breach of any duty of confidentiality or secrecy imposed by law; or
    - (ii) a breach of professional ethics or standards or any principles of conduct applicable to a person's employment; or
    - (iii) unprofessional conduct.

**300. Guidelines relating to information sharing**

The Chief Health Officer must issue guidelines as to the disclosure of information under section 299(3) or (4) and the requesting of information under section 299(5).

**301. Regulations relating to information sharing**

The regulations may include provisions about —

- (a) the circumstances in which information may be disclosed under section 299; and
- (b) the conditions subject to which information may be disclosed under that section; and
- (c) the receipt, use and storage of information disclosed under that section; and
- (d) the restriction of access to information disclosed under that section; and

- (e) the maximum period for which information disclosed under that section may be retained; and
- (f) the circumstances in which information disclosed under that section must be destroyed.

**302. Confidential information officially obtained**

- (1) In this section —  
*confidential information* includes information that the person has a duty to keep confidential, regardless of how the duty of confidentiality arises.
- (2) A person who, without lawful authority, directly or indirectly, uses or discloses confidential information obtained by reason of any function that the person has, or at any time had, in the administration of this Act or the *Health (Miscellaneous Provisions) Act 1911* Part XI commits an offence.

Penalty for an offence under this subsection: a fine of \$20 000.

*[Section 302 amended by No. 19 of 2016 s. 320.]*

**Division 4 — Guidelines**

**303. Guidelines**

- (1) The power conferred on the Chief Health Officer under sections 29, 140, 166(2) and 300 to issue guidelines includes the power to amend or revoke those guidelines.
- (2) These must be published in any manner the Chief Health Officer considers appropriate —
  - (a) guidelines;
  - (b) amendments made to guidelines;
  - (c) notice of the revocation of guidelines.
- (3) Guidelines are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

## **Division 5 — Regulations**

### **304. Regulations — general power**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for achieving the objects and giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may provide for, authorise, prescribe, require, prohibit, restrict or otherwise regulate all or any of the following matters —
  - (a) measures to prevent, control or abate public health risks, including public health risks arising from or relating to notifiable infectious diseases or notifiable infectious disease-related conditions;
  - (b) public health planning;
  - (c) the analysis or testing of samples obtained or taken under this Act, including —
    - (i) the persons who may analyse or test samples; and
    - (ii) the places where samples may be analysed or tested; and
    - (iii) the reporting of the results of the analysis or testing of samples;
  - (d) needle and syringe programmes, including conditions and requirements relating to the approval and conduct of those programmes;
  - (e) the procedure to be followed at, or in connection with, an inquiry conducted under section 228;
  - (f) the seizure or forfeiture of items under this Act;
  - (g) the designation of authorised officers;
  - (h) applications under this Act;

- (i) fees and charges payable under this Act and the recovery of those fees and charges.
- (3) Without limiting subsection (1), the regulations may —
- (a) without limiting section 34(1), declare that doing, or omitting to do, a specified thing, or a thing within a specified class of things —
    - (i) constitutes a breach of the general public health duty; or
    - (ii) does not constitute a breach of the general public health duty;
  - (b) specify or provide for guidelines for complying with the general public health duty;
  - (c) declare a specified activity, or an activity within a specified class of activities, to be a public health risk activity or not to be a public health risk activity;
  - (d) declare a specified public health risk, or a public health risk within a specified class of public health risks —
    - (i) to be a material public health risk or a serious public health risk; or
    - (ii) not to be a material public health risk or a serious public health risk;
  - (e) require things to be done in relation to the prevention, assessment or management of public health risks;
  - (f) without limiting paragraph (e), require the preparation, implementation and monitoring of, and reporting on, risk management plans in relation to public health risks;
  - (g) regulate or prohibit the manufacture, transport, storage, supply, use or disposal of anything that is a public health risk;
  - (h) without limiting paragraph (g), provide that any activity or thing, or the supply of any goods or services, is required to meet a specified standard, or comply with specified conditions, to prevent a public health risk;

- (i) regulate or prohibit the advertising of —
    - (i) any public health risk activity; or
    - (ii) the supply or use of anything that is a public health risk;
  - (j) require specified information to be provided to an appropriate enforcement agency by a specified person in relation to —
    - (i) any public health risk activity carried on or proposed to be carried on; or
    - (ii) the supply or use of anything that is a public health risk;
  - (k) specify the criteria and parameters that are to be applied in monitoring compliance with this Act;
  - (l) provide that a failure to comply with the regulations constitutes grounds for the issue of an improvement notice or enforcement order.
- (4) Without limiting subsection (1), the regulations may —
- (a) provide for offences against the regulations and prescribe penalties —
    - (i) for an individual — not exceeding a fine of \$50 000;
    - (ii) for a body corporate — not exceeding a fine of \$200 000;
  - (b) prescribe daily penalties for offences against the regulations —
    - (i) for an individual — not exceeding a fine of \$10 000;
    - (ii) for a body corporate — not exceeding a fine of \$50 000.



**305. Regulations may adopt codes or legislation**

- (1) In this section —
- code* means a code, standard, rule, specification or other document, published in or outside Australia, that does not by itself have legislative effect in this State;
- subsidiary legislation* includes rules, regulations, instructions, local laws and by-laws.
- (2) Regulations may adopt, either wholly or in part or with modifications —
- (a) any code; or
  - (b) any subsidiary legislation made, determined or issued under any other Act or under any Act of the Commonwealth, another State or a Territory.
- (3) The adoption may be by —
- (a) incorporating the code or subsidiary legislation in the regulations; or
  - (b) incorporating the code or subsidiary legislation by reference.
- (4) If regulations adopt by reference a code or subsidiary legislation, other than any subsidiary legislation to which the *Interpretation Act 1984* section 41 applies —
- (a) the code or subsidiary legislation is adopted as existing or in force when the regulations are made; and
  - (b) any amendments made to the code or subsidiary legislation after the regulations are made have no legal effect as part of the regulations unless they are specifically adopted by later regulations or a later amendment to the regulations.
- (5) If regulations adopt by reference any subsidiary legislation to which the *Interpretation Act 1984* section 41 applies, the

subsidiary legislation is adopted as existing or in force from time to time.

- (6) Subsections (4) and (5) do not apply if regulations state that a particular text is adopted.
- (7) If regulations adopted by reference a code or subsidiary legislation to which subsection (4) applies, the Chief Health Officer must —
  - (a) ensure that a copy of the code or subsidiary legislation, including any amendments made to it from time to time that have been adopted, is available, without charge, for public inspection; and
  - (b) if the code or subsidiary legislation, or any part of the code or subsidiary legislation, is in a language other than English, ensure that an accurate English translation of the code or subsidiary legislation, or of the relevant part, is also available, without charge, for public inspection; and
  - (c) publish a notice in the *Gazette* giving details of where those documents may be inspected or obtained.

### **Division 6 — Review of Act**

#### **306. Review of Act**

- (1) The Minister must carry out a review of the operation and effectiveness of this Act —
  - (a) as soon as is practicable after the expiry of the period of 5 years beginning on the day on which this section comes into operation; and
  - (b) after that, at intervals of not more than 5 years.
- (2) The Minister must —
  - (a) prepare a report based on each review; and
  - (b) cause it to be laid before each House of Parliament as soon as is practicable after it is prepared.

## **Part 20 — Transitional and savings provisions**

### **307. Terms used**

(1) In this Part —

***Health Act*** means the Act that —

- (a) before its renaming by the *Public Health (Consequential Provisions) Act 2016*, is known as the *Health Act 1911*; and
- (b) after its renaming by the *Public Health (Consequential Provisions) Act 2016*, is known as the *Health (Miscellaneous Provisions) Act 1911*.

(2) If a term has or, before the deletion of the relevant provision by the *Public Health (Consequential Provisions) Act 2016*, had a meaning in the Health Act, it has the same meaning in this Part unless the contrary intention appears.

### **308. Application of *Interpretation Act 1984***

The provisions of this Part do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the deletions of provisions of the Health Act effected by the *Public Health (Consequential Provisions) Act 2016*.

### **309. References to *Health Act 1911* and *Health (Miscellaneous Provisions) Act 1911***

A reference in a written law or document to the *Health Act 1911* or the *Health (Miscellaneous Provisions) Act 1911* may, if the context permits, be taken to be a reference to this Act.

### **310. Reference to Chief Health Officer to be temporarily read as Executive Director, Public Health for purposes of Part 17**

Until section 311 comes into operation, the reference to the Chief Health Officer in section 267(4)(a) is to be taken to be a

**s. 311**

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reference to the Executive Director, Public Health in the Department.

**311. Executive Director, Public Health to hold office as Chief Health Officer**

- (1) The person (the *incumbent*) who, immediately before the day on which this section comes into operation (the *commencement day*), holds the office of Executive Director, Public Health in the Department —
  - (a) is to be taken to be designated under section 11 as the Chief Health Officer; and
  - (b) is to be taken to be designated for a term of office beginning on the commencement day that is the balance of the incumbent's term of office (the *residual term*) as Executive Director, Public Health remaining immediately before the commencement day.
- (2) Subsection (1)(b) does not prevent the incumbent from again being designated as Chief Health Officer when the residual term expires.
- (3) Regardless of section 12(3), if the remuneration that the incumbent would have been entitled to receive as Executive Director, Public Health during the residual term is greater than the remuneration determined for the position of Chief Health Officer by the Salaries and Allowances Tribunal, the incumbent is entitled to receive that greater remuneration during the residual term.

