

Western Australia

Health Act 1911

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Health Act 1911

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Western Australia

Health Act 1911

An Act to consolidate and amend the law relating to public health.

Part I — Preliminary

1. Short title and commencement

- (1) This Act may be cited as the *Health Act 1911*, and shall come into operation on a day to be fixed by proclamation, not being later than 6 months from the passing of this Act¹.
- (2) The Governor may at any time after the passing of this Act make any such appointment of officers, to take effect upon the coming into operation of this Act, as he might have made if this Act had come into operation at the passing thereof.

[2. *Repealed by No. 26 of 1985 s. 3.*]

3. Interpretation

- (1) In this Act, unless the context otherwise indicates, the following terms have the meanings set against them respectively —
 - “**Agvet Code of Western Australia**” has the same meaning as it has in the *Agricultural and Veterinary Chemicals (Western Australia) Act 1995*;
 - “**AIDS**” means acquired immune deficiency syndrome;
 - “**analyst**” means analyst registered under section 203;
 - “**Analytical Committee**” means the Local Health Authorities Analytical Committee established under section 247A;
 - “**apparatus for the treatment of sewage**” means any apparatus for the bacteriolytic or aerobic treatment of sewage or any other apparatus for the treatment of sewage approved by the Executive Director, Public Health and includes any buildings, fittings, works, or appliances used or required in connection with the bacteriolytic or aerobic treatment of sewage, and the disposal of effluent or any residue of such treatment;
 - “**cellar**” or “**underground room**” includes any room being part of a house, if the floor of such room is more than a depth of

one metre below the surface of the adjoining street, or of the land adjoining or nearest to such room;

“**CEO**” has the meaning given by section 3 of the *Health Legislation Administration Act 1984*;

“**cesspool**” includes any receptacle for nightsoil or for noxious or offensive matter below or above the ground, but does not include any regulation sanitary pan, or any apparatus for the treatment of sewage, or other approved receptacle;

“**daily penalty**” means a penalty for each day on which any offence is continued after notice has been given to the offender of the commission of the offence, or after a conviction or order by any court, as the case may be;

“**dairy**” includes all buildings, yards, and premises occupied or used, or intended to be occupied or used, for the carrying on of any dairy business, or the production or manufacture or storage of any dairy produce;

“**dairy produce**” means milk, cream, butter, cheese, and any other product of milk intended for the food of man;

“**Department**” means the department of the Public Service of the State principally assisting the Minister in the administration of this Act;

“**disposal**” in relation to sewage, rubbish or refuse, includes disposal by one or more of the following methods —

- (a) removal;
- (b) treatment;
- (c) destruction;
- (d) burial;

“**district**” means an area that has been declared to be a district under the *Local Government Act 1995* plus any place under the control of the local government which is outside the boundaries of the district;

“**drain**” means any drain for the drainage of one building only, or of premises within the same curtilage, and made merely

for the purpose of communicating therefrom with a receptacle for drainage, or with a sewer into which the drainage of 2 or more buildings or premises occupied by different persons is conveyed, and includes the whole length of any combined system of drainage from several premises up to the point at which it enters the public sewer;

“drug” means any substance, organic or inorganic, used as medicine, or in the composition or preparation of medicines, whether for external or internal use, and includes soap and perfumes, cosmetics, absorbent cotton wool and surgical dressings and also includes therapeutic substances;

“environmental health officer” means an environmental health officer appointed under this Act and includes any acting or assistant environmental health officer;

“Executive Director, Personal Health” means the person holding or acting in the office of Executive Director, Personal Health Services in the Department;

“Executive Director, Public Health” means the person holding or acting in the office of Executive Director, Public Health and Scientific Support Services in the Department;

“false trade description” means a trade description which, by reason of anything contained therein or omitted therefrom, is false or likely to mislead in a material respect, as regards the articles to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, which makes the description false or likely to mislead in a material respect;

“food” means substance or matter ordinarily consumed or intended for consumption by man and includes —

- (a) drink;
- (b) chewing gum;

- (c) ingredient, food additive or other substance that enters into or is capable of entering into or is used in the composition or preparation of food; and
- (d) other substance or matter for the time being declared under subsection (1a) to be food,

but does not include substance or matter used only as a drug or declared under subsection (1a) not to be food;

“HIV infection” means human immunodeficiency virus infection;

“house” means any building or structure, whether temporary or otherwise, including tents and vans, and includes a place of worship, school, factory, workroom, shop, hotel, public house, or other premises of a licensed victualler; the term also includes any vessel lying in any river, harbour, or other water within the territorial waters of Western Australia other than a vessel which is under the command or charge of any officer bearing Her Majesty’s commission, or which belongs to the government of any foreign state. It is immaterial whether the house is on alienated land or Crown land:

Provided that where any building is let or occupied in flats, each flat shall be deemed to be a separate house;

“infectious disease” means and includes typhoid fever (which shall include paratyphoid fever), scarlet fever, diphtheria, poliomyelitis, plague, leprosy, tuberculosis (which shall include all forms of tuberculosis), cholera, yellow fever, typhus fever (all forms), malaria, ancylostomiasis, filariasis, anthrax; and also any other disease which the Governor from time to time by notification in the *Government Gazette* declares to be an infectious disease for the purposes of this Act, either generally or with respect to any particular place, and also the condition in which the organism presumed to cause any of the diseases is found to be present in any person;

“land” includes houses, buildings, and structures thereon, and rivers, streams, wells, and waters, and easements of every description;

“lodging-house” means any building or structure, permanent or otherwise, and any part thereof, in which provision is made for lodging or boarding more than 6 persons, exclusive of the family of the keeper thereof, for hire or reward; but the term does not include —

- (a) premises licensed under a publican’s general licence, limited hotel licence, or wayside-house licence, granted under the *Licensing Act 1911* ²;
- (b) residential accommodation for students in a non-government school within the meaning of the *School Education Act 1999*; or
- (c) any building comprising residential flats;

“meat” except in Division 3A of Part VIIA, means the flesh of any animal when killed which is intended to be used for the food of man, whether fresh, or prepared by freezing, chilling, preserving, salting, or by any other process;

“medical officer” includes all medical officers of health appointed pursuant to this Act, and whether appointed by the Governor or by a local government;

“medical practitioner” means a legally qualified medical practitioner duly registered under the *Medical Act 1894*;

“midwife” means a person whose name is entered in division 1 of the register kept under the *Nurses Act 1992* and who holds and has entered in that division, in respect of his or her name, qualifications in midwifery;

“milk” means the natural lacteal fluid, product of an animal;

“Minister” means the Minister of the Crown charged with the general administration of this Act;

“municipal fund” means the municipal fund of the local government established under section 6.6 of the *Local Government Act 1995*;

“newspaper” means a newspaper generally circulating in the district;

“nurse practitioner” means a nurse practitioner, as defined in the *Nurses Act 1992*, who is carrying on in a designated area (as defined in that Act) the practice of nursing as a nurse practitioner;

“occupier” includes a person having the charge, management, or control of premises, and in the case of a house which is let out in separate tenements, or in the case of a lodging-house which is let to lodgers, the person receiving the rent payable by the tenants or lodgers, either on his own account or as the agent of another person; and in the case of a vessel, the master or other person in charge thereof; the term also includes any person in occupation of the surface of any lands of the Crown, notwithstanding any want of title to occupy same;

“offensive” includes noxious;

“offensive matter” means and includes dust, mud, ashes, rubbish, filth, blood, offal, manure, soil or any other material which is offensive, and which is placed or found in or about any house, stable, cowhouse, pigsty, lane, yard, street, or place whatsoever;

“owner” means the person for the time being receiving the rack-rent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such premises were let at a rack-rent;

“pesticide” has the same meaning as “agricultural chemical product” has in the *Agvet Code of Western Australia*;

“piggery” means any building, enclosure, or yard in which one or more pigs are kept, bred, reared, or fattened for purposes of trade;

“pig-swill” means residues or wastes, whether solid or liquid or part of each, from kitchens, manufactories, shops, abattoirs

or markets, which residues or wastes may be used as food for pigs;

“**premises**”, except in Part VIII, includes messuages, buildings, lands, and hereditaments;

“**prescribed**” means prescribed by this Act or by any regulation or local law thereunder;

“**private place**” includes every place other than a public place;

“**proclamation**” means a proclamation by the Governor published in the *Government Gazette*;

“**public health official**” means a person appointed or designated as a medical officer of health, environmental health officer, inspector or public health official under section 6 or 7, as the case requires, of the *Health Legislation Administration Act 1984*;

“**public house**” includes any house in respect of which a publican’s general licence, an hotel licence, an Australian wine and beer licence, or wayside house licence is held under any Act regulating the sale of intoxicating liquor;

“**public place**”, except in Part IXB, includes every place to which the public ordinarily have access, whether by payment of fee or not;

“**public vehicle**” includes a coach, cab, omnibus, motor car, wagon, or other vehicle carrying passengers for hire, and includes a tramcar and railway carriage;

“**rack-rent**” means rent which is not less than two-thirds of the full net annual value of the property out of which the rent arises; and the full net value shall be taken to be the rent at which the property might reasonably be expected to let from year to year, free from rates and taxes and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent;

“**regulation**”, except in Part VIII, means a regulation made under this Act;

“relative”, in relation to a person, includes a de facto partner of the person;

“responsible pathologist”, in relation to a pathology laboratory, means the pathologist responsible for the day to day operations of the pathology laboratory;

“sanitary convenience” includes urinals, water-closets, earth-closets, privies, sinks, baths, wash troughs, apparatus for the treatment of sewage, ash-pits, ash-tubs, or other receptacle for the deposit of ashes, faecal matter, or refuse, and all similar conveniences;

“school” means and includes any premises in or upon which children or other persons are assembled for the purpose of instruction, including religious instruction;

“sell” includes —

- (a) barter, offer or attempt to sell, receive for sale, have in possession for sale, expose for or on sale, send, forward or deliver for sale or cause or permit to be sold or offered for sale;
- (b) sell for resale; and
- (c) in relation to food, supply or use under an agreement or arrangement or a contract, together with accommodation, service or entertainment, in consideration of an inclusive charge for the food supplied and the accommodation, service or entertainment;

“sewage” means any kind of sewage, nightsoil, faecal matter or urine, and any waste composed wholly or in part of liquid;

“sewer” includes sewers and drains of every description, except drains to which the word **“drain”** as above defined applies, also water channels constructed of stone, brick, concrete, or any other material, the property of a local government;

“street” includes any highway, and any public bridge, and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not;

“the Drug Advisory Committee” means the Drug Advisory Committee established by section 202(1);

“the Food Advisory Committee” means the Food Advisory Committee established by section 246H(1);

“therapeutic substance” means a substance which has a therapeutic use and which is prescribed under Division 7 of Part VIIA to be a therapeutic substance, and includes a surgical ligature, suture or dressing, but does not include a vaccine prepared from microscopic organisms from the body of a person or animal for use in the treatment of that person only;

“therapeutic use” means a use for the purpose of —

- (a) preventing, diagnosing, curing or alleviating of a disease, ailment, defect or injury in persons;
- (b) influencing, inhibiting or modifying of a physiological process in persons;
- (c) testing of susceptibility to a disease or ailment in persons;

“this Act” includes the regulations and local laws made thereunder;

“trade” includes business and manufacture;

“trade description”, in relation to any food or drug, means any description, statement, indication, or suggestion, direct or indirect —

- (a) as to the nature, number, quality, quantity, purity, class, grade, measure, gauge, size, or weight of the articles; or
- (b) as to the country or place in or at which the articles were made or produced; or
- (c) as to the manufacturer or producer of the articles, or the person by whom they were selected, packed, or in any way prepared for the market; or

- (d) as to the mode of manufacturing, producing, selecting, packing, or otherwise preparing the articles; or
- (e) as to the materials or ingredients of which the articles are composed, or from which they are derived; or
- (f) as to the article being the subject of an existing patent, privilege, or copyright; or
- (g) as to the efficacy of the article, or as to the effects which have followed, or may be expected to follow the use thereof;

“venereal disease” means and includes gonorrhoea, syphilis (including congenital syphilis), soft chancre, venereal warts and granuloma;

“vessel” includes a ship;

“writing” includes printing, and other modes of repeating and reproducing words in visible form.

- (1a) The Executive Director, Public Health, may by notice published in the *Gazette* —
 - (a) declare any substance or matter to be food or not to be food, as the case requires, for the purposes of this Act or any provision thereof; and
 - (b) amend or repeal a declaration made under this subsection.

[(2) repealed]

s. 5

[Section 3 amended by No. 55 of 1915 s. 2; No. 17 of 1918 s. 2; No. 5 of 1922 s. 2; No. 50 of 1926 s. 3; No. 30 of 1932 s. 2; No. 32 of 1937 s. 2; No. 21 of 1944 s. 3; No. 71 of 1948 s. 3; No. 11 of 1952 s. 3; No. 25 of 1952 s. 2; No. 34 of 1954 s. 4; No. 21 of 1957 s. 4; No. 18 of 1964 s. 3; No. 24 of 1970 s. 4; No. 94 of 1972 s. 4(1) (as amended by No. 83 of 1973 s. 3); No. 102 of 1973 s. 4; No. 28 of 1984 s. 24; No. 26 of 1985 s. 4; No. 57 of 1985 s. 11; No. 80 of 1987 s. 4; No. 104 of 1990 s. 38; No. 59 of 1991 s. 4 and 6; No. 27 of 1992 s. 84; No. 73 of 1994 s. 4; No. 3 of 1995 s. 57; No. 88 of 1994 s. 100; No. 14 of 1996 s. 4; No. 28 of 1996 s. 4; No. 10 of 1998 s. 39(1); No. 62 of 1998 s. 4; No. 36 of 1999 s. 247; No. 24 of 2000 s. 16(1); No. 28 of 2003 s. 73; No. 59 of 2004 s. 141; No. 23 of 2006 s. 4; No. 28 of 2006 s. 249.]

[4. Repealed by No. 14 of 1996 s. 4.]

5. Savings

- (1) All powers given to a local government under the provisions of this Act shall be deemed to be in addition to and not in derogation of any other powers conferred upon such local government by any other Act, and such other powers may be exercised in the same manner as if this Act had not been passed.
- (2) Nothing in this Act shall render lawful any act, matter, or thing whatsoever which but for this Act would be deemed to be a nuisance, nor exempt any person from any action, liability, prosecution, or punishment to which such person would have been otherwise subject in respect thereof.
- (3) The CEO or any local government (with the approval of the Minister) may, if in his or its opinion summary proceedings would afford an inadequate remedy, cause any proceedings to be taken against any person in the Supreme Court to enforce the abatement or prohibition of any nuisance, or for the remedying of any sanitary defects, or for the recovery of any penalties from, or for the punishment of, any person offending against the provisions of this Act.

- (4) And, generally, the provisions of this Act relating to nuisances shall be deemed to be in addition to, and not to abridge or affect, any right, remedy, or proceeding under any other provisions of this Act, or any other Act, or at common law.
- (5) Nothing in this Act contained with respect to the sale of food and drugs shall affect the power of proceeding by indictment, or take away any other remedy against any offender under the provisions of this Act, or in any way interfere with contracts and bargains between individuals, and the rights and remedies belonging thereto.
- (6) Provided that in any action brought by any person for a breach of contract on the sale of any food or drug, such person may recover, alone or in addition to any other damages recoverable by him, the amount of any penalty adjudged to be paid by him under the provisions of this Act, or any regulation or local law, together with the costs paid by him upon such conviction and those incurred by him in and about his defence thereto, if he proves that the food or drug the subject of such conviction was sold to him as and for a food or drug of the same nature, substance, and quality as that which was demanded of him, and that he purchased it not knowing it to be otherwise, and afterwards sold it, not knowing it to be otherwise, and in the same state in which he purchased it; but the defendant in such action shall nevertheless be at liberty to prove that the conviction was wrongful, or that the amount of costs awarded or claimed was not incurred or was unreasonable.
- (7) But no person shall be punished for the same offence both under the provisions of this Act or any regulation or local law, and under any other law or enactment.

[Section 5 amended by No. 14 of 1996 s. 4; No. 28 of 2006 s. 251.]

s. 6

6. Power to suspend operation of Act

- (1) The Governor may, by proclamation, suspend the operation of any of the provisions of this Act in any district or a part thereof for any period.
- (2) Nothing in this Act shall affect the provisions of the *Metropolitan Water Supply, Sewerage and Drainage Act 1909*.

Part II — Administration

Division 1 — The Minister, CEO and officers of Public Health

[Heading amended by No. 28 of 2006 s. 250.]

7. Minister

The general administration of this Act shall be under the control of a Minister of the Crown.