**312. Environmental health officers to be authorised officers for certain purposes**

- (1) If, immediately before this section comes into operation, a person holds an appointment as an environmental health officer under the Health Act, then, on this section coming into operation, the person is to be taken —

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- (a) to have been designated as an authorised officer under section 24(1) by the local government that appointed the person as an environmental health officer; and
  - (b) to have been so designated for the purposes of —
    - (i) Parts 8, 9, 14 and 16; and
    - (ii) the Health Act sections 145(1), 157(2), 173 (paragraph (a) of the definition of **authorised person**), 181, 183, 184(1), 227(1), 228(1), 234(1), 257, 262(3), 265(1), 267(1)(c), 268(a), 277(1)(b) and (3), 280(2), 349(1), 351(1), (2) and (5), 352(1) and (2), 358(2) and 375; and
    - (iii) the *Dog Act 1976*; and
    - (iv) the *Tobacco Products Control Act 2006*; and
    - (v) the *Food Act 2008*; and
    - (vi) the *Cat Act 2011*.
  - (2) If, under the Health Act section 30(1), the local governments of 2 or more districts have joined in the appointment of a person to whom subsection (1) applies, the person is to be taken to have been designated as an authorised officer, for the purposes referred to in subsection (1)(b), by those local governments acting jointly under section 24(4).
  - (3) This section does not limit or affect the power of a local government, or local governments acting jointly, to revoke or vary the designation, as an authorised officer, of a person to whom subsection (1) applies.

[313-320. *Have not come into operation.*<sup>2</sup>.]

**321. Transitional provisions for *Blood and Tissue (Transmissible Diseases) Regulations 1985***

*The Blood and Tissue (Transmissible Diseases) Regulations 1985* continue in force after this section comes into

**s. 322**

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operation as if those regulations were regulations made under section 304.

**322. Transitional regulations**

(1) In this section —

***specified*** means specified or described in the regulations;

***transitional matter*** —

(a) means a matter or issue of a transitional nature that arises as a result of —

(i) the enactment of this Act; or

(ii) the amendments and repeals effected by the *Public Health (Consequential Provisions) Act 2016*;

and

(b) includes a saving or application matter.

(2) If there is not sufficient provision in this Act for dealing with a transitional matter, regulations under this Act may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.

(3) Regulations made under subsection (2) may provide that specified provisions of a written law —

(a) do not apply to or in relation to any matter; or

(b) apply with specified modifications to or in relation to any matter.

(4) If regulations made under subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the day this section comes into operation, the regulations have effect according to their terms.

- (5) If regulations made under subsection (2) contain a provision referred to in subsection (4), the provision does not operate so as —
- (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication of those regulations; or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.
- (6) Regulations made under subsection (2) in relation to a matter referred to in subsection (3) must be made within such period as is reasonably and practicably necessary to deal with a transitional matter.
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## Notes

<sup>1</sup> This is a compilation of the *Public Health Act 2016* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Public Health Act 2016</i>	18 of 2016	25 Jul 2016	Pt. 1 (other than s. 3-5): 25 Jul 2016 (see s. 2(a)); s. 3-5: 26 Jul 2016 (see s. 2(b)(i)); Pt. 17: 26 Jul 2016 (see s. 2(b)(ii)); Pt. 19 (other than Div. 1, 3 and 4): 26 Jul 2016 (see s. 2(b)(iii)); Pt. 20 (s. 310 and 322): 26 Jul 2016 (see s. 2(b)(iv)); Pt. 2 Div. 1 (except s. 7 and 8), Div. 2-4, Pt. 18 Div. 1 and 2 and Pt. 20 (s. 307-309, 311 and 312): 24 Jan 2017 (see s. 2(c) and <i>Gazette</i> 10 Jan 2017 p. 163); Pt. 2 Div. 5, Pt. 3, 4, 9, 11-13, 15 and 16, Pt. 19 Div. 3 and 4 and Pt. 20 (s. 321): 20 Sep 2017 (see s. 2(c) and <i>Gazette</i> 19 Sep 2017 p. 4879)
<i>Public Health (Consequential Provisions) Act 2016</i> Pt. 5 Div. 18	19 of 2016	25 Jul 2016	20 Sep 2017 (see s. 2(1)(c) and <i>Gazette</i> 19 Sep 2017 p. 4880)
<i>Local Government Legislation Amendment Act 2016</i> Pt. 3 Div. 28	26 of 2016	21 Sep 2016	21 Jan 2017 (see s. 2(b) and <i>Gazette</i> 20 Jan 2017 p. 648)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.



### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Public Health Act 2016</i> s. 7 and 8, Pt. 5-8, 10, 14, Pt. 18 Div. 3, Pt. 19 Div. 1, and Pt. 20 (s. 313-320) <sup>2</sup>	18 of 2016	25 Jul 2016	To be proclaimed (see s. 2(c))
<a href="#">Health Practitioner Regulation National Law (WA) Amendment Act 2018</a> s. 117 <sup>3</sup>	<a href="#">4 of 2018</a>	<a href="#">19 Apr 2018</a>	<a href="#">1 Dec 2018 (see s. 2(d) and Gazette 13 Nov 2018 p. 4427-8)</a>

<sup>2</sup> On the date as at which this compilation was prepared, the *Public Health Act 2016* s. 7 and 8, Pt. 5-8, 10, 14, Pt. 18 Div. 3, Pt. 19 Div. 1 and Pt. 20 (s. 313-320) had not come into operation. They read as follows:

**7. Chief Health Officer may give directions to local governments**

- (1) This section applies if the Chief Health Officer —
  - (a) considers that there is, or is likely to be, a material public health risk in a local government district; and
  - (b) is unable to reach agreement with the local government as to the measures to be taken by the local government to prevent, control or abate that risk.
- (2) If this section applies, the Chief Health Officer may, in writing, direct the local government to take the measures that the Chief Health Officer considers necessary to prevent, control or abate that risk.
- (3) A local government has power to do anything necessary to comply with a direction under subsection (2).
- (4) If a local government that is given a direction under subsection (2) fails to comply with it, the Chief Health Officer may do anything that the Chief Health Officer considers necessary to achieve the purpose for which the direction was given.
- (5) The amount of any costs incurred by the Chief Health Officer in doing anything under subsection (4) —
  - (a) is to be taken to be a debt due to the State by the local government that has failed to comply with the direction; and
  - (b) is recoverable in a court of competent jurisdiction.

- (6) In any proceedings for the recovery of the debt, a certificate signed by the Chief Health Officer stating the amount of any costs and the manner in which they were incurred is evidence of the matters certified.

**8. Chief Health Officer may act without seeking local government agreement in urgent circumstances**

- (1) If the Chief Health Officer considers that the circumstances of the material public health risk referred to in section 7(1) are sufficiently urgent, the Chief Health Officer may do anything that the Chief Health Officer considers necessary to prevent, control or abate that risk without having first sought to reach agreement with the local government as to the measures referred to in section 7(1)(b).
- (2) Any costs incurred by the Chief Health Officer in doing anything under subsection (1) are not recoverable from the local government.

**Part 5 — Public health plans**

**42. Term used: public health plan**

In this Part —

*public health plan* means —

- (a) the State public health plan prepared by the Chief Health Officer under section 43; or
- (b) a local public health plan prepared by a local government under section 45.

**43. State public health plans**

- (1) The Chief Health Officer must prepare a public health plan (the *State public health plan*) that applies to the whole of the State.
- (2) The State public health plan must —
- (a) identify the public health needs of the State; and
- (b) include an examination of data relating to health status and health determinants in the State; and
- (c) establish objectives and policy priorities for —
- (i) the promotion, improvement and protection of public health in the State; and
- (ii) the development and delivery of public health services in the State;
- and

- (d) identify how, based on available evidence, the objectives and policy priorities referred to in paragraph (c) are proposed to be achieved; and
  - (e) describe how the Chief Health Officer proposes to work with local governments and other bodies undertaking public health initiatives, projects and programmes to achieve the objectives and policy priorities referred to in paragraph (c); and
  - (f) include a strategic framework for the identification, evaluation and management of public health risks in the State and any other matters relating to public health risks in the State —
    - (i) that the Chief Health Officer considers appropriate to include in the plan; or
    - (ii) that are required to be included in the plan by the regulations.
- (3) The Chief Health Officer must review the State public health plan each year and may amend or replace it at any time.
  - (4) Unless it is sooner replaced, the State public health plan must be replaced at the end of the period of 5 years after it was prepared.
  - (5) The Chief Health Officer must prepare the first State public health plan not later than 12 months after this section comes into operation.

**44. Publication of current State public health plan**

- (1) The Chief Health Officer must make the current State public health plan publicly available without charge.
- (2) The Chief Health Officer may comply with subsection (1) in any way the Chief Health Officer considers appropriate, including (without limitation) by making the current State public health plan available on a website maintained by or on behalf of the Department.
- (3) This section does not limit section 22(3)(b).

**45. Local public health plans**

- (1) A local government must prepare a public health plan (a *local public health plan*) that applies to its local government district.
- (2) A local public health plan must be consistent with the State public health plan.
- (3) A local public health plan may be prepared in conjunction with a plan for the future of the local government district prepared under the *Local Government Act 1995* section 5.56.

- (4) A local public health plan must —
  - (a) identify the public health needs of the local government district; and
  - (b) include an examination of data relating to health status and health determinants in the local government district; and
  - (c) establish objectives and policy priorities for —
    - (i) the promotion, improvement and protection of public health in the local government district; and
    - (ii) the development and delivery of public health services in the local government district;and
  - (d) identify how, based on available evidence, the objectives and policy priorities referred to in paragraph (c) are proposed to be achieved; and
  - (e) describe how the local government proposes to work with the Chief Health Officer and other bodies undertaking public health initiatives, projects and programmes to achieve the objectives and policy priorities referred to in paragraph (c); and
  - (f) include a strategic framework for the identification, evaluation and management of public health risks in the local government district and any other matters relating to public health risks in the local government district —
    - (i) that the local government considers appropriate to include in the plan; or
    - (ii) that are required to be included in the plan by the Chief Health Officer or the regulations;and
  - (g) include a report, in accordance with the regulations, on the performance by the local government of its functions under this Act.
- (5) A local government must review its local public health plan each year and may amend or replace it at any time.
- (6) Unless it is sooner replaced, a local public health plan must be replaced at the end of the period of 5 years after it was prepared.
- (7) A local government must prepare its first local public health plan not later than 2 years after this section comes into operation.

**46. Publication of current local public health plans**

- (1) A local government must make its current local public health plan publicly available without charge.
- (2) A local government may comply with subsection (1) in any way the local government considers appropriate, including (without limitation) by making the current local public health plan available on a website maintained by or on behalf of the local government.

**47. Provision of local public health plans to Chief Health Officer**

- (1) The Chief Health Officer may, by notice in writing, direct a local government to provide the Chief Health Officer with all or any of the following —
  - (a) a copy of the local government's current local public health plan;
  - (b) a copy of any amendments to the local government's current local public health plan.
- (2) A notice under subsection (1) may —
  - (a) direct a local government to supply a copy of a particular local public health plan or particular amendments to a plan; or
  - (b) direct a local government to supply, on an ongoing basis, a copy of all local public health plans or amendments to plans prepared after a specific date; or
  - (c) do both of those things.
- (3) A direction under subsection (1) to a local government must specify a time frame for compliance with the direction, and the local government must comply with the direction within that time frame.
- (4) The Chief Health Officer may at any time, by notice in writing, amend or revoke a direction given under subsection (1).

**Part 6 — Public health policies**

**48. Minister may issue public health policies**

- (1) The Minister may issue public health policies for any purposes relating to the objects of this Act.
- (2) A public health policy may be issued only if —
  - (a) sections 49, 50 and 52 have been complied with in relation to a draft of the public health policy; and
  - (b) the Chief Health Officer has recommended under section 52(2)(d) that the public health policy be issued.

**49. Chief Health Officer may prepare and publish draft public health policies**

- (1) If the Chief Health Officer considers that it is in the interests of public health for a public health policy to be issued under section 48, the Chief Health Officer may prepare a draft of the public health policy and make it available for public comment.
- (2) The Chief Health Officer must give public notice of the proposal to issue the public health policy, and the notice must —
  - (a) contain information about the draft policy; and
  - (b) specify where copies of the draft policy are available without charge; and
  - (c) invite interested persons to make submissions to the Chief Health Officer on the draft policy within a period specified in the notice; and
  - (d) specify how those submissions may be made.
- (3) The notice required by subsection (2) may be published in any way the Chief Health Officer considers appropriate, including (without limitation) by posting the notice on a website maintained by or on behalf of the Department.

**50. Chief Health Officer to consult on proposal to issue public health policy**

- (1) The Chief Health Officer must make reasonable efforts to consult any public authority or other person or body that the Chief Health Officer considers may be affected if the draft policy becomes a public health policy under this Part.
- (2) Consultation may be undertaken in any way that the Chief Health Officer considers appropriate in the circumstances, having regard to the number of persons or bodies considered likely to be affected as described in subsection (1).

**51. Submissions may be made to Chief Health Officer**

A person may make submissions to the Chief Health Officer, in the manner and within the period specified in the relevant notice required by section 49(2), in relation to the draft policy to which that notice relates.

**52. Chief Health Officer to report to Minister on outcome of consultation on draft policy**

- (1) After the end of the period for making submissions under section 49 in relation to a draft policy, the Chief Health Officer —

- (a) must consider any submissions made during that period and any views expressed by a public authority, person or body consulted under section 50; and
  - (b) may —
    - (i) decide to recommend to the Minister that the draft policy be issued as a public health policy without revision; or
    - (ii) revise the draft policy to any extent the Chief Health Officer considers appropriate, and decide to recommend to the Minister that the draft policy (as revised) be issued as a public health policy; or
    - (iii) decide not to recommend to the Minister that the draft policy (whether revised or not) be issued as a public health policy.
- (2) After deciding what to do under subsection (1)(b), the Chief Health Officer must submit a report to the Minister that contains —
- (a) a summary of the consultation undertaken by the Chief Health Officer under section 50 in relation to the draft policy; and
  - (b) a summary of the submissions made to the Chief Health Officer under section 51 on the draft policy; and
  - (c) the Chief Health Officer's decision under subsection (1)(b); and
  - (d) if the decision of the Chief Health Officer is to recommend to the Minister that the draft policy (whether revised under subsection (1)(b)(ii) or not) be issued as a public health policy —
    - (i) the Chief Health Officer's recommendation; and
    - (ii) a copy of the draft policy (as revised, if applicable) that the Chief Health Officer recommends be issued as a public health policy; and
    - (iii) if the Chief Health Officer has revised the draft policy recommended, the reasons for the revision.
- (3) Nothing in this section prevents the Chief Health Officer from consulting any public authority, body or person in relation to a draft policy revised under subsection (1)(b)(ii) before submitting the report to the Minister.

**53. Tabling of reports and public health policies**

- (1) The Minister must cause a copy of a report submitted to the Minister by the Chief Health Officer under section 52(2) to be laid before each House of Parliament as soon as is practicable after the Minister receives the report.
- (2) The Minister must cause a copy of a public health policy issued under this Part to be laid before each House of Parliament as soon as is practicable after the policy is issued.

**54. Publication of reports and public health policies**

- (1) The Chief Health Officer must make the following publicly available without charge —
  - (a) reports submitted to the Minister by the Chief Health Officer under section 52(2);
  - (b) current public health policies issued under section 48.
- (2) The Chief Health Officer may comply with subsection (1) in any way the Chief Health Officer considers appropriate, including (without limitation) by making the documents available on a website maintained by or on behalf of the Department.

**55. Application of *Interpretation Act 1984* to public health policies**

- (1) A public health policy is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (2) The *Interpretation Act 1984* sections 43 (other than subsection (6)) and 44 and Part VIII apply to a public health policy as if it were subsidiary legislation.

**56. Power to make regulations not limited**

Nothing in this Part or in any public health policy limits or affects the power to make regulations under section 304 or 322.

**Part 7 — Public health assessments**

**57. Terms used**

In this Part —

***assessable proposal*** means a proposal that the regulations provide is an assessable proposal;

***decision-making authority*** —

- (a) means a public authority authorised by or under a written law to make a decision in respect of an assessment, approval, review or other process to which a proposal is subject under the written law; and



- (b) includes, in relation to a particular proposal, a Minister prescribed by the regulations for the purposes of this definition as being the Minister responsible for the proposal;

**findings** includes conclusions and recommendations and, in relation to recommendations, the reasons for them;

**proponent**, of a proposal, means —

- (a) the person responsible for the proposal; or
- (b) the public authority on which the responsibility for the proposal is imposed under another written law;

**proposal** means a project, plan, programme, policy, operation, undertaking or development;

**public health assessment**, in relation to a proposal, means an assessment of any public health risks and any benefits to public health that may result from implementing the proposal.

**58. Regulations may provide for assessable proposals**

The regulations may —

- (a) provide that a proposal that is subject under another written law to a specified assessment, approval, review or other process by a decision-making authority is an assessable proposal; and
- (b) require the proponent of an assessable proposal to give notice of the proposal to the Chief Health Officer; and
- (c) provide for the form, content and timing of the notice that the proponent of an assessable proposal is required to give to the Chief Health Officer.

**59. Chief Health Officer may require public health assessments of assessable proposals**

- (1) The Chief Health Officer may, by written notice given to the proponent of an assessable proposal, require a public health assessment to be carried out in respect of the proposal by and at the expense of the proponent.
- (2) The Chief Health Officer must, without delay, give the decision-making authority in respect of which the proposal is an assessable proposal a copy of the notice given under subsection (1).
- (3) The proponent of the assessable proposal must —
  - (a) comply with the notice given under subsection (1); and
  - (b) provide a written report setting out the findings of the public health assessment to the Chief Health Officer.