8. Minister to be body corporate

- (1) The Minister of the Crown for the time being administering this Act shall, for the purposes of this Act, be a body corporate and shall be known by such designation as is conferred on him by the Governor under the *Constitution Acts Amendment Act 1899* or the *Alteration of Statutory Designations Act 1974*, whichever applies, and shall have perpetual succession and a common seal, and by that name shall be capable of suing and being sued, acquiring, holding, letting and taking land on lease, and alienating real and personal property, and of doing and suffering all such other acts and things as may be necessary or expedient for carrying out the purposes of this Act.
- (2) Where the Minister enters into any contract or agreement, under seal or otherwise, or makes any lease, under this Act all the rights and liabilities in respect thereof and all benefits and advantages thereunder or interest therein, shall vest in and be enforceable by or against his successor or successors in office, without the necessity of any transfer or assignment whatsoever.
- (3) An alteration of the designation of the Minister is hereby declared not to affect and never to have affected the corporate identity of the Minister and by force of this section the corporate identity of the Minister is continued under such designation as applies to him from time to time.

[Section 8 inserted by No. 101 of 1976 s. 4; amended by No. 28 of 1984 s. 25.]

[9-11. Repealed by No. 28 of 1984 s. 26.]

12. Powers of Executive Director, Public Health and officers

The Executive Director, Public Health and any medical officer or environmental health officer acting with his authority, shall have all the powers of a medical officer of health or environmental health officer of a local government, and may exercise such powers in any part of the State, and the Executive Director, Public Health shall have all such rights and powers as the local government would have in case its medical officer of health or environmental health officer exercised the power, or to enable such officer or environmental health officer to exercise the power. Any provision of this Act conferring any power on a medical officer of health or environmental health officer of a local government, or relating to or connected with the exercise or intended exercise, or the consequences of the exercise of any power by him, shall be construed and have effect for the purposes of this section as if the references therein to a medical officer of health or environmental health officer of the local government extended to the Executive Director, Public Health or any medical officer or environmental health officer acting with his authority, and as if all references to a local government extended to the Executive Director, Public Health.

[Section 12 amended by No. 17 of 1918 s. 3; No. 24 of 1970 s. 12; No. 28 of 1984 s. 45; No. 59 of 1991 s. 5; No. 14 of 1996 s. 4.]

13. Inquiries

The Executive Director, Public Health may, from time to time, hold or order to be held such inquiries or investigations as he may deem necessary in relation to any matter concerning public health in any place, or in relation to the administration of this Act, and may appoint such public health official or any other person to conduct such inquiries or investigations as he may deem fit.

[Section 13 amended by No. 28 of 1984 s. 45.]

14. Powers of persons directed to make inquiries

When an inquiry is directed by the Executive Director, Public Health to be made, the person authorised to make the same shall have free access to all books, plans, maps, documents, and other things belonging to any local government or any contractor, and shall have in relation to witnesses and their examination, and the production of documents, similar powers to those conferred upon a court of summary jurisdiction by the *Criminal Procedure Act 2004*, and may enter and inspect any building, premises, or place, the entry or inspection whereof appears to him requisite for the purpose of such inquiry.

[Section 14 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4; No. 59 of 2004 s. 141; No. 84 of 2004 s. 78.]

15. Power of Executive Director, Public Health to act in emergencies

- (1) In any emergency or necessity, of the existence of which emergency or necessity the Executive Director, Public Health shall be sole and final judge, the Executive Director, Public Health may —
 - (a) exercise and perform in any part of the State any or all of the powers and duties vested in or imposed upon a local government under this Act or any other Act relating to the public health;
 - (b) make any regulations for the abatement and prevention of nuisances, for the protection from pollution of water used for domestic purposes, and for securing the healthfulness of persons collected in any encampment or otherwise;
 - (c) make such other regulations as he may deem necessary to cope with the emergency or necessity.
- (2) Where, in carrying out the provisions of this section, any medical certificate may be necessary for any of the purposes of this Act or any other Act relating to the public health, such

certificate may, if there is no medical officer, be signed by any legally qualified medical practitioner, and shall for all such purposes be as effectual as if signed by a medical officer.

[Section 15 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

16. Executive Director, Public Health may act where no local government

The Executive Director, Public Health and all persons authorised by him may exercise and perform all or any of the powers and duties of a local government in any place which does not lie within the boundaries of a district, including the powers conferred by Part III.

[Section 16 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

17. Expenditure to be paid out of votes

All expenses incurred by the Executive Director, Public Health or incurred with sanction of the Governor by any local government may be defrayed out of the moneys that may from time to time be appropriated by Parliament for the purpose.

[Section 17 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

Division 2 — Local governments

[Heading amended by No. 14 of 1996 s. 4.]

[18, 19, 19A. Repealed by No. 14 of 1996 s. 4.]

[20, 21. Repealed by No. 57 of 1985 s. 12.]

22. Annexation

- (1) The Governor may place any area of land outside a district, and whether actually adjoining or not, under the jurisdiction of the local government of such district, for the purposes of this Act,

and such area shall for all the purposes of this Act be deemed to be within the district while so placed under that jurisdiction and the Governor may remove the area of land from that jurisdiction and from that district and such adjustment and distribution of the assets and liabilities of the local government as the Executive Director, Public Health considers necessary as consequential to such removal shall be made as and in the manner the Executive Director, Public Health directs.

- (2) The Governor may, to secure proportionate representation in the council of the local government in respect of the annexed area, appoint members to represent the ratepayers of such annexed area, who shall sit with, and have all the powers of councillors, and every such appointment shall be made upon the nomination of the ratepayers in manner prescribed by regulations to be made by the Governor under this Act.

[Section 22 amended by No. 25 of 1950 s. 3; No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

[23, 24. Repealed by No. 57 of 1985 s. 12.]

25. District may include water

Any river, harbour or other water shall be deemed for the purposes of this Act, to be within such district as may be fixed by the Governor:

Provided that the Governor may revoke or vary any order made under this section.

26. Powers of local government

Every local government is hereby authorised and directed to carry out within its district the provisions of this Act and the regulations, local laws, and orders made thereunder:

Provided that a local government may appoint and authorise any person to be its deputy, and in that capacity to exercise and discharge all or any of the powers and functions of the local government for such time and subject to such conditions and

limitations (if any) as the local government shall see fit from time to time to prescribe, but so that such appointment shall not affect the exercise or discharge by the local government itself of any power or function.

[Section 26 amended by No. 17 of 1918 s. 5; No. 14 of 1996 s. 4.]

27. Officers of local government

- (1) Every local government may, and when required by the Executive Director, Public Health shall, appoint a medical practitioner as medical officer of health, and also such environmental health officers and analysts as may be deemed necessary by the Executive Director, Public Health.
- (2) Such medical officer of health, environmental health officers, and analysts shall perform such duties as the local government from time to time directs, and also such as are specially prescribed by any order addressed by the Executive Director, Public Health to the local government.
- (3) The medical officer of health shall also be a medical officer of schools and school children, and shall perform such duties and submit such reports in connection therewith as may be prescribed by the Executive Director, Public Health.
- (4) Every medical officer of health shall be paid by the local government as remuneration for his services a salary of not less than \$30 per annum.
- (5) Every local government may appoint such other officers as it deems necessary.
- (6) All officers of local governments in office at the commencement of this Act shall be deemed to have been appointed under this Act.

[Section 27 amended by No. 113 of 1965 s. 8(1); No. 24 of 1970 s. 12; No. 28 of 1984 s. 45; No. 59 of 1991 s. 5; No. 14 of 1996 s. 4.]

28. Appointments to be approved

- (1) Every appointment by a local government of a medical officer of health, environmental health officer, or analyst shall be subject to the approval of the Executive Director, Public Health who may require satisfactory proof of competency to be supplied, and may give his approval absolutely or with any modification or condition as to the period of appointment or otherwise.
- (2) No officer entrusted with moneys under this Act shall be appointed by a local government until he shall have given security for the faithful discharge of his duties, nor shall any such officer be continued in his office except whilst such security is subsisting and in force.

[Section 28 amended by No. 24 of 1970 s. 12; No. 28 of 1984 s. 45; No. 59 of 1991 s. 5; No. 14 of 1996 s. 4.]

29. Executive Director, Public Health may appoint if local government neglects to do so

If the local government does not appoint a medical officer of health, environmental health officer, or analyst, the Executive Director, Public Health may, with the approval of the Governor, appoint such officer and fix his remuneration; and the amount so fixed shall be a charge upon the municipal fund, and shall be paid to the officer by the local government, and in default of payment may be recovered by him in any court of competent jurisdiction.

[Section 29 amended by No. 24 of 1970 s. 12; No. 28 of 1984 s. 45; No. 59 of 1991 s. 5; No. 14 of 1996 s. 4.]

30. Local governments may join in appointing officers

- (1) The local governments of 2 or more districts may, and when required by the Executive Director, Public Health shall, join in the appointment of a medical officer of health, environmental health officer, or analyst, and in remunerating them.

- (2) If the local governments of 2 or more districts do not, when required by the Executive Director, Public Health, join in appointing a medical officer of health, environmental health officer, or analyst, the Executive Director, Public Health may, with the approval of the Governor, appoint such officer and fix his remuneration and the proportional part of such remuneration to be paid by each local government.
- (2a) Every appointment made by the Executive Director, Public Health under subsection (2) shall continue during the pleasure of the Executive Director, Public Health, or until the local governments concerned, acting under subsection (1), shall join in the appointment of another person to take the place of the person appointed by the Executive Director, Public Health as aforesaid and the Executive Director, Public Health has approved of such appointment; and while an appointment made by the Executive Director, Public Health continues as aforesaid, the Executive Director, Public Health may at any time, and from time to time, vary the remuneration and also the proportional part of such remuneration as varied to be paid by each local government, either by reducing or increasing the same respectively, as he may think fit.
- (3) The remuneration so fixed or so varied shall be a charge on the municipal fund of each local government, and in default of payment may be recovered by such officer from any of the local governments concerned in any court of competent jurisdiction, subject to the right of contribution between the local governments concerned.

[Section 30 amended by No. 24 of 1970 s. 12; No. 28 of 1984 s. 45; No. 59 of 1991 s. 5; No. 14 of 1996 s. 4.]

31. Qualifications of environmental health officers

Every environmental health officer appointed under any repealed Act and acting as such immediately prior to the commencement of this Act shall, unless he is the holder of a qualifying certificate of competency which shall be approved by

the Executive Director, Public Health, obtain, within 12 months of the commencement of this Act, such qualifying certificate of competency as may be approved by the Executive Director, Public Health, and, after the expiration of such period of 12 months, no person shall be appointed or continue to be an environmental health officer unless he is the holder of such a certificate as aforesaid: Provided that the Executive Director, Public Health may exempt from the operation of this section, for such time as he thinks fit, the office of environmental health officer in any district.

[Section 31 inserted by No. 17 of 1918 s. 6; amended by No. 24 of 1970 s. 12; No. 28 of 1984 s. 45; No. 59 of 1991 s. 5.]

32. Removal of officers

- (1) The Executive Director, Public Health may, by order, remove any medical officer of health, environmental health officer, or analyst of a local government appointed for the purposes of this Act.
- (2) No person so removed shall be eligible for reappointment without the previous approval of the Executive Director, Public Health.
- (3) When a person is removed under the provisions of this section, the Executive Director, Public Health may, by order, require the local government to fill up the vacancy as hereinbefore provided; and if the local government makes default in so doing, the Executive Director, Public Health, with the approval of the Governor, may appoint a successor to the person so removed.
- (4) No medical officer of health, environmental health officer, or analyst of a local government shall have his remuneration reduced or be removed by the local government without the previous approval of the Executive Director, Public Health.

[Section 32 amended by No. 24 of 1970 s. 12; No. 28 of 1984 s. 45; No. 59 of 1991 s. 5; No. 14 of 1996 s. 4.]

33. Medical officer may direct and exercise powers of environmental health officer

Every medical officer of health —

- (1) may give to any environmental health officer such directions and instructions as he may deem necessary from time to time, for the due execution of this Act, and such environmental health officers shall obey and carry out directions or instructions so given; and
- (2) shall have and may exercise, in addition to the powers conferred on him by or under this Act, all the powers of an environmental health officer.

[Section 33 amended by No. 24 of 1970 s. 12; No. 59 of 1991 s. 5; No. 28 of 1996 s. 21.]

34. Reports by medical officer of health

- (1) Every medical officer of health shall, within one month after the expiration of every calendar year, and whenever required by the local government, and may at such other times as he thinks proper, report to the local government on the sanitary condition of the district, or any part thereof, with special reference to the provisions of and regulations made under this Act, and the local laws of the local government.
- (2) The local government shall, at such times as may be prescribed, forward to the Executive Director, Public Health copies of all such reports.

[Section 34 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

35. Proceedings on default of local government

- (1) Where in the opinion of the Executive Director, Public Health any local government has made default in enforcing or carrying out or complying with any provisions of or in the exercise of any power conferred by this Act, or any local law or regulation

thereunder, or of any order of the Executive Director, Public Health, which it is the duty of such local government to enforce, carry out, comply with, or exercise, the Executive Director, Public Health may make an order limiting a time for the performance of the duty of the local government.

- (2) If such duty is not performed within the time limited in such order, the performance of such duty may be enforced by writ of mandamus, or the Executive Director, Public Health may appoint some person to perform such duty, and shall order that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, be paid out of the funds by the local government in default; and any order made for the payment of such expenses and costs may be removed into the Supreme Court, and be enforced in the same manner as if the same were an order of such Court.
- (3) Any person appointed under this section to perform the duty of a defaulting local government shall, in the performance, and for the purposes of such duty, be invested with all the powers of such local government, and may enter into contracts on its behalf, and the Executive Director, Public Health may, from time to time, remove any person so appointed, and appoint another in his place.
- (4) When the Executive Director, Public Health has required any local government to make any local law in regard to any matter concerning which it is the duty of such authority to make a local law when so required, and the authority has not, within a period of 2 months from the date of the requisition, made a local law regarding such matter which the Executive Director, Public Health is willing to confirm, then the Executive Director, Public Health may, in lieu of the local government, make such local law as he shall consider ought to be made regarding such matter, and any local law so made by the Executive Director, Public

Health shall, subject to section 345, have effect as if made by the local government.

[Section 35 amended by No. 17 of 1918 s. 7; No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

36. Review of orders and decisions of local governments

- (1) Any person aggrieved by any order or decision of a local government may apply to the State Administrative Tribunal for a review of the order or decision.
- (2) Upon the local government being given a copy of an application made under subsection (1) for review of a decision or order, any proceedings commenced by the local government under the decision or order to recover expenses incurred by it shall be stayed.

[Section 36 amended by No. 14 of 1996 s. 4; No. 55 of 2004 s. 479.]

[37. Repealed by No. 55 of 2004 s. 480.]

38. Local governments to report annually

Every local government shall, in the prescribed form, during the month of February in every year, and at such other times as the Executive Director, Public Health may direct, report to the Executive Director, Public Health concerning the sanitary conditions of its district, and all works executed and proceedings taken by the local government.

[Section 38 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

Division 3 — The exercise of ministerial control

39. Powers of the Minister

- (1) All the powers, rights, and authorities vested in the CEO, Executive Director, Personal Health, Executive Director, Public Health or any local government shall, whenever he deems fit, be

exercisable by the Minister, and when so exercised shall, if so ordered by the Minister, supersede any act, direction, notice, or order of the CEO, Executive Director, Personal Health, Executive Director, Public Health or local government; and every officer, and employee of the local government (whether a member thereof or not) and the CEO, Executive Director, Personal Health, Executive Director, Public Health and every other public officer and employee assisting in the administration of this Act, shall at all times obey any order or direction of the Minister; and such officers and employees, for the purpose of carrying out such orders and directions, shall have all the powers of the CEO, Executive Director, Personal Health, Executive Director, Public Health or local government, whether conferred by Act, regulation, local law, or otherwise.

- (2) All orders, directions, authorities, consents, and receipts made or given, or purporting to be made or given, by such officer or employee in any way relating to the purpose in respect of which he was authorised by the Minister to act shall, by all courts, officers, and persons be deemed and taken to have the same force and effect as if such orders, directions, authorities, consents, or receipts (as the case may be) had been given by the CEO, Executive Director, Personal Health, Executive Director, Public Health or local government.
- (3) The Minister may make orders as to the costs of inquiries or proceedings under this Act, and as to the parties by whom, or the fund out of which, such costs shall be borne.
- (4) When any such order has been made, a verified copy thereof may be filed in the office of the Master of the Supreme Court, and may thereupon be enforced in the same manner as if it were an order of that Court.

[Section 39 amended by No. 28 of 1984 s. 27; No. 14 of 1996 s. 4; No. 28 of 1996 s. 20; No. 28 of 2006 s. 251.]