- (4) On receiving a report under subsection (3)(b), the Chief Health Officer must, without delay, give a copy of the report to the decision-making authority in respect of which the proposal is an assessable proposal.
- (5) The proponent of the assessable proposal may comply with the notice given under subsection (1) by causing a public health assessment to be carried out on behalf of the proponent in respect of the proposal.

**60. Chief Health Officer may give advice or make recommendations in relation to assessable proposal**

- (1) The Chief Health Officer must —
  - (a) consider a report given to the Chief Health Officer under section 59(3) by the proponent of an assessable proposal; and
  - (b) give written advice or make written recommendations in relation to the proposal to the decision-making authority in respect of which the proposal is an assessable proposal.
- (2) Without limiting subsection (1), the Chief Health Officer may give advice or make recommendations to the decision-making authority under that subsection —
  - (a) as to any public health risks and any benefits to public health that may result from implementing the proposal; or
  - (b) as to whether or not the proposal should be implemented; or
  - (c) as to any conditions or restrictions subject to which the proposal should be implemented.
- (3) The Chief Health Officer must, without delay, give the proponent of the assessable proposal a copy of any advice or recommendations that the Chief Health Officer gives or makes to the decision-making authority.

**61. Decision-making authority to have regard to advice and recommendations of Chief Health Officer**

- (1) A decision-making authority to which advice is given or recommendations are made under section 60 in relation to a proposal must not make any decision that could have the effect of causing or allowing the proposal to be implemented unless the decision-making authority has had regard to that advice or those recommendations.
- (2) This section applies despite any other written law.

**62. Minister may request Chief Health Officer to conduct inquiry into other proposals**

- (1) If the Minister considers that a proposal that is not an assessable proposal would be likely, if implemented, to have a significant effect on public health, the Minister may request the Chief Health Officer to conduct an inquiry under Part 15 into the proposal.
- (2) The Chief Health Officer must comply with a request under subsection (1).

**63. Regulations may provide for certain matters**

- (1) In this section —  
*nominated proposal* means an assessable proposal in respect of which a public health assessment is required to be carried out under section 59;  
*specified* means specified by the Chief Health Officer.
- (2) The regulations may —
  - (a) provide for the form, content, timing and procedure of a public health assessment that is required to be carried out under section 59; and
  - (b) provide for the form, content and timing of the report setting out the findings of the public health assessment, as referred to in section 59(3) (the *assessment report*); and
  - (c) provide for —
    - (i) fees or charges payable by the proponent of a nominated proposal for the Chief Health Officer's consideration of the assessment report provided in respect of the proposal; and
    - (ii) the recovery of those fees or charges;and
  - (d) require the proponent of a nominated proposal to make copies of the assessment report available —
    - (i) without charge to public authorities; and
    - (ii) at a charge not exceeding the amount prescribed by the regulations to members of the public;and
  - (e) require the proponent of a nominated proposal to advertise, in the manner prescribed by the regulations, that copies of the assessment report are available to public authorities and members of the public; and
  - (f) provide for the period within which, the extent to which and the manner in which written submissions may be

- made by a person or public authority to the Chief Health Officer in respect of the assessment report; and
- (g) require the proponent of a nominated proposal to provide to the Chief Health Officer, within the specified period, a written response to any of those submissions; and
  - (h) require the proponent of a nominated proposal, or any other person, to provide to the Chief Health Officer within the specified period specified information that is relevant to the proposal; and
  - (i) confer power on the Chief Health Officer to make any investigation or inquiry in relation to a nominated proposal that the Chief Health Officer thinks fit; and
  - (j) require —
    - (i) the implementation of a nominated proposal to be monitored in the specified manner by and at the expense of the proponent of the proposal; and
    - (ii) specified information relating to the monitoring of the implementation of the nominated proposal to be provided by the proponent of the proposal to the Chief Health Officer.

## Part 8 — Registration and licensing

### Division 1 — Preliminary

#### 64. Terms used

In this Part —

*activity licence* means a licence granted under section 78;

*certificate of registration* means a certificate of registration issued under section 68(6);

*corresponding public health law* means a law of another State, a Territory or the Commonwealth that is prescribed by the regulations to be a law that corresponds to this Act;

*licensable activity* means a public health risk activity declared under section 65 to be licensable;

*registrable activity* means a public health risk activity declared under section 65 to be registrable;

*vary*, a condition, includes to revoke a condition or to impose a condition.

#### 65. Regulations may declare licensable and registrable activities

The regulations may declare that a public health risk activity is —

- (a) registrable; or
- (b) licensable; or
- (c) both registrable and licensable.

**66. Application of Part to Crown**

- (1) To avoid doubt, this Part applies to —
  - (a) registrable activities carried on by the Crown in any capacity; and
  - (b) licensable activities carried on by any individual in their capacity as an employee, agent or officer of the Crown.
- (2) This section is subject to Part 17.

**Division 2 — Registration of registrable activities**

**67. Carrying on unregistered registrable activity**

- (1) In this section —  
*exempt person* means a person, or a person within a class of persons, prescribed by the regulations for the purposes of this definition.
- (2) A person, other than an exempt person, must not carry on a registrable activity at any premises unless the registrable activity is registered in respect of those premises under this Division.  
Penalty for an offence under this subsection: a fine of \$20 000.

**68. Registration of registrable activity**

- (1) The appropriate enforcement agency may register a registrable activity in respect of any premises for the purposes of this Division.
- (2) A person who proposes to carry on a registrable activity at any premises may apply, in the approved form, to the appropriate enforcement agency for the registration of the registrable activity in respect of those premises under this Division.
- (3) The application must be accompanied by —
  - (a) any plans, specifications or other documents or information that the appropriate enforcement agency reasonably requires for a proper consideration of the application; and
  - (b) either —
    - (i) if the appropriate enforcement agency is a local government, the fee, if any, imposed by the agency in accordance with section 294; or
    - (ii) in any other case, the fee, if any, prescribed by the regulations.

- (4) After considering the application, the appropriate enforcement agency may —
  - (a) grant the application, with or without conditions; or
  - (b) refuse the application.
- (5) In deciding whether to grant or refuse the application, the appropriate enforcement agency must have regard to any matters prescribed by the regulations for the purposes of this subsection.
- (6) If the appropriate enforcement agency grants the application, the agency must issue the applicant with a certificate of registration, in the approved form, that —
  - (a) specifies the premises and the registrable activity in respect of which the registration is granted; and
  - (b) sets out any conditions to which the registration is subject.
- (7) If the appropriate enforcement agency refuses the application, the agency must give written notice of the refusal to the applicant setting out the reasons for the refusal.

**69. Registration remains in force until cancelled**

- (1) The registration of a registrable activity in respect of any premises under this Division remains in force until cancelled.
- (2) Subsection (1) is subject to section 72(2).

**70. Annual or other fee in relation to registration**

- (1) The regulations may prescribe an annual or other fee in relation to the registration of a registrable activity in respect of any premises, to be paid by the time the regulations require the payment to be made.
- (2) If the appropriate enforcement agency is a local government, the agency may, in accordance with section 294, impose an annual or other fee in relation to the registration of a registrable activity in respect of any premises, to be paid by the time the agency requires the payment to be made.

**71. Variation of conditions, suspension or cancellation of registration**

- (1) The appropriate enforcement agency, either on its own initiative or on the application of the holder of the certificate of registration, may vary the conditions of, suspend or cancel the registration of a registrable activity registered by the agency in respect of any premises under this Division.

- (2) The registration of a registrable activity in respect of any premises may be suspended or cancelled on any grounds prescribed by the regulations or on any of these grounds —
- (a) the registration has been obtained by fraud or misrepresentation;
  - (b) the holder of the certificate of registration has been convicted of an offence under this Act or a corresponding public health law;
  - (c) the holder of the certificate of registration has failed to comply with a code of practice prescribed by the regulations in respect of the registrable activity that is registered in respect of those premises;
  - (d) if the appropriate enforcement agency is a local government, any annual or other fee imposed by the agency in relation to the registration of the registrable activity in respect of those premises has not been paid by the time the agency requires the payment to be made;
  - (e) in a case where paragraph (d) does not apply, any annual or other fee prescribed by the regulations in relation to the registration of the registrable activity in respect of those premises has not been paid by the time the regulations require the payment to be made;
  - (f) any condition to which the registration of the registrable activity is subject has not been complied with;
  - (g) the registrable activity has ceased to be carried on at those premises;
  - (h) the holder of the certificate of registration has applied for the suspension or cancellation.
- (3) The appropriate enforcement agency may vary the conditions of, suspend or cancel the registration of a registrable activity in respect of any premises only —
- (a) after having given the holder of the certificate of registration —
    - (i) written reasons for the agency's intention to vary, suspend or cancel; and
    - (ii) an opportunity to make submissions;and
  - (b) after having considered any submissions made by that person.
- (4) Subsection (3) does not apply to the variation of the conditions, or the suspension or cancellation, of the registration in accordance

with an application by the holder of the certificate of registration for the variation, suspension or cancellation.