Part III — Financial

40. Power to levy general health rate

- (1) Every local government shall, under the *Local Government Act 1995*, make a levy on all rateable land in the district, and cause to be collected, in addition to the rates which it may be otherwise authorised to make and levy, such annual health rate as may be required for the purposes of this Act.
- (2) Such annual rate shall not exceed —
 - (a) in districts from time to time declared by the Governor by notice in the *Government Gazette* to be within this paragraph:
 - (i) 5 cents in the dollar on the gross rental value; or
 - (ii) when the system of valuation on the basis of the unimproved value is adopted, 1¼ cents in the dollar on the unimproved value of the land in fee simple;and
 - (b) in other districts —
 - (i) 3⅓ cents in the dollar on the gross rental value; or
 - (ii) when the system of valuation on the basis of unimproved value is adopted, five-sixths of a cent in the dollar on the unimproved value of the land in fee simple.
- (3) A minimum rate of 25 cents may be levied under this section on any rateable land, or on each of the several lots in which any rateable land may be subdivided, the annual rate in respect of which, on the gross rental value or the unimproved land value, as the case may be, would not amount to 25 cents.

[Section 40 amended by No. 25 of 1950 s. 4; No. 113 of 1965 s. 4(1); No. 76 of 1978 s. 50; No. 14 of 1996 s. 4.]

41. Sanitary rate

Every local government may from time to time, as occasion may require, make and levy as aforesaid and cause to be collected an annual rate for the purpose of providing for the proper performance of all or any of the services mentioned in section 112, and the maintenance of any sewerage works constructed by the local government under Part IV.

Such annual rate shall not exceed —

- (a) 12 cents in the dollar on the gross rental value; or
- (b) where the system of valuation on the basis of the unimproved value is adopted, 3 cents in the dollar on the unimproved value of the land in fee simple:

Provided that the local government may direct that the minimum annual amount payable in respect of any one separate tenement shall not be less than \$1.

Provided also, that where any land in the district is not connected with any sewer, and a septic tank or other sewerage system approved by the local government is installed and used upon such land by the owner or occupier thereof for the collection, removal, and disposal of nightsoil, urine, and liquid wastes upon such land, the local government may by an entry in the rate record exempt such land from assessment of the annual rate made and levied under this section, and, in lieu of such annual rate, may, in respect of such land, make an annual charge under and in accordance with section 106 for the removal of refuse from such land.

[Section 41 amended by No. 5 of 1933 s. 2; No. 38 of 1933 s. 2; No. 25 of 1950 s. 5; No. 113 of 1965 s. 4(1); No. 2 of 1975 s. 3; No. 76 of 1978 s. 51; No. 14 of 1996 s. 4.]

42. Supplementary rates

Every local government may, and when required so to do by the Governor shall make and levy as aforesaid, within the

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authorisation of the preceding sections, and cause to be collected, supplementary rates to meet any extraordinary or unanticipated expenditure.

[Section 42 amended by No. 14 of 1996 s. 4.]

[43. Repealed by No. 57 of 1985 s. 12.]

44. Borrowing powers

(1)(a) Subject to any express provisions of this Act, every local government may from time to time under the borrowing powers conferred by the Local Government Act 1995, raise a special loan for any of the purposes of this Act.

[(b) deleted]

(c) The period for the repayment of any such loan shall not exceed 50 years, and the proceeds of each such loan shall be kept in a separate bank account, and shall not be applied to any purpose other than the purpose aforesaid.

(d) Where a local government has obtained the consent of the Governor under Part IV to the carrying out of any sewerage or drainage works, and has, with the Governor's consent, borrowed or arranged to borrow moneys to carry out the works, the Governor may authorise the Treasurer, on behalf of the State, to guarantee the repayment of any loans so borrowed or to be borrowed, in accordance with the terms and conditions of the loan, if the Governor is satisfied that the local government is by reason of such guarantee able to obtain more advantageous terms in respect of the loan and that such guarantee is desirable.

(e) The provisions of the preceding paragraph shall also apply to any loan which has been actually arranged by or made to any local government for the construction of sewerage or drainage works (including apparatus for the treatment of sewage) since 1 November 1933, under the provisions of the principal Act:

Provided the Governor is further satisfied that the works are sufficiently general in their scope. In connection with any such

guarantee the local government is authorised on the giving of such guarantee to execute all documents and do all things necessary for varying the terms of any loan made, or agreed to be granted, in order to give effect to and take advantage of any better terms granted by the lender in consideration of the guarantee.

- (2) A local government may, pending the collection of its annual health rate, and for the purpose of commencing, carrying on, or completing any works or meeting any expenses or liabilities which it is authorised under this Act to incur, obtain advances from any bank by overdraft on current account, but so that no such overdraft shall at any time exceed one-third of the annual revenue of the local government under this Act for the year then last preceding:

Provided that the bank making such advances shall not be concerned to inquire whether the same have been obtained for the purposes mentioned in this subsection, nor be required to see to the application of such advances.

This subsection shall be deemed to apply to all existing advances on overdraft to local governments to the extent hereby authorised, and any such advances are hereby validated.

[Section 44 amended by No. 50 of 1926 s. 4; No. 30 of 1932 s. 7; No. 5 of 1933 s. 4; No. 38 of 1933 s. 3; No. 16 of 1935 s. 2; No. 32 of 1937 s. 3; No. 59 of 1991 s. 7; No. 14 of 1996 s. 4.]

45. Special loan rate

Where in any year it becomes necessary to strike a rate for the purpose of providing the interest and sinking fund of any such loan, the local government shall, under the provisions of the *Local Government Act 1995*, make and levy a special annual rate, but where the local government has expended loan moneys in the installation of any appliances, drains, pipes, shafts, ventilating shafts and fittings on any lands, and the person responsible for the payment of the cost of such installations enters into an agreement

with the local government under the provisions of this Act for the payment of same the local government —

- (a) may in lieu of striking a special annual rate in the first instance place all repayments made to the credit of a special account for the liquidation of the loan by which the moneys expended were raised;
- (b) if such repayments are insufficient to meet the periodical repayments of principal and/or interest on the loan, or to meet any payments to any fund for the liquidation of the loan, the local government shall levy a special annual rate from time to time, as occasion requires, to make good such deficiency.

[Section 45 inserted by No. 38 of 1933 s. 4; amended by No. 27 of 1994 s. 42; No. 14 of 1996 s. 4.]

46. Application of rating provisions of local governing Acts

- (1) Subject to any express provisions of this Act, with respect to every health rate, sanitary rate, supplementary rate, and special loan rate made and levied under this Act by a local government, all the provisions of the *Local Government Act 1995* relating to the making, payment, and recovery of general rates shall apply and be deemed to be incorporated with this Act.

Provided that the local government, in the exercise of its powers conferred by this Part, may make and levy rates of different amounts in respect of different portions of its district, defined for that purpose by proclamation.

Provided further, that where a local government has carried out sewerage or drainage works under Part IV which are of benefit to a particular portion of its district, which was specified at the time of making application for the approval of the Governor, any special loan rate imposed in connection with moneys borrowed for such works may be imposed in respect of land situate within that portion.

- (2) A local government may utilise the same valuation, rate record, notice of assessment or valuation, or distress warrant for rates made under this Act and rates made under the *Local Government Act 1995*.

[Section 46 amended by No. 38 of 1933 s. 5; No. 14 of 1996 s. 4.]

47. Health rate to be regarded in determining borrowing powers

The health rate shall be deemed part of the ordinary income or general rates of the local government in determining the amount which at any time the local government may lawfully borrow for the purposes of this Act.

[Section 47 amended by No. 14 of 1996 s. 4.]

48. Time for giving notice of rate may be extended

In case any local government fails to make or give notice of any rate within the time limited in that behalf, the Governor may, by notice published in the *Government Gazette*, appoint a further time within which such local government may make and give notice of such rate.

[Section 48 amended by No. 14 of 1996 s. 4.]

49. Accounts and audit

[(1) repealed]

- (2) Every local government shall, within one month from the close of its financial year, forward to the Executive Director, Public Health a full statement of its accounts in the prescribed form, and shall furnish from time to time such information in regard to the state of the accounts and of its liabilities and of its assets as may be required by the Executive Director, Public Health.

[Section 49 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

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[50. Repealed by No. 57 of 1985 s. 12.]

[51. Repealed by No. 14 of 1996 s. 4.]

52. Financial adjustment

- (1) On the dissolution, by the operation of this Act, of any district board of health constituted under the provisions of the *Health Act Amendment Act 1900*³, or on the constitution of any new district, or the alteration of the boundaries of a district, the several local governments affected may, by agreement, make such adjustment of property, liabilities, contracts, and engagements between the several districts as such local governments shall think fit; but in default of any such agreement being come to, the Minister may, at such time as he may think fit, make the adjustments and finally determine all rights, liabilities, and questions arising therefrom.
- (2) Upon the abolition of any district, or the alteration of the boundaries of any district, all rates which have accrued due in respect of any land situated within the district or the portion of any district affected, and remain unpaid at the date of the abolition of the district or alteration of boundaries, shall remain due and payable and shall vest in and may be recovered by such local government as the Minister may determine, and shall be applied and disposed of as the Minister may direct.

[Section 52 amended by No. 14 of 1996 s. 4.]

Part IV — Sanitary provisions

Division 1 — Sewerage and drainage schemes

[Heading inserted by No. 38 of 1933 s. 42.]

53. Sewers vested in local government

- (1) All public sewers in a district made or to be made at the cost of or acquired or to be acquired by a local government, with all the works and materials belonging thereto and the management of the same, shall vest in and belong to the local government.
- (2) The Governor may place under the control of the local government any public sewer in the district not made at the cost of the local government.

[Section 53 inserted by No. 38 of 1933 s. 10 and 42; amended by No. 14 of 1996 s. 4.]

54. Power of local government to construct and maintain sewers

A local government may —

- (a) formulate or combine with any other local government in formulating a scheme or joint scheme for the construction and maintenance of all sewers, drains, and appliances necessary for carrying away or disposing of or treating any noxious or waste matter within its or their district or districts, or any portion or portions thereof;
- (b) without limiting the generality of the provisions of paragraph (a) formulate a scheme for the installation of, and install on premises generally or in any specified portion of the district, apparatus for the treatment of sewage;
- (c) subject to the provisions of this Part exercise beyond the district for the purpose of outfall or distribution of sewage all or any of the powers conferred by this Part;
- (d) alter or improve any such works from time to time;

- (e) install on any lands which such works are designed or intended, or capable of serving all such drains, fittings, ventilating shafts, pipes, or tubes as may be necessary effectually to enable noxious or waste matter on the said lands to be discharged into any such sewer.

[Section 54 inserted by No. 38 of 1933 s. 11 and 42; amended by No. 14 of 1996 s. 4; No. 28 of 1996 s. 5.]

55. Governor's approval necessary to all schemes

- (1) No such sewer or drain or general scheme for the installation of appliances for the treatment of sewage (other than a sewer or drain for the disposal of storm water) shall be constructed or carried out without the approval of the Governor. Provided that this restriction shall not apply to the construction of any sewer or drain where the Executive Director, Public Health is first satisfied that the scheme is sound and that the carrying out of the work will not involve an expenditure exceeding \$2 000.
- (2) For the purpose of obtaining the approval of the Governor, the local government or authorities concerned shall prepare a general plan and description of the proposed works.
- (3) The general plan shall be on a scale of not less than one inch to 2 miles, and shall show the character and extent of the works proposed.
- (4) The description shall clearly set forth —
 - (a) the object and purpose of the proposed works;
 - (b) the mode in which it is proposed to obtain funds for their construction;
 - (c) an estimate of their cost;
 - (d) a statement of the capital value of the property to be benefited thereby;
 - (e) the boundaries of the area proposed to be sewered and particulars of the premises proposed to be served;

- (f) the proposed source of supply of water for carrying out the scheme;
 - (g) in the case of a joint scheme, the amount of money proposed to be spent by each local government concerned.
- (5) The local government or authorities shall forward such general plan and description to the Executive Director, Public Health. The Executive Director, Public Health shall examine the same, and may avail himself of the assistance of any other Government department, or of any officer belonging to any other Government department, in the examination thereof and, after having made such examination, shall report thereon to the Minister.
- (6) The local government or authorities concerned, shall, if required by the Executive Director, Public Health, furnish details of the proposed works, with the levels thereof, and details of all proposed interferences with any street, road, bridge, culvert, or permanent structure, or with any private property, and such information as he requires.

[Section 55 inserted by No. 38 of 1933 s. 12 and 42; amended by No. 113 of 1965 s. 4(1); No. 28 of 1984 s. 45; No. 59 of 1991 s. 8; No. 14 of 1996 s. 4.]

56. Power to do acts preliminary to formulating scheme

For any of the purposes hereinbefore specified the local government may by its officers, engineers, agents, or employees enter at all reasonable hours in the daytime any lands, whether within or without its district, and make surveys and take levels.

[Section 56 inserted by No. 38 of 1933 s. 13 and 42; amended by No. 14 of 1996 s. 4; No. 28 of 1996 s. 20.]

57. Notice of plans and specifications

- (1) A notice stating that the application and general plan and description have been forwarded to the Executive Director,

Public Health, and stating in what place copies of the general plan and description have been deposited for inspection, shall be given by the local government making application to any other local government whose district is in whole or in part included in the area to be covered by the proposed works.

- (2) A like notice shall be published by the local government making application at least once in every week for 3 weeks —
 - (a) in some newspaper circulating generally in the district of the local government; and
 - (b) in the *Gazette*.
- (3) The Minister shall not forward any recommendation to the Governor in connection with any such proposed works until the requirements of the preceding section have been complied with and the Minister shall, when submitting any such application to the Governor, forward therewith a copy —
 - (a) of all notices given to any local governments affected; and
 - (b) of every newspaper and of the *Gazette* containing any publication of such notices.

[Section 57 inserted by No. 38 of 1933 s. 14 and 42; amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

58. Objections

- (1) Within one month after the last publication of any such notice in the *Gazette* any corporation or person having any property or interest in the area the subject of the scheme, which is likely to be injuriously affected by the proposed works, may forward to the Minister a petition to the Governor to refuse the application, or to amend or alter the plan thereof, or to make such other order in reference thereto as the petitioner may claim.
- (2) Every execution of a petition other than by the common seal of a local government shall be verified by the statutory declaration of some person signing the petition, and no petition shall be

received by the Minister unless the same is accompanied by such declaration.

[Section 58 inserted by No. 38 of 1933 s. 15 and 42; amended by No. 14 of 1996 s. 4.]

59. Copies of plans and specifications to be available for inspection

A true copy of the application, and of the general plan and description forwarded to the Executive Director, Public Health, shall be deposited for the inspection, without payment, of any person who desires to inspect the same, at the office of the local government and also at the office of the Executive Director, Public Health.

[Section 59 inserted by No. 38 of 1933 s. 16 and 42; amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

60. Conditions on which Minister may recommend scheme to Governor

After the expiration of one month from the date of the last publication of the notice in the *Gazette* prescribed by section 57, if the Minister is satisfied —

- (a) that the provisions of this Act have been complied with; and
- (b) that the revenue or periodical repayments estimated to be derived from the proposed works is sufficient to justify the undertaking; and
- (c) that the works, if carried out in the manner designed, will be of benefit to the district of the local government, or to that portion of the district of the local government which the works are designed to serve; and
- (d) that the objections, if any, lodged are not sufficient to require the approval of the Governor to be withheld from the proposed scheme,

he shall submit the general plans, specifications, and estimates to the Governor for approval, and if they are approved the

Governor may forthwith make an order empowering the local government to undertake the construction of the works, and such order shall be notified in the *Gazette*.

[Section 60 inserted by No. 38 of 1933 s. 17 and 42; amended by No. 16 of 1935 s. 3; No. 14 of 1996 s. 4.]

61. Apportionment of costs and maintenance of joint schemes

On the completion of any joint scheme carried out by any 2 or more local governments, the cost of such scheme, and the maintenance thereof, shall be apportioned between each of the local governments concerned on an equitable basis, and in case of disagreement the Governor may decide the amount to be paid by each local government.

[Section 61 inserted by No. 38 of 1933 s. 18 and 42; amended by No. 14 of 1996 s. 4.]

62. Powers of local government in carrying out works

For the purpose of the construction, extension, maintenance, repair, alteration, or improvement of any such works, the local government, and all persons acting with its authority, may enter upon any lands and —

- (a) make surveys and take levels of the same and set out such parts thereof as they may think fit;
- (b) may dig or break up the soil of such lands, and trench and fence in the same, and remove or use any earth, stones, trees, and other things taken therefrom;
- (c) erect buildings, pumping stations, and pumping machinery;
- (d) make, maintain, alter, or discontinue drains and culverts upon any lands authorised to be taken;
- (e) construct, alter, and maintain under any street, and through, across, or under any land any sewer pipes or drains;

- (f) open and break up the soil of any streets or of any land, and excavate and sink trenches for the purpose of laying down, making, and constructing sewers, pipes, and drains therein;
- (g) cause any sewers to discharge upon any such land as may be required by the local government for that purpose, or to communicate with the sea, or any arm thereof, or with any river or watercourse, either within or without the limits of the district of the local government;
- (h) open, cleanse, and repair such sewers, pipes, and drains, or alter the position and construction thereof;
- (i) make any sewers or drains from any main sewer laid in any street into any dwelling-house, public or private building or other premises for the purpose of cleansing and draining any such house, building, or premises by means of such sewers or drains;
- (j) do all such other acts, matters, and things as the local government may deem proper for making, repairing, completing, or improving any such works:

Provided that nothing herein contained shall authorise the local government to make use of any sewer, drain, or outfall for the purpose of conveying any sewage or sullage water into any river, natural stream, watercourse, lake, or pond until such sewage or sullage water is freed from all excrementitious or other foul or noxious matter as would affect or deteriorate the purity and quality of the water in the river, stream, watercourse, lake or pond:

Provided further, that the local government shall make to every person, or to any other local government aggrieved, compensation for any actionable damage actually sustained by any such person or local government through the exercise of the powers conferred by this Act, but any dispute as to the right of such person or local government to receive compensation or the

amount thereof shall be heard and determined under the provisions of Part 10 of the *Land Administration Act 1997*.

[Section 62 inserted by No. 38 of 1933 s. 19 and 42; amended by No. 14 of 1996 s. 4; No. 31 of 1997 s. 32(1); No. 55 of 2004 s. 481.]

Limited or party schemes

63. Recovery of cost of limited schemes from owners of premises served

- (1) Where the local government proposes to carry out any sewerage or drainage works which will be of special benefit to a particular portion only of its district, the local government may decide that the cost of constructing such works (in so far as it is not defrayed out of loan moneys) shall be recoverable by action in any court of competent jurisdiction from the owners of rateable lands situated within the aforesaid portion of the district, and such moneys shall be recoverable accordingly: Provided that the respective amounts to be recoverable from the various owners shall be proportionate to the values of the rateable lands owned by them respectively within such portion of the district. No direction or order given or made under this section shall be subject to appeal or review.
- (2) Any such sums shall be a charge, together with interest at such rate as may be prescribed (but not exceeded by more than 0.5% the rate of interest payable in respect of any loan moneys expended on such works) on the premises to which such sum or sums relate.

[Section 63 inserted by No. 38 of 1933 s. 20 and 42; amended by No. 14 of 1996 s. 4; No. 55 of 2004 s. 482.]

63A. Interpretation

Without limiting the generality of sections 63 and 64, it is hereby declared that any sewerage or drainage works, or any sewer, carried out or constructed at the expense of the local government, are sewerage or drainage works, or is a sewer,

carried out by or constructed by the local government for the purposes of those sections, notwithstanding that those works or that sewer are or is connected to a sewer or drain vested in the Water Corporation established by the *Water Corporation Act 1995* and notwithstanding that the works or the sewer may not have been actually carried out or constructed by the local government.

[Section 63A inserted by No. 52 of 1968 s. 2; amended by No. 73 of 1995 s. 188; No. 14 of 1996 s. 4.]

64. Agreements for recouping costs and paying maintenance in case of limited schemes

- (1) When it shall appear to any local government that the use of any sewer constructed or to be constructed by the local government will be confined to the owners or occupiers of a limited number of premises, and will not be general, then the local government may enter into agreements relating to the use of the sewer with the respective owners of such premises.
- (2) Any such agreement shall provide for the drainage into the sewer of sewage and liquid waste from the premises, and may provide for the local government constructing and providing any drain to connect the premises with the sewer.
- (3) In every such agreement there shall be contained an undertaking on the part of the owner to pay to the local government such annual sum as may in accordance with the agreement of the parties be necessary to cover —
 - (a) a reasonable instalment of a due proportion of the cost of making and providing the sewer and any incidental works;
 - (b) interest at such reasonable rate as may be stipulated on such proportion of the cost;
 - (c) the expenses of the local government for the year in maintaining and operating such sewer and works:

Provided that, in so far as the local government has expended loan moneys on the construction and provision of such sewer

and works, the period over which such instalments shall be payable shall not extend beyond the period of the loan, and the rate of interest to be charged shall not exceed by more than 0.5% that payable on the loan.

- (4) In the event of any person subsequently availing himself of the use of the sewer under agreement with the local government, any person who has entered into a prior agreement may apply to the local government for a revision and adjustment of the amount to be paid by him thereunder, and, in the event of no agreement thereon being arrived at within 2 months, then the application, and all questions connected therewith, shall be deemed to have been referred by the parties to arbitration under the *Commercial Arbitration Act 1985*.
- (5) Whenever, in the opinion of the local government, the amount of any noxious or waste matter discharged into any sewer from any premises is greater than was estimated at the time any such agreement was entered into the local government may, by notice in writing served on the owner, increase the amount to be paid by the owner, pursuant to any agreement, and the remaining payments to fall due under the said agreement shall be adjusted accordingly; provided that if the owner concerned considers the increased amount excessive he may, within 2 months after the service on him of the notice, serve a notice on the local government requiring the question of what (if any) is a fair sum by way of increase, and all questions connected therewith to be submitted to arbitration, and the provisions of the *Commercial Arbitration Act 1985*, shall apply as if the parties had agreed to a reference of such question.

The provisions of this subsection shall apply retrospectively as well as prospectively, and in their retrospective operation shall include all agreements made under section 53B⁴ of the *Health Act 1911*, or made since 4 January 1934.

- (6) Any amount payable to the local government under any such agreement shall be and remain until paid a charge upon the premises to which the agreement refers, and on all the owner's

estate and interest therein, as if the agreement had contained an express charge to that effect, and the personal obligation to make the payments stipulated for in the agreement, and to perform and observe the terms thereof, shall be binding not only on the original party but on every subsequent owner of the premises, but so that no person shall be personally liable for the making of any payment or the discharge of any obligation which shall accrue due or arise after he has ceased to be owner of the premises.

- (7) The obligations of the local government under any such agreement shall be enforceable by the owner for the time being of the premises as if had been entered into with him.
- (8) Nothing in this section shall deprive the local government of any power of imposing any rate, except in so far as any such agreement as aforesaid may impose a restriction on such power for the benefit of any person liable under or entitled to the benefit of such agreement.
- (9) In the event of the ownership of any premises to which an agreement refers becoming divided between 2 or more persons, then the benefit and burden of the agreement may be so apportioned and adjusted between the owners as the Minister may determine, and the Minister's determination shall have effect as if embodied in an agreement under this section.

[Section 64 inserted by No. 38 of 1933 s. 21 and 42; amended by No. 16 of 1935 s. 4; No. 109 of 1985 s. 3(1); No. 14 of 1996 s. 4.]

65. Power to acquire land

- (a) The local government may take and acquire any land it may from time to time deem necessary for any of the purposes of this Part. Any such land shall be taken under and subject to the provisions of Part 9 of the *Land Administration Act 1997*.
- (b) If a local government fails to serve an offer on any claimant against the local government for compensation under the said Act within the time limited for that purpose by that Act, the

Minister may at any time thereafter serve an offer on behalf of the local government, and such offer shall be deemed to be an offer made by the local government for the purposes of the said Act.

[Section 65 inserted by No. 38 of 1933 s. 22 and 42; amended by No. 14 of 1996 s. 4; No. 31 of 1997 s. 142.]

66. Duty of local government where street broken up

When the local government opens or breaks up the soil or pavement of a street it shall —

- (a) with all dispatch complete the work for which it is broken up, and fill in the ground and reinstate and make good the street or pavement so opened or broken up; and
- (b) while any portion of such street or pavement continues to be opened up or broken up, cause such portion of the street or pavement to be fenced or guarded, and sufficient light to be kept there at night.

[Section 66 inserted by No. 38 of 1933 s. 23 and 42; amended by No. 14 of 1996 s. 4.]

67. Interfering with works of other authorities

If at any time the local government deems it necessary to raise, sink, or otherwise alter the situation of any tram rails, gas pipes, or gas works, hydraulic, steam, or other pipes, electric or telephone lines, pneumatic pipes or tubes, or other works laid in or under any street, it may by notice in writing require the person to whom the works belong to raise, sink, or otherwise alter the situation of the same in such manner and within such reasonable time as shall be specified in such notice, and the expense attendant on or connected with such alteration shall be paid by the local government, and if such notice shall not be complied with, the local government may make the alterations required.

[Section 67 inserted by No. 38 of 1933 s. 24 and 42; amended by No. 14 of 1996 s. 4.]

68. Alteration of sewerage works

The local government may open the ground, and change the level or otherwise amend or enlarge any sewer lying under any public or private street or place within the district for better communicating with the main sewer or stormwater drains: Provided that no person shall by means of any such alteration, amendment, or enlargement be deprived of the use and enjoyment of any private sewer or drain which he shall be entitled to use, but the local government may at its own cost so construct and alter such private sewer or drain as to render the same as effectual for the purposes for which it was intended as any such sewer or drain may be at the time of such alteration.

[Section 68 inserted by No. 38 of 1933 s. 25 and 42; amended by No. 14 of 1996 s. 4.]

69. Ventilating shafts, etc., may be attached to buildings, etc.

The local government may cause any ventilating shaft, pipe, or tube of any sewer or drain to be attached to any wall or building within its district; provided that the mouth of every such shaft, pipe, or tube shall be at least 1.8 metres higher than any window or door situated at a distance of 9 metres therefrom, and also make use of the chimney of any public building, or of any factory or any tramway building, for a ventilating shaft or tube: Provided that no ventilating shaft for the purpose of ventilating any sewer shall be attached to a private residence.

[Section 69 inserted by No. 38 of 1933 s. 26 and 42; amended by No. 94 of 1972 s. 4(1) (as amended by No. 83 of 1973 s. 3); No. 14 of 1996 s. 4.]

70. Maps of systems to be kept

The local government shall cause to be made a map of all sewerage works in its district, on such scale and with such indications of levels and particulars of sewers and other works as may be prescribed, and shall cause such map to be revised from time to time and such additions made thereto as may show

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any new sewers, drains, and works, and the date of every revision shall be expressed therein. A copy of every such map shall be kept in the office of the Executive Director, Public Health, and another copy shall be kept in the office of the local government, and shall be open at all reasonable times to the inspection of the owner or occupier of any land within the district of the local government.

[Section 70 inserted by No. 38 of 1933 s. 27 and 42; amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

71. Sewers to be kept cleansed

The local government shall cause all sewers and drains under its control to be constructed and kept so as not to be a nuisance or injurious to health, and shall keep the same properly cleansed, and for that purpose may construct, either above or below the ground, such reservoirs, sluices, engines, and fittings as it may think necessary, and may cause all or any of such sewers or drains to connect with and to be emptied into such places as it may think fit, and may cause the sewage and refuse therefrom to be collected for sale or for any purpose whatever, but not so as to create a nuisance.

[Section 71 inserted by No. 38 of 1933 s. 28 and 42; amended by No. 14 of 1996 s. 4.]

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[Heading inserted by No. 38 of 1933 s. 42; amended by No. 14 of 1996 s. 4.]

72. Owners or occupiers may be compelled to connect premises when works complete

- (1) As soon as any sewer or any part of the sewer is complete and ready for use, the local government may by notice in writing demand that the owner or occupier of any land situate in its

district and capable, in the opinion of the local government, of being drained into such sewer, shall construct such drains and fittings from and in connection with such land to connect with the sewer as the local government may determine.

- (2) Such drains and fittings shall be made and attached and be supplied with water according to such plans and directions as the local government shall deem proper for effectually carrying off all impurities from the land.

[Section 72 inserted by No. 38 of 1933 s. 29 and 42; amended by No. 14 of 1996 s. 4.]

73. Notice to owner or occupier to carry out installation of fittings

- (1) The local government may, after giving the prescribed notice to the owner or occupier of any land, require such drains and fittings to be constructed by the owner or occupier within such time as it may limit in that behalf, and may require ventilating shafts, pipes, or tubes to be attached to any building or erected apart from or otherwise than attached to any building and to be connected with the drains.
- (2) If the same shall not be constructed within such time or according to such plans and directions as the local government shall think proper, the local government may construct and attach the same, and for that purpose may enter into or upon the land of any such owner or occupier and excavate the ground, and make and construct and attach such drains and fittings, and may attach any such ventilating shafts, pipes, or tubes as aforesaid.
- (3) The local government may in such case recover from every such owner or occupier in any court of competent jurisdiction, the full amount of the expenses of making such drains and fittings, or attaching or connecting such ventilating shafts, pipes, or tubes, together with interest at such rates as may be prescribed, but not exceeding by more than 0.5% the rate of interest on any loan moneys expended in carrying out such work; and the cost

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of providing, laying down, constructing, and fixing in readiness for use such drains and fittings shall, as between the owner and occupier of the land, be payable by the owner.

- (4) All such moneys, together with interest as aforesaid, shall be a charge on the lands in respect of which they were expended.

[Section 73 inserted by No. 38 of 1933 s. 30 and 42; amended by No. 14 of 1996 s. 4.]

74. Where the local government makes installations it may enter into agreements with persons responsible for payment of cost

- (1) Where any owner or occupier of land becomes liable to the local government for the expense of making drains or fittings, or attaching or constructing ventilating shafts, pipes, or tubes, the local government may, on the application of the owner or occupier, enter into an agreement with the owner or occupier for the payment of such expenses and any costs incurred by the local government in relation to such works, over a period not exceeding the period of any loan from which the moneys expended to pay for the same were derived, or in not more than 60 quarterly instalments from the date of the completion of the work, if that period does not exceed the period of the loan.
- (2) Interest from time to time on the amount remaining, to be paid at such rate per centum per annum, not exceeding by more than 0.5% per annum the rate of interest on the loan moneys from which such moneys were expended, and in other cases, at such rate as may be prescribed, shall be added to each instalment, and all such moneys and interest shall be a charge on the land in respect of which such works have been carried out, and may be recovered from any owner of such land with costs.
- (3) The obligation of any occupier under an agreement made pursuant to this section shall cease in respect of any instalments becoming due thereunder after his tenancy shall have determined, but without prejudice to the right of the local government to recover such instalments from the owner.

[Section 74 inserted by No. 38 of 1933 s. 31 and 42; amended by No. 16 of 1935 s. 5; No. 14 of 1996 s. 4.]

75. Right of owner or occupier to connect drains with sewer

The owner or occupier of any land in the district of the local government may, subject to such conditions as the local government may impose and to the relative local laws, cause his drains to empty into the covered sewers of the local government.

[Section 75 inserted by No. 38 of 1933 s. 32 and 42; amended by No. 14 of 1996 s. 4.]

76. Owner or occupier of land outside district may connect if local government agreeable

The owner or occupier of any land beyond the district of the local government may cause any sewer or drain from such land to communicate with any sewer of the local government, on such conditions as the local government may impose.

[Section 76 inserted by No. 38 of 1933 s. 33 and 42; amended by No. 14 of 1996 s. 4.]

77. Restrictions on construction or alteration of certain drains and fittings

A person who constructs or alters any drain or fitting connected with a sewer —

- (a) without having given not less than one week's written notice to the local government of his intention to do so; or
- (b) otherwise than in accordance with —
 - (i) the conditions laid down in the local laws of the local government; and
 - (ii) such plans and in such manner as the local government directs,

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commits an offence.

[Section 77 inserted by No. 80 of 1987 s. 5; amended by No. 14 of 1996 s. 4.]

78. Owner or occupier responsible for cleaning private drains

- (1) All drains and fittings connected with any sewer shall from time to time be repaired and cleansed under the inspection or direction of the local government, at the expense of the owner or occupier of the land in respect of which the said drain shall be constructed.
- (1a) An owner or occupier referred to in subsection (1) who, if the local government —
- (a) does not give him a direction in respect of the repair or cleansing of a drain or fitting referred to in that subsection, repairs or cleanses that drain or fitting otherwise than under the inspection of the local government; or
 - (b) gives him a direction in respect of the repair or cleansing of a drain or fitting referred to in that subsection, does not repair or cleanse that drain or fitting in accordance with that direction,

commits an offence.

- (2) Subject to any agreement between the owner and occupier of any premises, the cost of repairing drains and fittings shall, as between the owner and occupier, be payable by the owner, and the cost of cleansing drains shall, as between the owner and occupier, be payable by the occupier.

[Section 78 inserted by No. 38 of 1933 s. 35 and 42; amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 6; No. 14 of 1996 s. 4.]