- (5) A variation of the conditions, or the suspension or cancellation, of the registration of a registrable activity in respect of any premises —
- (a) must be by written notice; and
  - (b) must be served on the holder of the certificate of registration; and
  - (c) takes effect on the day on which the notice is served or on a later day specified in the notice.

**72. Further provisions relating to suspension of registration**

- (1) Unless a longer period of suspension is requested by the holder of the certificate of registration, the registration of a registrable activity in respect of any premises cannot be suspended under section 71 for longer than 3 months.
- (2) While the registration of a registrable activity in respect of any premises is suspended under section 71, the registrable activity is to be regarded as not registered in respect of those premises.
- (3) If the registration of a registrable activity in respect of any premises is suspended under section 71 (other than at the request of the holder of the certificate of registration), the appropriate enforcement agency may, at any time before the suspension ceases, extend the period of suspension for one further period of not more than 3 months if the enforcement agency is satisfied that the ground for the suspension is continuing.
- (4) Section 71(5) applies with all necessary changes to the extension of a period of suspension as if it were the imposition of a period of suspension.
- (5) If the registration of a registrable activity in respect of any premises is suspended under section 71 —
- (a) in any case where the holder of the certificate of registration requested the suspension, the appropriate enforcement agency must immediately terminate the suspension if the holder requests that the suspension be terminated;
  - (b) in any other case, the appropriate enforcement agency may, by written notice served on the holder of the certificate of registration, terminate the suspension if the enforcement agency is satisfied at any time that it is no longer necessary or appropriate for the suspension to continue.



**73. Notification of certain matters relating to registrable activity or premises**

- (1) A person who carries on, or who carried on, a registrable activity that is registered in respect of any premises under this Division must give written notification, in the approved form, to the appropriate enforcement agency of any of these occurrences —
  - (a) the registrable activity ceases to be carried on at those premises;
  - (b) the person ceases to carry on the registrable activity at those premises;
  - (c) approval of any proposed alteration of those premises is sought from a public authority or other person or body.
- (2) A person must give the notification required under subsection (1) within 5 working days after the relevant occurrence takes place.  
Penalty for an offence under this subsection: a fine of \$10 000.
- (3) A person who carries on a registrable activity that is registered in respect of any premises under this Division must not make any change to the registrable activity carried on at those premises that is likely to affect the nature or extent of the public health risk from that activity unless —
  - (a) the person has given written notification to the appropriate enforcement agency of the proposed change to the registrable activity; and
  - (b) that change has been approved by the agency.Penalty for an offence under this subsection: a fine of \$10 000.

**74. Transfer of certificate of registration**

- (1) The registration of a registrable activity in respect of any premises is not transferable to any other premises.
- (2) The holder of a certificate of registration can transfer that certificate to another person, but only if the appropriate enforcement authority first approves the transfer.
- (3) An application for the approval of the transfer of a certificate of registration must be made and dealt with as if it were an application made under section 68 for the registration of the registrable activity in respect of the premises to which the certificate of registration relates, and that section applies accordingly with any necessary changes.

**75. Review of decisions relating to registration**

An applicant for the registration of a registrable activity in respect of any premises under this Division, or the holder of a certificate

of registration that specifies any premises, may apply to the State Administrative Tribunal for a review of a decision of the appropriate enforcement agency that relates to —

- (a) the grant or refusal of the application for the registration of the registrable activity in respect of those premises under this Division; or
- (b) the imposition of conditions on the registration of the registrable activity in respect of those premises on the application being granted; or
- (c) the variation of conditions of the registration of the registrable activity in respect of those premises; or
- (d) the suspension or cancellation of the registration of the registrable activity in respect of those premises; or
- (e) the refusal of an application to transfer the certificate of registration to another person.

**76. Register of activities and premises to be maintained**

- (1) An enforcement agency must prepare and maintain, in an approved form, a register listing the registrable activities that are registered by the agency under this Division and the premises in respect of which those activities are registered.
- (2) The register must contain any details prescribed by the regulations in respect of the registrable activities and premises listed in the register.
- (3) The register must be made publicly available, without charge, during normal business hours.
- (4) Without limiting subsection (3), the register may be made publicly available on a website maintained by or on behalf of the enforcement agency.

**Division 3 — Licensing of individuals carrying on licensable activities**

**77. Unlicensed persons carrying on licensable activities**

- (1) In this section —  
*exempt person* means a person, or a person within a class of persons, prescribed by the regulations for the purposes of this definition.
- (2) A person, other than an exempt person, must not carry on a licensable activity unless the person holds an activity licence that authorises the person to carry on that activity.

Penalty for an offence under this subsection:

- (a) for an individual — a fine of \$20 000;

- (b) for a body corporate convicted under section 281 — a fine of \$100 000.

**78. Activity licences**

- (1) The appropriate enforcement agency may grant an activity licence that authorises a person to carry on one or more licensable activities.
- (2) An activity licence —
  - (a) may be granted only to an individual; and
  - (b) is not transferable to another individual.
- (3) A person may apply, in the approved form, to the appropriate enforcement agency for an activity licence, specifying the licensable activity or activities that the person proposes to carry on.
- (4) The application must be accompanied by —
  - (a) any documents or information that the appropriate enforcement agency reasonably requires for a proper consideration of the application; and
  - (b) either —
    - (i) if the appropriate enforcement agency is a local government, the fee, if any, imposed by the agency in accordance with section 294; or
    - (ii) in any other case, the fee, if any, prescribed by the regulations.
- (5) After considering an application for an activity licence, the appropriate enforcement agency may —
  - (a) grant the application, with or without conditions; or
  - (b) refuse the application.
- (6) In deciding whether to grant or refuse the application, the appropriate enforcement agency must have regard to any matters prescribed by the regulations for the purposes of this subsection.
- (7) If the appropriate enforcement agency grants an application for an activity licence, the agency must issue the applicant with an activity licence, in the approved form, that —
  - (a) specifies the name of the person to whom the licence is issued; and
  - (b) specifies the licensable activity or activities authorised to be carried on by the licence; and
  - (c) sets out any conditions to which the licence is subject; and

(d) specifies the period for which the licence remains in force.

- (8) If the appropriate enforcement agency refuses an application for an activity licence, the agency must give written notice of the refusal to the applicant setting out the reasons for the refusal.

**79. Period an activity licence remains in force**

- (1) Unless it is sooner cancelled, an activity licence remains in force, except while it is suspended, for the period specified in the licence.
- (2) An activity licence may be renewed under section 80.

**80. Renewal of activity licence**

- (1) A person who holds an activity licence may apply to the appropriate enforcement agency to renew the licence.
- (2) The application must be made before the activity licence expires.
- (3) Section 78(4) to (8) apply, with any necessary changes, to an application under this section.
- (4) A suspended activity licence may be renewed under this section, but the renewal of the licence does not affect the period of suspension.
- (5) If an application for the renewal of an activity licence is made but not dealt with before the licence expires —
- (a) the licence continues in force until the application is dealt with, but without affecting the period of suspension of a suspended activity licence; and
  - (b) any renewal in that case is to be taken for all purposes to have taken effect on the day immediately following the day on which the licence would (but for the renewal) have expired.

**81. Annual or other fee in relation to activity licence**

- (1) The regulations may prescribe an annual or other fee in relation to an activity licence, to be paid by the time the regulations require the payment to be made.
- (2) If the appropriate enforcement agency is a local government, the agency may, in accordance with section 294, impose an annual or other fee in relation to an activity licence, to be paid by the time the agency requires the payment to be made.

- 82. Variation of conditions, suspension or cancellation of activity licence**
- (1) The appropriate enforcement agency, either on its own initiative or on the application of the holder of the activity licence, may vary the conditions of, suspend or cancel an activity licence issued by the agency.
  - (2) An activity licence may be suspended or cancelled on any grounds prescribed by the regulations or on any of these grounds —
    - (a) the licence has been obtained by fraud or misrepresentation;
    - (b) the holder of the licence has been convicted of an offence under this Act or a corresponding public health law;
    - (c) the holder of the licence has failed to comply with a code of practice prescribed by the regulations in respect of a licensable activity authorised to be carried on by the licence;
    - (d) if the appropriate enforcement agency is a local government, any annual or other fee imposed by the agency in relation to the licence has not been paid by the time the agency requires the payment to be made;
    - (e) in a case where paragraph (d) does not apply, any annual or other fee prescribed by the regulations in relation to the licence has not been paid by the time the regulations require the payment to be made;
    - (f) any condition to which the licence is subject has not been complied with;
    - (g) the holder of the licence has ceased to carry on the licensable activity or activities authorised to be carried on by the licence;
    - (h) the holder of the licence has applied for the suspension or cancellation.
  - (3) The appropriate enforcement agency may vary the conditions of, suspend or cancel an activity licence only —
    - (a) after having given the holder of the licence —
      - (i) written reasons for the agency's intention to vary, suspend or cancel; and
      - (ii) an opportunity to make submissions;and
    - (b) after having considered any submissions made by that person.