79. Obstructing or encroaching on sewers

- (1) Every person who shall erect, construct, or place any building, wall, fence, or obstruction in, upon, or over or under any sewer, so as to interfere with or injuriously affect such sewer in the carrying away of sewage or drainage, and every person who shall obstruct, fill in, close up, or divert any sewer without the previous consent in writing of the local government, commits an offence.
- (2) The local government may perform any works necessary for restoring or reinstating such sewer; and the person offending shall be liable to pay the local government all expenses incurred in performing such works. All such expenses may be recovered in any court of competent jurisdiction.

[Section 79 inserted by No. 38 of 1933 s. 36 and 42; amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 7; No. 14 of 1996 s. 4.]

80. Local government may enforce drainage of undrained houses

- (1) Subject to the express provisions of section 72, when any house in the district is without a drain sufficient for effectual drainage, the local government may, by written notice, require the owner or occupier of such house, within a reasonable time therein specified, to make a drain or drains emptying into any sewer of the local government which is not more than 91 metres from the curtilage of such house; or, if no such means of drainage are within that distance, then emptying into such place within that distance, and not being under any house as the local government directs.
- (2) The local government may require any such drain or drains to be of such material, and size, and to be laid at such level and in such direction and with such fall as appear to the local government to be necessary.

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- (3) If such notice is not complied with, the local government may, after the expiration of the time specified in the notice, do the work required, and recover the expenses incurred by it in so doing from the owner.

[Section 80 inserted by No. 38 of 1933 s. 37 and 42; amended by No. 94 of 1972 s. 4(1) (as amended by No. 83 of 1973 s. 4); No. 14 of 1996 s. 4.]

81. Owner may be required to connect premises with public sewer

- (1) Subject to the express provisions of section 72, when there exists in any district any sewer (whether constructed by or under the control of the local government or not) ready for use and suitable for the removal of sewage on the water-carriage system, then the local government may, by notice in writing, require the owner of any house or land situated in the district within 91 metres of the sewer, and capable, in the opinion of the local government, of being drained into such sewer, to provide for the removal of sewage from such house or land, and for that purpose to construct and provide, within a time specified in the notice, such drains and fittings as the authority having control of such sewer shall deem necessary, and to connect such drains with the sewer.
- (2) Such drains and fittings shall be constructed and connected and be supplied with water in accordance with the laws and regulations applicable to the sewer, and in conformity with any directions given by the authority controlling the sewer.
- (3) It shall be the duty of any owner to whom any such notice as aforesaid is given to comply with that notice within the time specified therein, and to carry the same into complete effect.
- (4) If a notice given under this section is not complied with, the local government may, after the expiration of the time specified in the notice, do the work required, and for that purpose may enter into or upon the house or land of the owner and excavate

the ground and construct and provide such drains and fittings and connect such drains with the sewer.

- (5) The local government may recover from the owner in any court of competent jurisdiction the full amount of the expenses incurred by it in constructing and providing such drains and fittings and connecting such drains to the sewer pursuant to subsection (4), with interest at a rate, if loan moneys are expended in carrying out the work, not exceeding by more than 0.5% the rate of interest payable on the loan but otherwise at such rate as the Minister may approve, and such amount and interest shall be and remain a charge upon the land in respect of which the expenses were so incurred, notwithstanding any change that may take place in the ownership of that land.

[Section 81 inserted by No. 38 of 1933 s. 38 and 42; amended by No. 8 of 1965 s. 2; No. 94 of 1972 s. 4(1) (as amended by No. 83 of 1973 s. 4); No. 14 of 1996 s. 4.]

82. Buildings without drains

- (1) No person shall —
- (a) erect any house; or
 - (b) rebuild any house which has been pulled down to or below the ground floor;
 - (c) occupy any house so erected or rebuilt,

unless or until such drains (if any) as the local government deems necessary for the effectual drainage of the house are provided to the satisfaction of the local government.

- (2) Subject to the express provisions of section 72 the drain or drains so to be constructed shall empty into some sewer of the local government which is within 91 metres from the curtilage of the house to be built or rebuilt; or, if no such means of draining are within that distance, shall, subject to the local laws, empty into such place within that distance, not being under any house, as the local government directs.

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- (3) Any person who causes any house to be erected or rebuilt, or any drain to be constructed, contrary to the provisions of this section commits an offence.

[Section 82 inserted by No. 38 of 1933 s. 39 and 42; amended by No. 113 of 1965 s. 8(1); No. 94 of 1972 s. 4(1) (as amended by No. 83 of 1973 s. 4); No. 80 of 1987 s. 8; No. 14 of 1996 s. 4.]

82A. Where the local government makes connections with sewers it may enter into agreement with person responsible for payment of cost

- (1) Where the local government has been requested in writing by the owner of premises in the district of the local government to arrange for the connection of any of the drains of the premises with a sewer, whether constructed by or under the control of the local government or not or for the supply and installation in the premises of any bath, basin, sink or trough, and the pipes and fittings necessary for the proper functioning thereof, whether the supply and installation is by way of replacement or not, the local government may do the necessary work and provide the necessary materials, and may recover from the owner the expenses incurred by the local government in doing so.
- (2) The local government may at the request of the owner enter into an agreement with the owner for the payment of the expenses, by such instalments extending over such period, not exceeding 15 years, and including such rate of interest, as the local government deems reasonable.
- (3) So much of the expense, and so much of the interest due, as is not paid to the local government, is a charge upon the land on or in relation to which the expense is incurred, notwithstanding any change that may take place in the ownership of the land.

[Section 82A inserted by No. 29 of 1955 s. 2; amended by No. 38 of 1960 s. 2; No. 14 of 1996 s. 4.]

83. Making sewers and drains under private land

Without affecting the provisions of this Act relating to the powers of the local government in the carrying out of any sewerage and drainage works, and the compulsory connection of any premises to any such works, whenever in the opinion of the local government it is necessary for the proper drainage of any land or premises to construct a sewer or drain through or under private land, the following provisions shall apply:

- (a) The local government may by notice in writing to the owner and to the occupier (if any) require him or them to permit such sewers or drains to be made through or under such private land.
- (b) After one month from the service of such notice on the owner and the occupier (if any), the local government, or any person authorised by the local government, may make such sewers or drains through or under such private land and may without notice enter into the premises to maintain or repair such sewer or drain.
- (c) Where any sewer or drain is made by or with the authority of the local government, or the person so authorised, there shall be paid to the owner and to the occupier compensation for any damages occasioned by them in consequence of such works, and in relation to the assessment and determination of such compensation the provisions of Part 10 of the *Land Administration Act 1997* shall, with the necessary modifications, apply. There shall be payable to such owner in addition to any sum claimable under the last-mentioned Act all loss which may arise or be consequent upon the exercise by the local government of any of the powers herein, including the depreciation (if any) in the value of the land through or under which any sewer or drain may be made.
- (d) Subject to the provisions of section 63 and section 64, all expenses incurred by the local government or by any person in making any sewer or drain through or under private land, and any compensation and costs shall be

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repaid to the local government or to the person so authorised —

- (a) in the case of drainage of private land or premises, by the owner thereof;
- (b) in the case of the drainage of any street, road, or way, by the owner of the land and premises fronting or abutting thereon, if the local government shall so require; and
- (c) as between several owners, in such proportions as the local government may fix,

and may be recovered by action in any court of competent jurisdiction.

[Section 83 inserted by No. 38 of 1933 s. 40 and 42; amended by No. 14 of 1996 s. 4; No. 31 of 1997 s. 32(2).]

84. Recovery of expenses incurred by local government

All expenses incurred by the local government in making any sewer or drain through or under private land, and in compensation and costs, shall be repaid to the local government —

- (a) in the case of drainage of private land or premises, by the owner thereof;
- (b) in the case of the drainage of any street, road, or way, by the owner of the land and premises fronting or abutting thereon, if the local government shall so require; and
- (c) as between several owners, in such proportions as the local government may fix,

and shall be recoverable in a court of competent jurisdiction.

[Section 84 amended by No. 14 of 1996 s. 4; No. 59 of 2004 s. 141.]

85. Dwelling-houses on low lying land

It shall not be lawful for any person, upon land which is so situated as not to admit of being drained by gravitation into an

existing sewer, to erect any building to be used wholly or in part as a dwelling-house, or to adapt any building to be used wholly or in part as a dwelling-house, except with the permission of the local government and subject to and in accordance with such local laws as the local government may from time to time prescribe.

The local government may by such local laws —

- (a) prohibit the erection of dwelling-houses or the adaptation of any buildings for use as dwelling-houses on such land, or any defined area or areas of such land;
- (b) regulate the erection of dwelling-houses or the adaptation of buildings for use as dwelling-houses on such land, or any defined area or areas of such land;
- (c) prescribe the level at which the under side of the lowest floor of any permitted building shall be placed on such land, or any defined area of such land, and as to the provision to be made and maintained by the owner for securing efficient and proper drainage of the buildings.

[Section 85 amended by No. 14 of 1996 s. 4.]

86. Filling up low lying land

- (1) Whenever the surface of any land is lower than the level of the street, road, sewer, or drain into which the water off the said land should, in the opinion of the local government, drain, the local government may give notice to the owner to fill up such land within a time limited by the notice, so that the same may be so drained.
- (2) An owner who neglects or refuses to comply with a notice given to him under subsection (1) commits an offence.
- (2a) When an owner neglects or refuses to comply with a notice given to him under subsection (1), the local government may do the work required by that notice to be done and recover from the owner so in default the expense incurred by it in so doing.

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- (3) Such expense, until paid, shall be and remain a charge upon the land, notwithstanding any change that may take place in the ownership thereof.

[Section 86 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 9; No. 14 of 1996 s. 4.]

87. Stagnant water holes

The local government may, and, if required by the Executive Director, Public Health, shall cause to be drained, cleansed, covered, or filled up all ponds, pools, open ditches, sewers, drains, and places containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health, by making and serving an order upon the person causing any such nuisance, or upon the overseer, owner, or occupier of any premises whereon the same exists, requiring him within a time to be specified in such order to drain, cleanse, cover, or fill up any such pond, pool, ditch, sewer, drain, or place, or to construct a proper sewer or drain for the discharge thereof, as the case may require.

[Section 87 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

88. Stagnant water in cellars, etc.

- (1) No person shall suffer any waste or stagnant water to remain in any cellar or premises in or about any dwelling-house for 24 hours after notice given and served upon him by the local government or its officer to remove same.
- (2) If the local government has reason to suspect that there is any waste or stagnant water in or about any house or premises, such local government, after 24 hours' notice, in writing, to the occupier or owner of such house may direct its officers to make entry into or upon such house or premises, and cause any floor or portion thereof to be opened up in order to ascertain whether there is in or about any such house any waste or stagnant water; if there is no waste or stagnant water found underneath any floor

so removed, such local government shall cause to be repaired and made good any such floor or portion thereof so removed as aforesaid; but if there is found any waste or stagnant water under any such floor, then in such case all expenses incurred in the removal and repair of such floor or portion thereof shall be chargeable to the owner of the house or premises, and may be recovered from such owner as hereinafter provided.

- (3) Before any waste or stagnant water having an offensive smell is emptied from any cellar or other premises, the occupier of such premises shall cause such water to be thoroughly deodorised.

[Section 88 amended by No. 14 of 1996 s. 4.]

89. Cellars, asphaltting, etc.

The owner of any house to which there is a cellar shall, if so required by the local government, and within a time to be specified, cause such cellar to be paved or asphalted in manner directed by and to the satisfaction of the local government; and if such cellar is subject to the leakage of water thereinto, and there is no drain for the discharge of such water, such owner shall likewise, if so required by the local government, construct in such cellar where, when, and as directed, a well for the gathering of such leakage, and upon completion of such well shall cause the same to be regularly emptied at intervals not exceeding 24 hours:

Provided that in case the occupier of any such house has paved or asphalted any such cellar, or constructed any such well, he may, subject to any agreement previously made between him and the owner of such house, recover in a court of competent jurisdiction the moneys expended by him on such paving or asphaltting, or on constructing such well, or may deduct the same from any rent payable by him to such owner.

[Section 89 amended by No. 14 of 1996 s. 4; No. 59 of 2004 s. 141.]

90. Brickmaking and other excavations to be fenced

Any local government may, and, when so required by the Executive Director, Public Health, shall, by order addressed to the owner of any land which has been excavated for brickmaking, quarrying, mining, or other purposes, whether before or after the commencement of this Act¹, direct such owner to have any excavation so made securely fenced round to the satisfaction of such local government; and may further direct such owner or the occupier to take such measures as are in the opinion of the local government necessary, and as are specified in such order for preventing any noxious or offensive drainage or other matter from flowing or being thrown into any such excavation.

[Section 90 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

91. Storm water to be allowed its natural channel

- (1) It shall not be lawful for a local government to deal with any highway or any land under its control, or for any owner or occupier of any land to deal with the same in such a manner that the free flow of storm water along any natural channel through or across such highway or land is so impeded or interfered with as to cause or be likely to cause any collection or pool of stagnant or offensive water or liquid.
- (2) Subject to subsection (3), a local government, an owner or occupier which or who contravenes subsection (1) commits an offence.
- (3) Nothing in this section shall apply to dams constructed for mining or other industrial purposes, provided that no offensive matter is allowed to accumulate in such dams.

[Section 91 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 10; No. 14 of 1996 s. 4.]

92. Unauthorised building over sewers and under streets

- (1) Any person who, in any district, without the written consent of the local government —

- (a) causes any house to be erected over any sewer or drain of the local government; or
- (b) causes any vault, arch, or cellar to be built or constructed under any street,

commits an offence.

- (2) The local government may cause any house, vault, arch, or cellar erected or constructed contrary to the provisions of this section to be altered, pulled down, or otherwise dealt with as it thinks fit, and may recover from the offender any expense incurred by it in so doing.

[Section 92 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 11; No. 14 of 1996 s. 4.]

93. Injurious matter not to pass into sewers

Any person who throws or suffers to be thrown or to pass into any sewer of a local government, or any drain communicating therewith, any matter or substance by which the free flow of the sewage or surface or storm water may be interfered with, or by which any such sewer or drain may be injured, commits an offence.

[Section 93 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 12; No. 14 of 1996 s. 4.]

94. Chemical refuse, steam, etc., not to be turned into sewers

- (1) Any person who turns or permits to enter into any sewer of a local government or any drain communicating therewith any chemical refuse or any waste, condensing water, heated water or other liquid over a temperature of 43°C, which causes a nuisance or is injurious to health, or interferes with the disposal of sewage, commits an offence.
- (2) A person shall not be liable to a penalty for an offence under subsection (1) until the local government has given him notice of the provisions of this section, nor for an offence committed before the expiration of 7 days from the service of such notice;

but the local government shall not be required to give the same person such notice more than once.

[Section 94 amended by No. 113 of 1965 s. 8(1); No. 94 of 1972 s. 4(1) (as amended by No. 83 of 1973 s. 4); No. 80 of 1987 s. 13; No. 14 of 1996 s. 4.]

Division 3 — Disposal of sewage

95. Disposing of sewage

For the purpose of receiving, storing, disinfecting, deodorising, purifying, distributing, or otherwise disposing of sewage, a local government may —

- (1) construct any works in the district or (subject to the provisions of this Act) beyond the district;
- (2) contract for the use of, purchase, or take on lease any land, buildings, engines, materials, or apparatus either within or beyond the district;
- (3) make contracts for the supply of sewage to any person for any period not exceeding 25 years, and as to the execution and cost of works, either in or beyond the district, for the purpose of such supply:

Provided that no nuisance shall be created in the exercise of any of the powers conferred by this section.

[Section 95 amended by No. 14 of 1996 s. 4.]

96. Communication of sewers with sewers of adjoining district

A local government may, by agreement with the local government of any adjoining district, and with the sanction of the Executive Director, Public Health, cause its sewers to communicate with the sewers of the local government of such adjoining district in such manner and on such terms, and subject to such conditions, as may be agreed upon between the local governments, or in case of dispute, as may be settled by

arbitration, under the provisions of the *Commercial Arbitration Act 1985*.

[Section 96 amended by No. 28 of 1984 s. 45; No. 109 of 1985 s. 3(1); No. 14 of 1996 s. 4.]

97. Dealing with land appropriated to sewage purposes

- (1) The local government may, subject to the approval of the Executive Director, Public Health, deal with any land held by it for the purpose of receiving, storing, disinfecting, or distributing sewage, in such manner as it deems most profitable —
- (a) by leasing the same for a period not exceeding 25 years for agricultural purposes; or
 - (b) by contracting with some person to take the whole or a part of the produce of such land; or
 - (c) by farming such land and disposing of the produce thereof;

but in dealing with such land, the local government shall see that provision is made for effectually disposing of all the sewage brought to such land without creating a nuisance or endangering the public health.

- (2) When a local government, with the approval of the Executive Director, Public Health, agrees with any person as to the supply of sewage, or as to works to be made for the purpose of such supply, the local government may contribute to the expense of carrying into execution by such person all or any of the purposes of such agreement.

[Section 97 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

98. Punishment for placing sewage in streets, etc.

Any person spilling, casting, throwing, or otherwise putting down or depositing or causing or allowing to be spilt, cast, thrown or otherwise put down or deposited any sewage into or

upon any road, street, tramway, channel or tunnel, footway, lane or any land or place other than a place or depot duly authorised for the purpose, commits an offence.

[Section 98 amended by No. 17 of 1918 s. 8; No. 113 of 1965 s. 8(1); No. 102 of 1973 s. 5; No. 80 of 1987 s. 14.]

Division 4 — Sanitary conveniences

99. Houses to have sanitary conveniences

- (1) No person shall erect, rebuild, maintain, or use any house, or keep or use or suffer to be kept or used any public place or private place without providing for the same sanitary conveniences, and also bathroom and laundry and cooking facilities, to the number prescribed, constructed and equipped in accordance with the local laws of the local government.

[(2) repealed]

- (3) If it appears to the local government to be advisable that any house, public place, or private place should be provided with an apparatus for the treatment of sewage, it may cause written notice to be served on the owner of the house or place requiring him within a time specified in the notice to provide and install such apparatus for and in connection with such house or place, and such owner shall comply with such notice, and shall observe in connection with the provision and installation of the apparatus the provisions of section 107 and of the relative local laws.
- (4) A person who neglects or refuses to comply with the requirements of a notice served on him under subsection (3) commits an offence.
- (4a) When a person neglects or refuses to comply with the requirements of a notice served on him under subsection (3), the local government may do the work required by that notice to be done and provide the material or apparatus required to be provided to carry out the requirements of the notice in respect of

which default has been made, and may recover from the person so in default the expense incurred by it in so doing.

- (5) Such expenses, until paid, shall be and remain a charge upon the land, notwithstanding any change that may take place in the ownership thereof.

[Section 99 inserted by No. 30 of 1932 s. 12; amended by No. 32 of 1937 s. 4; No. 21 of 1944 s. 4, No. 45 of 1954 s. 2; No. 49 of 1962 s. 2; No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 15; No. 59 of 1991 s. 9; No. 14 of 1996 s. 4.]

100. Provision of apparatus for the treatment of sewage

- (1) Whenever the local government has been requested in writing by the owner of any premises to provide and install thereon an apparatus for the treatment of sewage, or to supply and install in the premises any bath, basin, sink or trough, and the pipes and fittings necessary for the proper functioning thereof, whether the supply and installation is by way of replacement or not, the local government may do the work and provide the material required to be done and provided, and recover from the owner the expenses incurred by it in so doing.
- (2) When any owner is liable to the local government in respect of the provision and installation of any such apparatus as aforesaid in connection with any house, then the local government may, at the request of the owner, enter into an agreement with him for the payment of the amount due by instalments extending over such period as the local government shall deem reasonable, with interest at the rate indicated in the proviso hereto, or, in cases in which the proviso is not applicable, at a rate determined by the local government with the approval of the Minister: Provided that if the local government has paid the expenses out of any loan the period aforesaid shall not extend beyond the period within which the loan is repayable, and the rate of interest shall not exceed by more than 0.5% the rate of interest payable on the loan:

Provided further, that no such agreement shall be entered into in respect of any house the erection of which was not commenced

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before the date fixed for the district by a resolution passed for the purposes of this section by the local government and published in the *Government Gazette* but the provisions of this proviso do not apply in respect of any house which is the property of the Crown in right of the State.

- (3) Such expenses, until paid, whether by instalment or otherwise, shall be and remain a charge upon the land upon or in relation to which the expenses were incurred, notwithstanding any change that may take place in the ownership thereof, but where the Crown is liable for payment of the expenses under an agreement, the expenses are not a charge on the land and may be recovered by the local government, if they are not repaid in accordance with the terms of the agreement, as a debt in any court of competent jurisdiction.
- (4)(a) In this section the expression, “**owner**” includes the Crown in right of the State and where the Crown is the owner of any premises the expression, “**apparatus for the treatment of sewage**” includes any buildings, fittings, works or appliances used or required for ablutionary purposes.
- (b) The reference to the Crown in this section does not imply that the Crown is bound by the other provisions of this Act.

[Section 100 inserted by No. 50 of 1926 s. 6; amended by No. 30 of 1932 s. 13; No. 38 of 1933 s. 8; No. 22 of 1959 s. 2; No. 18 of 1964 s. 4; No. 59 of 1991 s. 10; No. 14 of 1996 s. 4.]

101. Sanitary conveniences for manufactories, etc.

- (1) Every house used as a workshop or manufactory, or where persons are employed or intended to be employed in any trade or business, and every house in which persons above 20 in number are gathered at one time, shall be provided with such sanitary conveniences as, in the opinion of the local government, are suitable and sufficient having regard to the number and sex of persons employed or gathered therein.
- (2) When it appears to the local government that the provisions of this section are not complied with, the local government shall,

by written notice, require the owner of the house, within a time therein specified, to make such alterations and additions therein as may be required to give such sufficient and suitable accommodation.

- (3) An owner who neglects or refuses to comply with the requirements of a notice given to him under subsection (2) commits an offence.
- (4) When an owner neglects or refuses to comply with the requirements of a notice given to him under subsection (2), the local government may do the work required by that notice to be done and recover from the owner so in default the expense incurred by it in so doing.

[Section 101 amended by No. 18 of 1964 s. 5; No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 16; No. 14 of 1996 s. 4.]

102. Sanitary conveniences in connection with works

A person who undertakes work in the district of a local government and who does not provide and maintain for the use of persons engaged, whether as employees or as independent contractors or otherwise, on the work, sanitary conveniences of the number, situation, construction, dimensions and equipment prescribed by the regulations or local laws of that local government, or who does not remove those sanitary conveniences when required by the local government, commits an offence.

[Section 102 inserted by No. 25 of 1952 s. 3; amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 17; No. 14 of 1996 s. 4.]

103. Persons to carry out sanitary work in certain cases

Where any person undertakes any work upon any land, whether such work necessitates the employment of workmen or not, such person shall, if required by the local government, collect and dispose of in accordance with the terms of the local government's requisition, all sewage, rubbish, or refuse present or found as the result of work being undertaken within the land occupied or controlled by him in connection with or for the purpose of such work.

[Section 103 inserted by No. 30 of 1932 s. 14; amended by No. 102 of 1973 s. 6; No. 14 of 1996 s. 4; No. 57 of 1997 s. 68(1).]

104. Earth-closets

The local government may itself undertake or contract with any person to undertake to supply dry earth or other deodorising substances within the district, for the purposes of any earth-closet.

[Section 104 amended by No. 14 of 1996 s. 4.]

105. Public necessities

- (1) The local government may provide and maintain, in proper and convenient situations —
 - (a) sanitary conveniences for public accommodation;
 - (b) receptacles for the temporary deposit and collection of dust, ashes, and rubbish.
- (2) The local government may levy and collect charges for the use of such conveniences and receptacles.
- (3) The local government may also provide and maintain fit buildings and places, either within or beyond the district, for the deposit of any matters collected by it in pursuance of this Part.

[Section 105 amended by No. 14 of 1996 s. 4.]

106. Power to make pan charges

- (1) The local government may, in lieu of, or in addition to a sanitary rate, provide for the proper disposal of sewage, rubbish or refuse, whether within the district or not, by making an annual charge per pan or other receptacle, payable in one sum or by equal monthly or other instalments in advance, in respect of every house or place provided with the service.
- (2) Such charge shall be levied on the owner or occupier, as the local government may decide, of every house in which any such pan or other receptacle is in use, and may be recovered by the local government in the same way as rates in arrear are recoverable.
- (3) In the case of houses being erected and becoming occupied during the year for which payment is to be made, the charge thereon for the service provided under this section shall be such sum as will proportionately represent the period between the occupation of the house and the ending of the year for which payment is made.
- (4) Notice of any charge made under this section may be included in any document containing notice of any rates levied under this Act; but the omission to give any notice of such charge shall not affect the validity of the charge or the power of the local government to recover it.
- (5) Any such charge may be limited to premises in a particular portion of the area under the control of the local government.
- (6) Charges under this section may be levied in respect of and shall be payable for all premises in respect of which a service is provided under this section, whether such premises are rateable or not.
- (7) A local government may, with the approval of the Executive Director, Public Health, make different charges for services rendered in different portions of its district.

- (8) Where a local government has heretofore or shall hereafter establish a sewerage scheme as authorised by the provisions of Division 1 of Part IV, it may, in lieu of levying a rate as provided for in this Act, make an annual charge, according to the prescribed scale, at per pedestal, and all the provisions of this Act shall apply to any such charge as if it were a rate as aforesaid.

[Section 106 amended by No. 17 of 1918 s. 10; No. 30 of 1932 s. 15; No. 38 of 1933 s. 9; No. 32 of 1937 s. 5; No. 102 of 1973 s. 7; No. 28 of 1984 s. 45; No. 14 of 1996 s. 4; No. 28 of 1996 s. 6.]

107. Drains, privies, etc., to be properly kept

- (1) The local government shall provide that all drains, sanitary conveniences, and any apparatus for the treatment of sewage within the district are constructed and kept so as not to be a nuisance or dangerous or injurious to health.
- (2) A person who constructs or installs, or permits or authorises the construction or installation of, any apparatus for the treatment of sewage commits an offence unless —
- (a) the local government has approved of that construction or installation, where it is prescribed by regulation that the apparatus is to be approved for the purpose of this paragraph by the local government; or
 - (b) the Executive Director, Public Health has approved of that construction or installation, where it is prescribed by regulation that the apparatus is to be approved for the purposes of this paragraph by the Executive Director, Public Health.
- (3) Application for approval under subsection (2) is to be made as prescribed by regulation and may be granted subject to such conditions as are specified in writing and given to the applicant.

- (4) A person who uses, or permits or authorises another person to use, any apparatus for the treatment of sewage commits an offence unless —
 - (a) the local government has granted permission for the apparatus to be used under subsection (5); and
 - (b) the apparatus conforms to all relevant requirements prescribed by regulation and any conditions imposed on an approval granted under subsection (3) in respect of the apparatus.
- (5) A local government may grant permission for apparatus for the treatment of sewage to be used only after the apparatus has been inspected by, or on behalf of, the local government to ensure that the apparatus conforms to all relevant requirements prescribed by regulation and any condition imposed on an approval granted under subsection (3) in respect of the apparatus.
- (6) The provisions of this section shall apply, so far as capable of application, to contractors, officers, and others acting on behalf of or under contract with a local government in or about the construction, installation, maintenance, or provision of apparatus for the treatment of sewage.
- (7) The Governor may make regulations for the purpose of carrying this section into effect, including regulations with respect to maintenance of any apparatus for the treatment of sewage and charges in relation thereto, and regulations prescribing fees to be paid with respect to applications and inspections for the purposes of this section.
- (8) Where an owner or occupier installs apparatus for the treatment of sewage, a local government, if satisfied that the installation of the apparatus renders unnecessary the continuation of any sanitary service provided by the local government under this Act, may remit or refund so much of any rate or charge as was imposed under this Act in respect of the service so rendered unnecessary.

[Section 107 amended by No. 50 of 1926 s. 7; No. 21 of 1957 s. 6; No. 113 of 1965 s. 8(1); No. 28 of 1984 s. 45; No. 80 of 1987 s. 18; No. 59 of 1991 s. 11 and 20; No. 14 of 1996 s. 4; No. 28 of 1996 s. 7.]

107A. Articles in use in construction or operation of sewers, etc., to be of prescribed standard

Any person who manufactures, sells or offers for sale an article designed for use in the construction or operation of any sewer, drain, sanitary convenience or receptacle for drainage, commits an offence if the article is not of the prescribed standard and construction.

[Section 107A inserted by No. 35 of 1966 s. 3.]

108. Examination of drains, etc.

- (1) If the local government suspects that any drain, sanitary convenience, or apparatus for the treatment of sewage in the district is a nuisance or injurious to health, the local government may, after 24 hours' written notice to the occupier of the land, or in case of emergency, of which the local government shall be the judge, without notice, direct an officer to enter the land, with or without assistants, and cause the ground to be opened, and examine such drains, sanitary convenience or apparatus.
- (2) If the same, on examination, is found to be in a proper condition, the officer shall cause the ground to be closed, and any damage done to be made good as soon as can be, and the expenses of the works shall be defrayed by the local government.
- (3) If the same, on examination, appears to be in a bad condition, or to require alteration or amendment, the local government shall forthwith cause notice, in writing, to be given to the owner or occupier of the land requiring him forthwith or within a time therein specified, to do the necessary works.

- (4) An owner or occupier who neglects or refuses to comply with the requirements of a notice given to him under subsection (3) commits an offence.
- (4a) When an owner or occupier neglects or refuses to comply with the requirements of a notice given to him under subsection (3), the local government may do the works required by that notice to be done and recover from the owner or occupier so in default the expense incurred by it in so doing.
- (5) Where 2 or more houses belonging to different owners are connected with a public sewer by a single private drain, a notice may be given under this section to the several owners and occupiers, and the local government may recover any expenses incurred by it in executing any works under the powers conferred on it by this section from the owners of the houses, in such shares and proportions as the local government thinks just, or as, in case of dispute, may be decided by a court of competent jurisdiction.

[Section 108 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 19; No. 59 of 1991 s. 12; No. 14 of 1996 s. 4; No. 59 of 2004 s. 141.]

109. Local government may require filling up of certain cesspools

An owner of land on which there is a cesspool for the reception of nightsoil who, on being required to fill up that cesspool by notice in writing given to him by the local government within a time specified in that notice, does not comply with that requirement commits an offence.

[Section 109 inserted by No. 80 of 1987 s. 20; amended by No 14 of 1996 s. 4.]

110. New cesspools for nightsoil forbidden

From and after the commencement of this Act no cesspool for the reception of nightsoil below the ground shall be constructed except within such portion (if any) of the district as may be prescribed by the local government.

[Section 110 amended by No. 14 of 1996 s. 4.]

111. Local government may supply receptacles

Whenever the local government shall determine by local law to adopt a system of pans or receptacles for sewage, rubbish, or refuse, interchangeable or otherwise, it shall be lawful for the local government to supply the necessary pans or receptacles, or any portion of them, out of its own funds; and the local government may reserve the exclusive right to sell such pans or receptacles, and may charge a reasonable price, not exceeding the cost, for the same, and may recover the price of the required number supplied to any owner or occupier who is under obligation to take one or more.

[Section 111 amended by No. 102 of 1973 s. 8; No. 14 of 1996 s. 4.]

Division 5 — Scavenging, cleansing, etc.

112. Local government to provide for removal of refuse and cleansing works

- (1) A local government may, and when the Executive Director, Public Health so requires, shall undertake or contract for the efficient execution of the following works within its district, or any specified part of its district:
 - (a) The removal of house and trade refuse and other rubbish from premises.
 - (b) The supply of disinfectants for the prevention or control of disease, and pesticides for the destruction of pests.
 - (c) The cleansing of sanitary conveniences and drains.
 - (d) The collection and disposal of sewage.
 - (e) The cleaning and watering of streets.
 - (f) The providing, in proper and suitable places, of receptacles for the temporary deposit of refuse and rubbish collected under this section.

- (g) The providing of suitable places, buildings, and appliances for the disposal of refuse, rubbish and sewage.
- (ga) The construction and installation of plant for the disposal of refuse, rubbish and sewage.
- (h) The collection and disposal of the carcasses of dead animals:

Provided that it shall not be lawful to deposit nightsoil in any place where it will be a nuisance or injurious or dangerous to health.

- (2) Any local government which has undertaken or contracted for the efficient execution of any such work as aforesaid within its district or any part thereof may by local law prohibit any person executing or undertaking the execution of any of the work undertaken or contracted for within the district or within such part thereof as aforesaid, as the case may be, so long as the local government or its contractor executes or continues the execution of the work or is prepared and willing to execute or continue the execution of the work.
- (3) After the end of the year 1934 no nightsoil collected in one district shall be deposited in any other district, except with the consent of the local government of such other district, or of the Executive Director, Public Health.

[Section 112 amended by No. 17 of 1918 s. 11; No. 30 of 1932 s. 17; No. 45 of 1954 s. 3; No. 38 of 1960 s. 3; No. 102 of 1972 s. 9; No. 28 of 1984 s. 45; No. 14 of 1996 s. 4; No. 28 of 1996 s. 8.]