- (4) Subsection (3) does not apply to the variation of the conditions, or the suspension or cancellation, of an activity licence in accordance with an application by the holder of the licence for the variation, suspension or cancellation.
- (5) A variation of the conditions, or the suspension or cancellation, of an activity licence —
  - (a) must be by written notice; and
  - (b) must be served on the holder of the licence; and
  - (c) takes effect on the day on which the notice is served or on a later day specified in the notice.

**83. Further provisions relating to suspension of activity licence**

- (1) Unless a longer period of suspension is requested by the holder of the activity licence, an activity licence cannot be suspended under section 82 for longer than 3 months.
- (2) While an activity licence is suspended under section 82, the holder of the licence is to be regarded as not authorised to carry on the licensable activity to which the licence relates.
- (3) If an activity licence is suspended under section 82 (other than at the request of the holder of the licence), the appropriate enforcement agency may, at any time before the suspension ceases, extend the period of suspension for one further period of not more than 3 months if the enforcement agency is satisfied that the ground for the suspension is continuing.
- (4) Section 82(5) applies with all necessary changes to the extension of a period of suspension as if it were the imposition of a period of suspension.
- (5) If an activity licence is suspended under section 82 —
  - (a) in any case where the holder of the licence requested the suspension, the appropriate enforcement agency must immediately terminate the suspension if the holder requests that the suspension be terminated;
  - (b) in any other case, the appropriate enforcement agency may, by written notice served on the holder of the licence, terminate the suspension if the enforcement agency is satisfied at any time that it is no longer necessary or appropriate for the suspension to continue.

**84. Notification of certain changes to licensable activities**

- (1) A person who holds an activity licence must give written notification, in the approved form, to the appropriate enforcement agency of any of these changes in relation to the licence —

- (a) the person ceases to carry on a licensable activity authorised to be carried on by the licence;
  - (b) any change is made to a licensable activity authorised to be carried on by the licence that is likely to affect the nature or extent of the public health risk from that activity;
  - (c) any other change in relation to the licence that is prescribed by the regulations.
- (2) The person must give the notification required under subsection (1) within 5 working days after the relevant change takes place.
- Penalty for an offence under this subsection:
- (a) for an individual — a fine of \$10 000;
  - (b) for a body corporate convicted under section 281 — a fine of \$50 000.

**85. Review of decisions relating to activity licences**

An applicant for, or for the renewal of, an activity licence, or the holder of an activity licence, may apply to the State Administrative Tribunal for a review of a decision of the appropriate enforcement agency that relates to —

- (a) the grant or refusal of the application for, or for the renewal of, the licence; or
- (b) the imposition of conditions on the licence on the application being granted; or
- (c) the variation of conditions of the licence; or
- (d) the suspension or cancellation of the licence.

**86. Register of licence holders to be maintained**

- (1) An enforcement agency must prepare and maintain, in an approved form, a register listing the persons who hold an activity licence issued by the agency.
- (2) The register must contain any details prescribed by the regulations in respect of each person listed in the register.
- (3) The register may be prepared and maintained in conjunction with a register prepared and maintained by the enforcement agency under section 76.
- (4) The register must be made publicly available, without charge, during normal business hours.
- (5) Without limiting subsection (4), the register may be made publicly available on a website maintained by or on behalf of the enforcement agency.

## Part 10 — Non-infectious diseases and physical or functional abnormalities

### 148. Terms used

In this Part —

***infectious disease-related condition*** means a medical condition that could be declared under section 91 to be a notifiable infectious disease-related condition;

***prescribed condition of health*** —

- (a) means a disease process, or physical or functional abnormality, that is prescribed by the regulations as a condition of health to which this Part applies; but
- (b) does not include —
  - (i) an infectious disease; or
  - (ii) an infectious disease-related condition.

### 149. Objects of this Part

The objects of this Part are to promote the prevention and alleviation of those disease processes, and of those physical or functional abnormalities, as are —

- (a) not infectious and not infectious disease-related conditions; and
- (b) prescribed.

### 150. Regulations for this Part

- (1) Without limiting section 304(1), regulations may be made under that subsection for the purpose of achieving the objects of this Part.
- (2) Without limiting subsection (1), the regulations may —
  - (a) prescribe conditions of health to which this Part applies;
  - (b) prescribe how, when, by whom, and to whom, cases of prescribed conditions of health must be notified;
  - (c) provide for the establishment and maintenance of registers for the purposes of recording information notified or provided under this Part, and (without limitation) —
    - (i) regulate, restrict or prohibit access to, and the release of information from, those registers;
    - (ii) provide for the removal of information from those registers;
  - (d) prescribe functions, powers, and duties of any person or class of person, whether the Minister, the Chief Health



Officer, a medical practitioner, a person having any prescribed condition of health or any other person or class of person.

- (3) A regulation made under subsection (2)(d) is limited to prescribing the functions, powers and duties necessary to achieve the objects of this Part, and cannot require any person to submit to treatment without the person's consent.

**151. Protection from liability**

- (1) If a person is required under regulations made under section 150 to give any information and gives the information in good faith —
- (a) no civil or criminal liability is incurred in respect of giving the information; and
  - (b) giving the information is not to be regarded as —
    - (i) a breach of any duty of confidentiality or secrecy imposed by law; or
    - (ii) a breach of professional ethics, professional standards or any principles of conduct applicable to the person's employment; or
    - (iii) unprofessional conduct.
- (2) This section does not limit section 150.

**Part 14 — Improvement notices and enforcement orders**

**Division 1 — Preliminary**

**210. Terms used**

In this Part —

*assessment* includes inspection;

*occupier*, of premises, includes —

- (a) the owner of the premises; and
- (b) the person in charge of the premises; and
- (c) a person authorised to be present at the premises as an agent of the owner, or of the person in charge, of the premises.

**211. Proceedings for offences: how affected**

- (1) The issue of an improvement notice or an enforcement order does not prevent proceedings for an offence under this Act or any other written law being commenced or continued in connection with any matter in respect of which the notice or order was issued.

- (2) However, criminal proceedings (including proceedings under *The Criminal Code* section 177 or 178) do not lie against a person by reason only that the person has not complied with an improvement notice.

**Division 2 — Improvement notices**

**212. Issue of improvement notice**

An authorised officer may give an improvement notice to a person if the officer reasonably believes that —

- (a) the person —
- (i) is carrying on a public health risk activity that contravenes, or is likely to contravene, any provision of this Act; or
  - (ii) is carrying on a public health risk activity in a manner that contravenes, or is likely to contravene, any provision of this Act; or
  - (iii) has carried on a public health risk activity that contravened, or in a manner that contravened, any provision of this Act in circumstances that make it likely that the contravention will continue or be repeated;
- or
- (b) the person —
- (i) is carrying on an activity that poses a public health risk or that is carried on in a manner that poses a public health risk; and
  - (ii) has failed to take reasonable and practicable steps to prevent or minimise any harm to public health;
- or
- (c) the person is failing, or has failed, to comply with the general public health duty; or
- (d) the person is the occupier of premises where —
- (i) a public health risk activity is being carried on that contravenes, or is likely to contravene, any provision of this Act; or
  - (ii) a public health risk activity is being carried on in a manner that contravenes, or is likely to contravene, any provision of this Act; or
  - (iii) a public health risk activity has been carried on, or carried on in a manner, that contravened any provision of this Act in circumstances that make

it likely that the contravention will continue or be repeated;

or

- (e) the person is the occupier of premises where —
  - (i) an activity is being carried on that poses a public health risk or that is carried on in a manner that poses a public health risk; and
  - (ii) reasonable and practicable steps to prevent or minimise any harm to public health have not been taken;

or

- (f) the person is the occupier of premises where there is or has been a failure to comply with the general public health duty.

**213. Contents of improvement notice**

- (1) An improvement notice must take the form of an order requiring the person given the notice to take specified action, which may consist of—
  - (a) steps the person given the notice is required to take; or
  - (b) action the person given the notice is required to stop; or
  - (c) both of those things.
- (2) An improvement notice must —
  - (a) be in an approved form; and
  - (b) state the authorised officer's belief in terms of section 212(a), (b), (c), (d), (e) or (f); and
  - (c) state the reasonable grounds for that belief; and
  - (d) specify any provision of this Act in respect of which that belief is held; and
  - (e) specify the action that the person given the notice is required to take in order to comply with the notice and the period within which the person must take that action; and
  - (f) state that the person has the right to apply for a review under section 226(1); and
  - (g) state the date the notice was given and the name and contact details of the authorised officer who gave it.
- (3) Without limiting subsection (2)(e), an improvement notice may require the preparation and implementation of a risk management plan that —

- (a) identifies public health risks associated with the activities specified in the notice; and
  - (b) sets out the steps to be taken —
    - (i) to manage those risks; and
    - (ii) to ensure compliance with any requirements of this Act that relate to those activities.
- (4) When specifying under subsection (2)(e) the action that the person given the improvement notice is required to take, the authorised officer must have regard to —
  - (a) the degree, or the potential degree, of the risk or the damage to public health from any activity in relation to which the notice is issued; and
  - (b) any measures that were taken, or that have not been taken, to avoid, or to minimise the consequences or potential consequences of, that risk or damage to public health; and
  - (c) the principles set out in the Table to section 3(2); and
  - (d) any other matter prescribed by the regulations.
- (5) An improvement notice must state that it is issued under section 212.
- (6) An improvement notice may include ancillary or incidental directions.