112A. Local government may prescribe part of district in which occupier of premises shall not remove rubbish without permission

- (1) Where a local government undertakes or contracts for the efficient execution within its district or any part of its district of the work specified in section 112(1)(a), every occupier of

premises within a prescribed part of that district or of that part of the district of the local government as the case may be shall —

- (a) not, unless he is authorised by the local government so to do, remove any house and trade refuse and other rubbish from the premises;
 - (b) pay to the local government or its contractor, as the case may be, for the removal, the prescribed charge or the charge according to the scale published in accordance with section 113.
- (2) The local government may in writing authorise the occupier of premises within its district to remove or dispose of house and trade refuse and rubbish from or on the premises if —
- (a) the refuse and rubbish on the premises is not available for removal at regular periods and is of such a nature or quantity as to be unsuitable for removal by the local government or its contractor; or
 - (b) there is installed on the premises efficient apparatus for the destruction of the refuse and rubbish and the apparatus is used to dispose of the refuse and rubbish on the premises without causing a nuisance or permitting the discharge of smoke into the atmosphere in such quantities or of such a nature as to cause annoyance to persons.
- (3) Where any refuse and rubbish is removed from the premises under a written authority of a local government, the person removing it shall —
- (a) dispose of it at the place set apart by the local government for the disposal of refuse and rubbish; and
 - (b) pay to the local government the prescribed fee for the disposal.
- (4) Any occupier of premises who, whether with authority granted under subsection (2), or not —

- (a) disposes of any house or trade refuse or other rubbish on those premises; or
- (b) causes or permits any house or trade refuse or other rubbish to be disposed of on those premises,

in such a manner as to cause a nuisance or to permit the discharge of smoke into the atmosphere in such quantities or of such a nature as to cause a nuisance to persons, commits an offence.

[Section 112A inserted by No. 45 of 1954 s. 4; amended by No. 52 of 1968 s. 3; No. 14 of 1996 s. 4.]

113. Power of contractor to recover

Whenever any local government enters into a contract with any person for the execution of any works referred to in section 112(1) such local government shall thereupon publish in some newspaper circulating in the district the scale of charges fixed by the contract; and if any person neglects or refuses to pay to the contractor any charge made by him under his contract with such local government for services rendered on behalf of such person, such charge may be recovered by the contractor or by the local government on his behalf from such person by action in any court of competent jurisdiction.

[Section 113 amended by No. 30 of 1932 s. 18; No. 102 of 1973 s. 10; No. 14 of 1996 s. 4; No. 28 of 1996 s. 9.]

114. Obstruction or hindrance of certain works penalised

- (1) Subject to subsection (2), a person who obstructs or hinders the local government or its contractor in the execution of any works under section 112 commits an offence.
- (2) The occupier of a house does not commit an offence under subsection (1) by reason only of himself collecting or using, selling or otherwise disposing of his own house-refuse or rubbish (other than sewage) if in so doing he takes sufficient precautions to the satisfaction of an environmental health officer

to prevent the creation of any nuisance or anything offensive or injurious to health.

[Section 114 inserted by No. 80 of 1987 s. 21; amended by No. 59 of 1991 s. 5; No. 14 of 1996 s. 4; No. 28 of 1996 s. 21.]

115. Disposal of refuse and waste matter

All refuse, rubbish, sewage, and waste matter collected by the local government or its contractor may be destroyed, or after such material has been rendered innocuous by some method prescribed by the Executive Director, Public Health, sold, or otherwise disposed of and any profits derived therefrom shall be paid into the municipal fund.

[Section 115 amended by No. 102 of 1973 s. 12; No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

116. Procedure when local government undertakes work

In every case where the local government has undertaken or contracted for the execution of any of the works referred to in section 112, the following provisions shall apply:

- (a) The work shall be executed promptly, efficiently, and at regular and prescribed intervals, to the satisfaction of the Executive Director, Public Health and the local government.
- (b) If in respect of any house-premises default made in executing any such work efficiently or at the prescribed intervals, and by reason thereof, refuse, rubbish, or sewage has accumulated, or any sanitary convenience or drain is offensive or is not cleansed, the occupier of the house may serve notice thereof on the local government.
- (c) If the notice is served as aforesaid, the local government shall forthwith inform the contractor (if any).
- (d) If such notice is served on the local government, then, unless within 48 hours after the service the requisite

work is done and the cause of complaint is removed, the person in default commits an offence.

- (e) In paragraph (d) “**the person in default**” means the contractor if the work is being executed by contract, or the officer in charge of the work if it is being executed by the local government.

[Section 116 amended by No. 113 of 1965 s. 8(1); No. 102 of 1973 s. 13; No. 28 of 1984 s. 45; No. 80 of 1987 s. 22; No. 14 of 1996 s. 4.]

117. Cleansing common courts and passages

- (1) When any court or private way, common yard, urinal or other sanitary convenience, or when any passage leading to the back of several buildings in separate occupation, is not regularly and effectually swept and kept clean and free from rubbish or other accumulation to the satisfaction of the local government, it may cause such court, private way, common yard, urinal, or other sanitary convenience or passage to be swept and cleaned.
- (2) The expenses thereby incurred shall be apportioned between the occupiers of the buildings situated in the court or to the back of which the private way or passage leads, or between the several occupiers of premises having the common use of such yard, urinal, or sanitary convenience, in such shares as may be determined by the local government, or as, in case of dispute, may be decided by a court of competent jurisdiction, and in default of payment any share so apportioned may be recovered from the occupier on whom it is apportioned.

[Section 117 amended by No. 14 of 1996 s. 4; No. 59 of 2004 s. 141.]

118. Obtaining destructors, etc.

- (1) A local government, or 2 or more local governments in combination, may, and if so required by the Executive Director, Public Health shall, provide a site and a machine or machinery

for the disposal of, or some process of rendering inoffensive, sewage and other refuse matter and rubbish.

- (2) If 2 or more local governments combine in providing such site, machinery, or process, the Executive Director, Public Health may, by order, fix the proportion of the cost of obtaining and maintaining such site, machine, machinery, or process, to be borne by each local government.
- (3) The obtaining or providing such site, machine, machinery, or process, shall be deemed a permanent work or undertaking within the meaning of any Act relating to local government.

[Section 118 amended by No. 102 of 1973 s. 14; No. 28 of 1984 s. 45; No. 14 of 1996 s. 4; No. 28 of 1996 s. 10.]

119. Reserves for deposit of sewage, rubbish or refuse

With the consent of the Governor the local government may, from time to time, set apart any portion of its reserves or other lands as a site for the deposit and disposal of sewage, rubbish, or refuse:

Provided that, in using any land for such purpose, the local government shall in every case conform to the requirements of the Executive Director, Public Health, and if it fails or neglects so to do, then the Governor may revoke his consent, whereupon it shall be unlawful for the local government to use the land for such purpose.

[Section 119 amended by No. 102 of 1973 s. 15; No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

120. Power to close depots

- (1) The Executive Director, Public Health may make such orders as he may think fit for improving the condition of, or for closing and prohibiting the further use of, any place for the reception, utilisation, or deposit of sewage, refuse matter, or rubbish.
- (2) Any person who deposits any sewage, refuse matter, or rubbish in such place, contrary to such order, commits an offence.

- (3) Where the Executive Director, Public Health makes an order prohibiting the further use of any such place, he may also order the surface of such place to be covered with a layer of clean earth, not less than 230 millimetres in depth.
- (4) It shall be the duty of the owner of such place, and of any person, local government, or other authority by whom such place shall have been used for the deposit of sewage, refuse matter, or rubbish, to carry out the order of the Executive Director, Public Health.

[Section 120 amended by No. 17 of 1918 s. 13; No. 94 of 1972 s. 4(1) (as amended by No. 93 of 1973 s. 4); No. 102 of 1973 s. 16; No. 28 of 1984 s. 45; No. 80 of 1987 s. 23; No. 14 of 1996 s. 4.]

121. Building on sanitary depots

- (1) The Executive Director, Public Health may order that no building shall be erected on any such place until the whole surface is rendered impervious by asphalt or other means.
- (2) Any person who, without the consent of the Executive Director, Public Health, erects any building on such place, and who fails to remove the same when ordered so to do, commits an offence.

[Section 121 amended by No. 113 of 1965 s. 8(1); No. 28 of 1984 s. 45; No. 80 of 1987 s. 24.]

122. Provision for obtaining order for cleansing offensive watercourse or ditch on boundaries of districts

In any case where any river (whether tidal or otherwise), watercourse, stream, or open ditch or drain, lying near to or on the boundaries of 2 or more districts, or running into 2 or more districts, is foul or offensive, or out of repair, or otherwise defective, the following provisions shall apply —

- (1) On the application of the Executive Director, Public Health or of any local government of any of the said districts to the Magistrates Court, the court may summon

the local governments of all the said districts to show cause why an order should not be made directing them, or any of them, to cleanse the river, watercourse, stream, ditch, or drain, and remedy all defects affecting the same, and prohibiting the recurrence of the defect.

- (2) After hearing the parties, or such of them as appear to the summons, and after making such inquiry as it thinks necessary, the court may, by order —
 - (a) specify the works that are necessary in order to effectually cleanse the watercourse, stream, ditch, or drain, amend all defects in the same, and effect any requisite structural or non-structural improvements to the same;
 - (b) direct one of the local governments to execute the whole of the works, or apportion the works and the execution thereof between 2 or more of the local governments;
 - (c) direct one of the local governments to pay the whole cost of the works, or apportion the cost between 2 or more of the local governments;
 - (d) prohibit the recurrence of the defect;
 - (e) give such other directions in the premises as it thinks fit.
- (3) The court's order may be varied or amended from time to time by subsequent order made by it on the application of the Executive Director, Public Health or any of the local governments, and after summons to show cause.
- (4) Every order made by the court under this section shall, according to its tenor, bind all the local governments concerned.
- (5) The Executive Director, Public Health may appoint an engineer or other competent person to supervise the execution of the works, and the expenses of such

supervision shall be deemed to be part of the cost of the works.

- (6) The works shall be executed with all reasonable diligence, and to the satisfaction of the Executive Director, Public Health or the person appointed to supervise as aforesaid; and if default is made in so doing, the Executive Director, Public Health may cause the works or any portion thereof to be executed at the cost in all things of the local government in default.
- (7) For the purpose of executing the works, the local government or person executing the same may enter on land and there do whatever may be reasonably necessary in the premises.
- (8) The jurisdiction of the court under this section shall not be affected by the fact that, independently of this section, the watercourse, stream, ditch, or drain would not be under the control of the local government executing the work, or of any of the local governments.
- (9) If, independently of this section, any person (other than a local government) would be liable in law to cleanse the watercourse, stream, ditch, or drain, or to keep the same in repair, or would be responsible in law for the defects, the local government executing, or by the court's order directed to execute, any work under this section shall be entitled to recover from such person the whole or a duly proportionate part of the costs incurred by it under this section.

[Section 122 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4; No. 59 of 2004 s. 141.]

123. Access to sanitary reserves

The local government may, with the approval of the Executive Director, Public Health, apply its funds in the construction and maintenance of roads or tramways outside its district so far as necessary to afford access to any sanitary reserve.

[Section 123 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

Division 6 — Yards, ways, passages, etc.

124. Power to require yards, etc., to be paved

The local government may, by written notice, require the owner of any house or premises to pave and drain any yard, passage or way belonging to or used with such house or premises, within such time, in such manner, and with such material as may be approved by the local government.

[Section 124 amended by No. 14 of 1996 s. 4.]

125. Power to require private streets, ways, etc., to be paved

In case any street, way, lane, yard, or passage, or other premises formed or set out on private property, or in case any street, lane, or passage formed or set out on public property in such manner as to afford means of back access to or drainage from property adjacent to such street, way, lane, or passage, is not formed, paved, levelled, or drained to the satisfaction of the local government the local government may from time to time, by notice to the respective owners of the premises fronting, adjoining, or abutting upon such parts thereof as may require to be formed, paved, levelled, drained, or made good, require them to form, pave, level, drain, or make good the same in such manner and according to such levels and specifications as may be approved by the local government and within a time to be named in such notice.

[Section 125 amended by No. 14 of 1996 s. 4.]

126. Penalty for default

- (1) If any notice served under either of the 2 last preceding sections is not complied with the local government may, if it thinks fit, subsequently to or in lieu of prosecuting for such non-compliance, execute the works mentioned or referred to in

the notice, and the expenses incurred by it in so doing shall be paid by the owner or owners in default in such proportions as may be fixed by the local government, and shall be recoverable as hereinafter provided:

Provided that, in case of lanes or passages, only such owners of premises fronting, abutting, or adjoining upon such lanes or passages as by themselves or their tenants have the right to use or commonly do, without trespass, use any such lane or passage shall, for the purposes of this section, be deemed to be owners of premises.

- (1a) An owner who neglects or refuses to comply with the requirements of a notice given to him under section 124 or 125 commits an offence.
- (2) In any proceeding by the local government for the recovery of the cost of executing the works mentioned in the last preceding section, it shall not be a good defence that the defendant's premises do not actually touch or abut upon any street, lane, or passage within the meaning of that section, if it appears to the court that such street, lane, or passage is for the general advantage or benefit of such defendant, and is or may be used by him as a means of access to such premises, and he has a right of using such road for a period of not less than 21 years.

[Section 126 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 25; No. 14 of 1996 s. 4.]

127. Formation of ways

- (1) In case it is necessary for the formation, completion, or continuance through any private premises, from one street to another, of any right-of-way or passage, the local government may make an order on the owner or owners of such premises requiring such owner or owners to permit the formation, completion, or continuance of such right-of-way; and after the expiration of one month from the making of such order, the local government may form, complete, and continue such right-of-way through such premises.

- (2) Where the local government has, under the powers conferred by this section, formed, completed, or continued any right-of-way through private premises, there shall be paid by the local government to the owner or owners of such premises such compensation as is agreed upon, or decided in a court of competent jurisdiction.
- (3) The amount of compensation so paid, and all costs and expenses incurred by the local government in connection therewith, together with the cost of forming or making the way, shall be repaid to the local government by the owners of the premises benefited by the said way in such proportion as may be fixed by the local government.

[Section 127 amended by No. 14 of 1996 s. 4; No. 59 of 2004 s. 141.]

128. Recovery of expenses

All expenses incurred by the local government in the exercise of its powers conferred by this Division shall be repaid to the local government by the owner of the premises, and as between several owners, in such proportions as the local government may fix, and shall be a charge until paid on the premises and shall be recoverable with interest not exceeding 7% per annum, in a court of competent jurisdiction, from the owner of the premises or any subsequent owner.

[Section 128 amended by No. 113 of 1965 s. 8(1); No. 14 of 1996 s. 4; No. 59 of 2004 s. 141.]

Division 7 — Pollution of water

129. Pollution of water supply

Any person who —

- (a) defiles or pollutes any water supply, or the catchment area thereof; or
- (b) permits or suffers any water supply or the catchment area thereof to become defiled or polluted,

commits an offence.

“Water Supply” in this Division includes any river, stream, watercourse, creek, swamp, water-hole, well, tank, lake, or reservoir containing water intended or available for human consumption.

[Section 129 amended by No. 17 of 1918 s. 13; No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 26.]

130. Riparian rights

Whenever the pollution of any water supply becomes or is likely to become injurious to health, the local government shall, for the purpose of preventing such pollution, have within its district the rights of a riparian proprietor, and may enforce such rights by proceeding in any court of competent jurisdiction against the person in default, and may generally prevent the pollution of water.

[Section 130 amended by No. 14 of 1996 s. 4.]

131. Sources of water supply may be closed

- (1) The local government may, and if so required by the Executive Director, Public Health shall, direct that any water supply, which in the opinion of any medical officer of health or of any 2 legally qualified medical practitioners, is so polluted or unwholesome as to be unfit for human consumption, shall be closed, and that the contents thereof shall cease to be used for human consumption either absolutely or for such time as the local government may direct.
- (2) A person who uses or permits to be used for human consumption a water supply to which a direction made under subsection (1) relates while that direction remains in force commits an offence.
- (3) When any water supply has been directed to be closed the local government may, and shall, if the Executive Director, Public Health so directs, take all such steps, whether by filling in the

water supply or otherwise, as shall be necessary to prevent the further use of such supply.

[Section 131 amended by No. 17 of 1918 s. 14; No. 28 of 1984 s. 45; No. 80 of 1987 s. 27; No. 14 of 1996 s. 4.]

132. Power to seize and destroy pigs, etc., trespassing on rivers, etc.

- (1) Any local government may cause to be conspicuously posted up in the neighbourhood of any water supply notice that the water thereof is required for drinking purposes, and that pigs, dogs, ducks, and geese are prohibited from trespassing thereon.
- (2) If after the posting up of such notice any person suffers or permits any pigs, dogs, ducks, or geese to trespass on any such water supply, or the catchment area thereof, such person commits an offence.
- (3) If any pigs, dogs, ducks, or geese shall after the posting up of a notice as aforesaid trespass on any such water supply, then the local government may cause any pigs, dogs, ducks, or geese so trespassing to be destroyed or seized and sold and the proceeds thereof shall be paid into the funds of such local government.