**214. Extension of period of compliance with improvement notice**

Before the end of the period specified in the improvement notice under section 213(2)(e), an authorised officer may, on his or her own initiative or on the application of the person given the notice, extend by written notice given to the person the period within which the person must take action in accordance with the improvement notice.

**215. Compliance with improvement notice**

- (1) If an authorised officer is satisfied, after carrying out an appropriate assessment, that an improvement notice has been complied with, the officer must give the person given the improvement notice a notice of compliance in the approved form.
- (2) If an authorised officer is not satisfied, after carrying out an appropriate assessment, that the improvement notice has been complied with, the officer must give the person given the improvement notice a notice in the approved form setting out the reasons why the officer is not satisfied.

- (3) An assessment for the purposes of subsection (1) or (2) may be carried out on the application of the person given the improvement notice or on the initiative of the authorised officer.
- (4) An improvement notice in respect of which a notice of compliance is given under subsection (1) is to be taken to have been revoked.

### **Division 3 — Enforcement orders**

#### **216. Issue of enforcement orders**

- (1) An enforcement agency may give an enforcement order to a person if the agency reasonably believes that —
  - (a) the person has not complied with an improvement notice given to the person within the period specified in the notice under section 213(2)(e) or any extension of that period under section 214; or
  - (b) the issue of the order is necessary to prevent or mitigate a serious public health risk.
- (2) An enforcement agency may give an enforcement order to a person under subsection (1)(a) whether the authorised officer who gave the improvement notice to the person was designated as an authorised officer by that or another enforcement agency.

#### **217. Contents of enforcement order**

- (1) An enforcement order must take the form of an order that the person given the order is —
  - (a) required to take specified action; or
  - (b) prohibited from carrying on a specified activity; or
  - (c) prohibited from causing or permitting a specified activity to be carried on at specified premises; or
  - (d) prohibited from using any specified machinery, equipment or other thing; or
  - (e) prohibited from entering specified premises.
- (2) A prohibition imposed by an enforcement order may, without limitation —
  - (a) be limited, for example the prohibition might relate only to the manner in which something is done;
  - (b) be absolute or conditional.
- (3) An enforcement order must —
  - (a) be in an approved form; and
  - (b) state that it is issued under section 216; and
  - (c) state the grounds on which the order is given; and

- (d) state the period, if applicable, within which the person is required to comply with the order; and
  - (e) state the date, if applicable, on which the order ceases to have effect; and
  - (f) state that the person has the right to apply for a review under section 226(2); and
  - (g) state the date the notice was given and the name and contact details of the enforcement agency that gave it.
- (4) When specifying in an enforcement order anything that the person given the order is required to do or prohibited from doing, the enforcement agency must have regard to —
- (a) the degree, or the potential degree, of the risk or the damage to public health from any activity in relation to which the order is issued; and
  - (b) any measures that were taken, or that have not been taken, to avoid, or to minimise the consequences or potential consequences of, that risk or damage to public health; and
  - (c) the principles set out in the Table to section 3(2); and
  - (d) any other matter prescribed by the regulations.
- (5) An enforcement order may include ancillary or incidental directions, including a direction that a copy of the order be displayed in a specified manner at any premises to which the order applies.

**218. Extension of period of compliance with enforcement order**

If an enforcement order specifies the period under section 217(3)(d) within which the person given the order is required to comply with it, the enforcement agency may, on the agency's own initiative or on the application of the person given the order, extend the period within which the person must comply with the order.

**219. Enforcement agency may implement enforcement order**

- (1) This section applies if a person given an enforcement order has not complied with the order —
- (a) within the period specified in the order under section 217(3)(d) or any extension of that period under section 218; or
  - (b) if no period for compliance is specified, within the period that the enforcement agency reasonably believes to be sufficient for the order to have been complied with.

- (2) If this section applies, the enforcement agency may take any action the agency reasonably believes to be necessary to ensure that the order is complied with.
- (3) Without limiting subsection (2), for the purposes of that subsection an authorised officer designated by the enforcement agency may —
  - (a) with any police officer or other person the enforcement agency considers necessary, enter any premises to which the enforcement order relates, using any force that is reasonably necessary to do so —
    - (i) at any reasonable time; or
    - (ii) at any time, if the enforcement agency reasonably believes that the circumstances are sufficiently serious or urgent that immediate entry is required;
  - or
  - (b) arrange to be disconnected or turned off, or to be reconnected or turned on, any electricity, gas, water or fuel supply, or any drainage facility, or any other service, in any premises to which the enforcement order relates; or
  - (c) seize, detain, dispose of or isolate anything to which the enforcement order relates.
- (4) The regulations may make provision in respect of things detained, disposed of or isolated under subsection (3)(c).

**220. Application of *Criminal and Found Property Disposal Act 2006***

- (1) The *Criminal and Found Property Disposal Act 2006* applies to and in relation to anything that is seized under section 219(3)(c).
- (2) For the purposes of the *Criminal and Found Property Disposal Act 2006* as applied by subsection (1), each enforcement agency is a prescribed agency.

**221. Recovery of costs incurred by or on behalf of enforcement agency**

- (1) The amount of any costs incurred by or on behalf of the enforcement agency in taking action under section 219 —
  - (a) is to be taken to be a debt due to the enforcement agency, or to the State if the enforcement agency is the Chief Health Officer, from the person who has not complied with the enforcement order; and
  - (b) is recoverable in a court of competent jurisdiction.

- (2) In any proceedings for the recovery of the debt, a certificate signed by the enforcement agency stating the amount of any costs and the manner in which they were incurred is evidence of the matters certified.

**222. Criminal liability not affected**

Nothing in section 219 affects the liability of a person to be proceeded against for an offence under this Act or any other written law or the recovery of a penalty in proceedings of that kind.

**223. Certificate of clearance to be given in certain circumstances**

- (1) The enforcement agency that gave an enforcement order to a person must give a certificate of clearance to the person if the enforcement agency finds, by the enforcement agency's own assessment or the report of an authorised officer's assessment, that —
- (a) the person has complied with the order; and
  - (b) if applicable, there is no longer a serious public health risk to be prevented or mitigated.
- (2) A certificate of clearance must be in the approved form.
- (3) An enforcement order in respect of which a certificate of clearance is given is to be taken to have been revoked.

**224. Request for assessment**

- (1) A person may, at any time after an enforcement order has been given to the person, make a written request to the enforcement agency that gave the order to make an assessment, or to cause an authorised officer to make an assessment, for the purposes of section 223.
- (2) A certificate of clearance is to be taken to have been given to the person under section 223 if —
- (a) a request for an assessment is made under subsection (1); and
  - (b) through no fault of the person who made the request, the assessment is not made within the period of 5 working days after the receipt of the request by the enforcement agency.
- (3) The enforcement agency must give written notice in the approved form to the person given an enforcement order of the decision not to give a certificate of clearance after an assessment under this section or section 223 and the reasons for that decision.



**225. Contravention of enforcement order**

A person must not, without reasonable excuse, contravene or fail to comply with an enforcement order given to the person under this Division.

Penalty: a fine of \$50 000.

Daily penalty: a fine of \$10 000.

**Division 4 — Review by State Administrative Tribunal**

**226. Review of decisions relating to improvement notices and enforcement orders**

- (1) A person given an improvement notice may apply to the State Administrative Tribunal for a review of —
  - (a) the decision to give the improvement notice; or
  - (b) a decision of an authorised officer not to give a notice of compliance to the person under section 215.
- (2) A person given an enforcement order may apply to the State Administrative Tribunal for a review of —
  - (a) the decision to give the enforcement order; or
  - (b) a decision of the enforcement agency that gave the order not to give a certificate of clearance to the person under section 223.

**Part 18 — Liability, evidentiary and procedural provisions**

**Division 3 — Enforcement action against Crown**

**291. Term used: responsible agency**

In this Division —

*responsible agency*, in relation to an improvement notice, is the agency of the Crown the acts or omissions of which are alleged to form the basis for the giving of the notice.

**292. Improvement notices may be given to Crown**

- (1) An improvement notice may be given under this Act to the Crown in any of its capacities.
- (2) An improvement notice to be given to the Crown under this Act may be given to the responsible agency.

**293. Enforcement orders cannot be given to Crown**

An enforcement order cannot be given under this Act to the Crown in any of its capacities.

## Part 19 — Miscellaneous

### Division 1 — Provisions relating to local governments

**294. Fees and charges may be fixed and recovered by enforcement agencies that are local governments**

An enforcement agency that is a local government may impose and recover under the *Local Government Act 1995* Part 6 Division 5 Subdivision 2 a fee or charge for the performance of a function as an enforcement agency under this Act, including a fee or charge for the provision of information.

**295. Exercise of functions of local government outside its district**

(1) This section applies if —

- (a) a local government (the *affected local government*) reasonably considers that —
- (i) there is a material public health risk in its local government district; and
  - (ii) the risk is wholly or partly caused by some act or default in the local government district of another local government (the *other local government*); and
  - (iii) it is necessary for either or both of those local governments to take measures to control or abate that risk;

and

- (b) those local governments are unable to reach agreement as to the measures to be taken by either or both of them to control or abate that risk.

(2) If this section applies —

- (a) the Chief Health Officer may, in writing, authorise the affected local government to take, within the local government district of the other local government, the measures that the Chief Health Officer considers necessary to control or abate the material public health risk and specifies in the authorisation; and
- (b) an authorisation under paragraph (a) is sufficient authority for the affected local government to perform, within the local government district of the other local government, those functions that are conferred on local governments by or under this Act and that are necessary to control or abate the material public health risk; and

- (c) the amount of any costs incurred by the affected local government in performing functions under paragraph (b) —
  - (i) is to be taken to be a debt due to the affected local government by the other local government; and
  - (ii) is recoverable in a court of competent jurisdiction.
- (3) In any proceedings for the recovery of the debt, a certificate signed by the chief executive officer of the affected local government stating the amount of any costs and the manner in which they were incurred is evidence of the matters certified.
- (4) Nothing in this section limits —
  - (a) sections 7 and 8; or
  - (b) the *Local Government Act 1995* section 3.19.

**296. Chief Health Officer may act where no local government**

- (1) The Chief Health Officer may perform all the functions of a local government in any place that is not within the boundaries of a local government district.
- (2) Subsection (1) does not limit or affect any other provision of this Act that confers functions on the Chief Health Officer.

**Part 20 — Transitional and savings provisions**

**313. Unpaid rates levied under Health Act Part III remain recoverable**

If any health rate, sanitary rate, supplementary rate or special loan rate made and levied under the Health Act Part III remains unpaid immediately before the deletion of that Part effected by the *Public Health (Consequential Provisions) Act 2016*, the rate remains due and payable and may be recovered under the *Local Government Act 1995*, and all the provisions of the *Local Government Act 1995* relating to the payment and recovery of general rates apply accordingly.

**314. Transitional provisions relating to deletion of Health Act Part IV**

If any disagreement of the kind referred to in the Health Act section 61 remains undecided immediately before the deletion of that section effected by the *Public Health (Consequential Provisions) Act 2016*, the Governor may decide the amount to be paid by each local government towards the cost or maintenance of the joint scheme that is the subject of the disagreement.

**315. Transitional provisions relating to notices and orders issued under Health Act Part V Division 1 or 2**

- (1) A notice given by a local government under the Health Act section 135 or 137 or 139 and in force immediately before the deletion of Part V Division 1 of that Act effected by the *Public Health (Consequential Provisions) Act 2016* is to be taken to be an improvement notice issued under this Act in the same terms as the original notice, and to continue in force.
- (2) An order given under the Health Act section 145 and in force immediately before the deletion of Part V Division 1 of that Act effected by the *Public Health (Consequential Provisions) Act 2016* is to be taken to be an improvement notice issued under this Act in the same terms as the order, and to continue in force.
- (3) A notice given by a local government under the Health Act section 150 and in force immediately before the deletion of Part V Division 2 of that Act effected by the *Public Health (Consequential Provisions) Act 2016* is to be taken to be an improvement notice issued under this Act in the same terms as the original notice, and to continue in force.

**316. Transitional provisions relating to deletion of Health Act Part VII**

- (1) A requisition issued under the Health Act section 181 or 184 and in force immediately before the deletion of the relevant section by the *Public Health (Consequential Provisions) Act 2016* is to be taken to be an improvement notice issued under this Act in the same terms as the original notice, and to continue in force.
- (2) A notice given by a local government under the Health Act section 196 and in force immediately before the deletion of that section effected by the *Public Health (Consequential Provisions) Act 2016* is to be taken to be an improvement notice issued under this Act in the same terms as the original notice, and to continue in force.

**317. Transitional provisions relating to deletion of Health Act Part IX**

A requisition issued under the Health Act section 260 and in force immediately before the deletion of that section by the *Public Health (Consequential Provisions) Act 2016* is to be taken to be an improvement notice issued under this Act in the same terms as the original notice, and to continue in force.

- 318. Transitional provisions relating to recovery for work done by local government, and charges on land or premises**
- (1) If a local government has carried out work on any land or premises under a provision of the Health Act (the *first provision*), or under an agreement entered into under the first provision, and, immediately before the deletion of the first provision effected by the *Public Health (Consequential Provisions) Act 2016*, the Health Act section 371 or subsection (2) applied to and in relation to the amount due to the local government in respect of the work, the Health Act section 371 or, as the case requires, subsection (2) continues to apply to and in relation to that amount.
  - (2) Any amount that, under the Health Act section 371, is recoverable by a local government from the owner of any land immediately before the deletion of that section effected by the *Public Health (Consequential Provisions) Act 2016* continues to be recoverable by that local government from that owner in any court of competent jurisdiction, and until paid is a charge on that land.
  - (3) If any amount payable to a local government under a provision of the Health Act (the *first provision*), or under an agreement entered into under the first provision, remains unpaid immediately before the deletion of the first provision effected by the *Public Health (Consequential Provisions) Act 2016*, and, under the first provision, or another provision of the Health Act (whether or not that other provision is deleted at the same time or subsequently), the amount is a charge on any premises or land immediately before the deletion of the first provision, that amount continues to be a charge on those premises or that land until the amount is paid.
  - (4) The Health Act section 372 applies or, as the case requires, continues to apply to and in relation to any charge on land or premises in any case where the charge arises or is continued under this section.
  - (5) Subsections (1) and (2) are subject to the *Limitation Act 1935* and the *Limitation Act 2005*.
- 319. Pesticides Advisory Committee**
- (1) The Pesticides Advisory Committee (the *Committee*) that, immediately before the day on which this section comes into operation (the *commencement day*), was preserved and continued in existence by the Health Act section 246B continues in existence as if it had been established by the Chief Health Officer as an advisory committee under section 33.

- (2) Until the Chief Health Officer determines otherwise under section 33 —
- (a) the Committee continues to have the members (including co-opted members) that it had immediately before the commencement day; and
  - (b) the Chief Health Officer is the Chairperson of the Committee, unless a person nominated by the Chief Health Officer is a member in place of the Chief Health Officer, in which case that person is the Chairperson; and
  - (c) any person who, immediately before the commencement day, was a deputy for a member of the Committee continues to be deputy for that member; and
  - (d) the Chief Health Officer may appoint a deputy for any member of the Committee who does not have a deputy; and
  - (e) at any meeting of the Committee at which a member (other than a co-opted member) is not present, that member's deputy has all the functions of that member; and
  - (f) the person who, immediately before the commencement day, held the office of Secretary of the Pesticides Advisory Committee continues to hold that office; and
  - (g) the procedure of the Committee is to be as set out in the Health Act section 246B(6), as that provision existed immediately before the commencement day, except that in the application of that provision the references to a regular member are to be taken to be references to any member who is not a co-opted member; and
  - (h) each co-opted member of the Committee may be paid the attendance fee (if any) that, immediately before the commencement day, was prescribed for the purposes of the Health Act section 246B(8) (as that provision existed immediately before the commencement day), but not if the co-opted member belongs to a class of co-opted members to whom an attendance fee was not payable immediately before the commencement day; and
  - (i) the Committee's function is to advise the Chief Health Officer on any matter whatsoever concerning pesticides, whether that matter is referred to it by the Chief Health Officer or not.

**320. Transitional provisions for Health Act Part IXA**

- (1) The *Interpretation Act 1984* section 36 applies as if the Health Act Part IXA had been repealed and re-enacted by Part 10 of this Act.
- (2) However, the following regulations, and no other regulations, continue in force under this section as if those regulations were regulations made under section 150 —
  - (a) the *Health (Cervical Screening Register) Regulations 1991*;
  - (b) the *Health (Notification of Lead Poisoning) Regulations 1985*;
  - (c) the *Health (Notification of Stimulant Induced Psychosis) Regulations 2010*;
  - (d) the *Health (Western Australian Cancer Register) Regulations 2011*;
  - (e) the *Health (Western Australian Register of Developmental Anomalies) Regulations 2010*.

<sup>3</sup> On the date as at which this compilation was prepared, the *Health Practitioner Regulation National Law (WA) Amendment Act 2018* s. 117 had not come into operation. It reads as follows:

**117. Public Health Act 2016 amended**

- (1) This section amends the *Public Health Act 2016*.
- (2) In section 4(1) in the definition of *midwife* delete “whose name is entered on the Register of Midwives kept under that Law;” and insert:

in the midwifery profession;
- (3) In section 4(1) in the definition of *nurse* delete “and midwifery profession whose name is entered on the Register of Nurses kept under that Law;” and insert:

profession;

(4) In section 4(1) in the definition of *nurse practitioner* delete “whose name is entered on the Register of Nurses kept under that Law as being qualified to practice as a” and insert:

in the nursing profession whose registration under that Law is endorsed as