[Section 132 amended by No. 30 of 1932 s. 19; No. 80 of 1987 s. 28; No. 14 of 1996 s. 4.]

Division 8 — Morgues

133. Local government may license morgues

- (1) The local government may grant a licence for any place for the temporary reception of the bodies of the dead, and for keeping such bodies for the purpose of view, examination, identification, or other lawful purpose before burial or cremation, and may license any private premises for the temporary reception and keeping of such bodies awaiting burial at an annual fee to be prescribed by the local laws.

- (2) Any person who, in the course or for the purpose of any business, keeps the body of any dead person awaiting burial on premises for which no such licence has been granted commits an offence.
- (3) The provisions of this section shall not apply to any public hospital, or to any morgue established by the local government, or to any police morgue.

[Section 133 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 29; No. 14 of 1996 s. 4.]

Division 9 — Local laws

[Heading amended by No. 14 of 1996 s. 4.]

134. Local laws in respect of Part XIV

Local laws may be made in accordance with Part XIV for all or any of the following purposes:

- (1) The provision, construction, situation, inspection, maintenance, and control of sewers and drains, and apparatus for the treatment of sewage, and house fittings and appliances connected therewith.
- (1a) Prescribing the nature, quality and dimensions of and marks to be applied to fittings or parts of apparatus for the treatment of sewage and prohibiting the use in the construction of the apparatus of fittings or parts not in conformity with the standards prescribed.
- (2) Prescribing the conditions on which any connection of a private drain with a public sewer or drain may be made, cut off, or repaired.
- (3) Prescribing the purposes for which any drains or sewers shall be used or applied.
- (4) Prescribing the dimensions, material, form, construction, and arrangement of and the maintenance or alteration of ventilators for drains or sewers.

- (5) Prescribing the disinfection and cleansing of or otherwise dealing with any substance or matter for the discharge thereof into any drain or sewer.
- (6) Prescribing the fees payable for tapping the mains or connecting with the sewers of the local government.
- (7) Providing for the proper keeping and repair by owners and occupiers of drains and fittings on or communicating with premises owned or occupied by them.
- (8) Prohibiting any alteration or interference with any drains or fittings without the consent of or notice to the local government.
- (9) Enabling the local government to repair all such drains or fittings with a view to preventing nuisances and for the efficient working of sewers with which they may communicate.

[(10) and (11) deleted]

- (12) Prescribing scales of charges to be made periodically or otherwise, as the case may require, in respect of non-rateable premises which are served by any sewer or drain, or for any services rendered in respect of such premises under this Act, and for the recovery of such charges in the same manner as rates.
- (13) Requiring that all buildings be provided with spouting, downpipes, and drains sufficient to carry off all storm or rain water.
- (14) The provision of water for sanitation purposes by either of the following methods, namely —
 - (i) the supply of water from established water supplies and the reticulation thereof to bathrooms, kitchens and laundries; or
 - (ii) the provision of wells and equipment; or
 - (iii) the provision and maintenance of water storage tanks with catchment facilities and with a

prescribed capacity for premises in prescribed areas;

Provided that a water storage tank used for sanitation purposes in connection with a house or other premises shall be deemed sufficient if it has a capacity of not less than 4.5 cubic metres.

- (15) Requiring the foundations of any new building, and the ground on which the same is erected, to be dry, sound, and well drained.
- (16) The establishment, use, and control of sanitary conveniences for public accommodation.
- (17) The establishment, use, and control of receptacles for the deposit and collection of dust, ashes, rubbish, and other offensive matter, whether temporary or otherwise.
- (18) Preventing or regulating the deposit of filth, dust, ashes, rubbish, sludge, or offensive matter upon streets and other lands and places under the control of the local government.
- (19) Imposing upon the occupier of any premises the duties of the cleansing of footways and pavements adjoining such premises, the removal of house refuse from such premises, and the cleansing of sanitary conveniences belonging to such premises, when a local government does not itself undertake or contract for such cleansing or removal, and prescribing the manner in which such duties are to be performed; or when a local government itself undertakes or contracts for such cleansing or removal, imposing on such occupier duties in connection with such cleansing or removal so as to facilitate the work undertaken or contracted for.
- (20) Requiring all house, yard, and street refuse to be rendered inoffensive or be incinerated in destructors, desiccators, or incinerators provided by the local governments, either singly or in concert.

- (21) Requiring rubbish from houses and yards to be placed without delay in covered non-absorbent receptacles, into which a sufficient quantity of some efficient deodorant shall be introduced when necessary.
- (22) Providing at least once a week, or so much more frequently as the local government may from time to time direct, that the contents of these receptacles be removed and either rendered inoffensive or removed to a destructor.
- (23) Prohibiting the placing of receptacles in streets or lanes by the householders, and requiring the same to be taken from the yards and replaced by the scavengers.
- (24) Requiring that the householders be held responsible for the keeping of the receptacles in an efficient and inoffensive condition.
- (25) The provision, construction, and situation of sanitary conveniences on any premises and prescribing the classes or descriptions of sanitary conveniences which alone may lawfully be in use in the district generally, or in specified parts of the district.
- (25a) The provision, number, situation, construction, equipment, dimensions, maintenance, period of maintenance and removal of sanitary conveniences on the site of works undertaken in the district for the use of persons engaged on the work.
- (26) Abolishing the ordinary system of pans for nightsoil and providing that every closet be furnished with a double-pan service.
- (27) Requiring for each closet the supply of a sufficient number of receptacles for excrementitious matter, and to determine the size, shape, style and materials to be used in the construction of such receptacles, and especially that they be interchangeable with others in the same district.
- (28) Prescribing that at least once a week, or so much more frequently as the local government may from time to time direct, the pan in use be closed with a tightfitting lid, and

- removed in a suitable cart, and that a pan cleansed by superheated steam, or some equally efficient means approved by the local government be left in its place.
- (29) Fixing the charge which may be made, when no annual charge is made under section 106 for removing each receptacle and replacing it by a clean one and for any other sanitary service.
- (30) Fixing the charge for the removal of trade or house refuse.
- (31) Determining to whom and on what conditions licences to remove nightsoil shall be issued.
- (32) Imposing penalties on licensees for breach of conditions;
- (33) Making the use of a sufficient quantity of suitable disinfectant or deodorant compulsory.
- (34) Regulating the disposal of nightsoil, urine, and refuse.
- (35) Regulating the collection and disposal of pig swill, providing for the annual registration of collectors of pig swill, prescribing the conditions of and fees for registration, prohibiting any unregistered person from undertaking such collection or from disposing of pig swill, prescribing the mode, means and hours of collection, and compelling notification to the local government of the premises from which a collector has contracted to collect pig swill.
- (36) Requiring that all nightsoil removed be either rendered inoffensive or treated in a destructor, desiccator, or incinerator, or be trenched or ploughed into land.
- (37) Prescribing the times for the removal or carriage through the streets of any faecal or offensive or noxious matter or liquid, whether into or out of or through the district: providing that the utensils, receptacles, and vehicles used therefor shall be properly constructed and covered so as to prevent the escape of any such matter or liquid or of any offensive smell; and compelling the cleansing

of any place whereon such matter or liquid has been dropped or spilt in removal or carriage.

- (38) Prescribing and regulating the construction, ventilation, paving, drainage, and situation of stables, pig-sties, poultry yards, or other premises other than dairies on which animals are kept.
- (39) Regulating the keeping of animals or birds so as not to be a nuisance, injurious, or dangerous to health.
- (40) Defining areas within the district within which it shall not be lawful to keep animals or birds or particular species of animal or of bird, and prohibiting the keeping of animals or birds or of a particular species of animal or of bird in such areas.
- (41) For the prevention of the pollution of any water supply;
- (42) Regulating the sanitation and cleanliness of the premises of hairdressers, and the precautions to be observed by persons carrying on the business of a hairdresser.
- (43) For the cleaning of public vehicles.
- [(44) *deleted*]
- (45) Prescribing the fees to be paid for the licensing of morgues, and the conditions on which such licences may be granted.
- (46) Prescribing the fees to be paid to a local government for any sanitary or other services rendered by it in connection with any camp.
- (47) For the regulation and control of the sanitation of camps.
- (48) For the prevention of the pollution of any water used for bathing purposes.
- (48a) Regulating the construction, equipment, maintenance and use of lakes used for cable skiing, spa pools, swimming baths, swimming pools, waterslides, wave pools and any other aquatic amenities or facilities that are controlled or used by or in connection with any club, school, business, association or body corporate, and prescribing the quality

and treatment of the water to be used in those amenities or facilities and the measures to be taken —

- (i) to prevent and abate any nuisance in such an amenity or facility; and
 - (ii) to cause any such amenity or facility to be closed and to prevent any person from using such an amenity or facility while it is closed.
- (49) Prohibiting the use of damaged vessels, whether cups, plates, dishes, or otherwise, and whether of crockery, glass, or otherwise, for serving food for reward and prescribing the kind and condition of vessels that may be used for that purpose.
- (50) Prescribing what matters and things shall be observed and done and by what persons, for the purposes of —
- (i) preventing rodents entering premises;
 - (ii) rendering premises free of rodents;
 - (iii) keeping premises free of rodents;
- including what method of construction and what materials shall be used in the building of and alteration and addition to any premises, and what alterations and additions shall be made to existing premises.
- (51) The provision, construction, situation, inspection and maintenance of bathroom and laundry facilities, including the provision of plunge baths, shower baths, wash hand basins and the connection of those facilities with an adequate water supply.
- (52) Prescribing the precautions to be observed by dealers in secondhand clothes or books.
- (52a) Regulating and prohibiting the establishment or carrying on of any food stalls or other premises used for the sale of meals but which are not eating houses.

In this paragraph the expression “**meals**” and “**eating house**” have the same meaning respectively as they have in section 160.

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Part IV Sanitary provisions

Division 9 Local laws

s. 134

- (53) For any other purpose which the Governor deems necessary and notifies in the *Government Gazette* as calculated to safeguard the public health.

[Section 134 amended by No. 17 of 1918 s. 15; No. 50 of 1926 s. 8; No. 30 of 1932 s. 20; No. 38 of 1933 s. 41; No. 16 of 1935 s. 6; No. 21 of 1944 s. 5; No. 71 of 1948 s. 4; No. 25 of 1952 s. 4; No. 45 of 1954 s. 6; No. 33 of 1962 s. 2; No. 113 of 1965 s. 8(1); No. 35 of 1966 s. 4; No. 94 of 1972 s. 4(1) (as amended by No. 83 of 1973 s. 4); No. 28 of 1984 s. 45; No. 80 of 1987 s. 30; No. 59 of 1991 s. 13 and 21; No. 14 of 1996 s. 4; No. 39 of 1999 s. 11(5).]

Part V — Dwellings

Division 1 — Houses unfit for occupation

135. Dwellings unfit for habitation

- (1) Any local government may, of its own motion, and shall, when required by order of the Executive Director, Public Health by notice in writing, declare that any house, or any specified part thereof, is unfit for human habitation.
- (2) The notice may direct that such house or part thereof shall not, after a time to be specified in the notice, be inhabited or occupied by any person.
- (3) The notice shall be affixed to some conspicuous part of the house, and a copy of such notice shall be served upon the owner or occupier thereof.

[Section 135 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

136. Such house not to be let or occupied

Any person who, after the expiration of the specified time, inhabits or occupies, or suffers to be inhabited or occupied, such house or part thereof, commits an offence.

[Section 136 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 31.]

137. Condemned building to be amended or removed

A notice may be served by the local government upon the owner of such house directing him, within a time limited by such notice, either to amend the same in some specified manner or take down and remove the same.

Provided that —

- (i) the notice may direct the owner to take down and remove the house, without giving him the alternative of amending the same; and

- (ii) any person aggrieved by any notice under this section may apply to the State Administrative Tribunal for a review of the decision.

[Section 137 amended by No. 30 of 1932 s. 21; No. 14 of 1996 s. 4; No. 55 of 2004 s. 483.]

138. Land to be cleaned up after removal of house or building therefrom

Any person who dismantles any house, building, or other structure, whether in pursuance of a notice from the local government or not, shall forthwith clean the land to the satisfaction of the local government, and remove all rubbish to a place appointed by the local government.

[Section 138 inserted by No. 30 of 1932 s. 22; amended by No. 14 of 1996 s. 4.]

139. Owner may be required to clean or repair house

In addition to the powers contained in the preceding sections of this Part, a local government may, if in its opinion any house is unfit for human habitation by reason of uncleanness or want of repair, require the owner of such house by a notice served on such owner to render clean or to repair such house within the time and in the manner specified in such notice.

[Section 139 inserted by No. 32 of 1937 s. 6; amended by No. 14 of 1996 s. 4.]

140. Local government may act in default of owner

- (1) Whenever any owner fails to comply with a notice served upon him under any of the foregoing provisions of this Part, within a time therein specified, he commits an offence, and the local government may carry out the terms of the notice and recover all expenses from the owner:

Provided that the local government may sell or dispose of the material taken from a demolished or amended building, but the

proceeds of sale shall be applied towards the expense of carrying out the terms of the notice — the surplus (if any) to be paid to the owner.

- (2) Where, pursuant to subsection (1), a local government is empowered and has resolved to take down and remove a house, any person or authority that supplies electricity, gas or water to the house may, and shall if so requested by the local government, take such action as is necessary to ensure that all equipment, fixtures and fittings on or about the house for the purposes of the supply thereto of electricity, gas or water, as the case may be, are removed or are left in such a state as will not interfere with the taking down and removal of the house.

[Section 140 amended by No. 32 of 1937 s. 7; No. 113 of 1965 s. 8(1); No. 52 of 1968 s. 4; No. 80 of 1987 s. 32; No. 14 of 1996 s. 4.]

141. Penalty for erecting buildings on ground filled up with offensive matter

- (1) No person shall erect a building on any ground which has been filled up with any matter impregnated with faecal, animal, or vegetable matter, or upon which any such matter has been deposited, unless or until such matter has, to the satisfaction of the local government, been properly removed by excavation or otherwise, or has been rendered or has become innocuous.
- (2) Every person who does or causes or permits to be done any act in contravention of this section commits an offence.

[Section 141 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 33; No. 14 of 1996 s. 4.]

142. Occupying cellar dwellings

- (1) No person shall let or occupy or suffer to be occupied as a dwelling any cellar, after notice in writing from the local government to discontinue such letting or occupation.
- (2) When 2 convictions have taken place within 3 months (whether the persons so convicted were or were not the same), a court of summary jurisdiction may direct the closing of the cellar so occupied for such time as it thinks necessary, or may empower the local government permanently to close the same.
- (3) Any cellar, vault, or underground room, in which any person passes the night, is deemed to be a cellar occupied as a dwelling.

[Section 142 amended by No. 14 of 1996 s. 4; No. 59 of 2004 s. 141.]

143. Plans of buildings to be submitted to local government

- (1) No building shall, after the commencement of this Act, be erected within any district unless and until plans and specifications thereof have, before the commencement of such building, been submitted by the owner or occupier to, and have been approved, in relation to ventilation, lighting and sanitary construction and also as to the area of the open space appurtenant to such building, by the local government.
- (2) The Governor may from time to time declare by proclamation that subsection (1) shall apply in any other district or in any portion of any other district, and may at any time revoke any such proclamation, and while such declaration remains in force subsection (1) shall apply in such district or portion as if it were a district.

[Section 143 amended by No. 17 of 1918 s. 16; No. 14 of 1996 s. 4.]

144. Building not erected as dwelling not to be converted into one

No person shall convert into or adapt or use as a dwelling any building not originally constructed or erected as a dwelling-house, and no person shall let, or lease, or sublet, or

sublease, or otherwise permit, whether for any consideration or gratuitously, the use of, the building as a dwelling, without having first obtained the consent of the local government of the district in which the building is situated, and complied (in case a conditional consent is given) with such conditions as the local government has seen fit to impose.

[Section 144 inserted by No. 17 of 1918 s. 17; amended by No. 21 of 1957 s. 7; No. 14 of 1996 s. 4.]

145. Medical officer may order house or things to be cleansed

- (1) Any medical officer of health may order that any house or part of a house, or any furniture, goods, or things therein shall be cleansed to the satisfaction of an environmental health officer, and the occupier shall forthwith comply with such order.
- (2) In case default is made in compliance with such order, the local government may take such steps as in the opinion of its medical officer of health are necessary to carry out the terms of the order, and may recover the cost and expenses of so doing from the person guilty of the default by action in any court of competent jurisdiction; but nothing in this section shall be deemed to relieve such person from any penalty to which he has rendered himself liable by his default.
- (3) In this section the word “**occupier**” includes the owner of any premises which are in fact unoccupied.

[Section 145 inserted by No. 30 of 1932 s. 23; amended by No. 24 of 1970 s. 12; No. 59 of 1991 s. 5; No. 14 of 1996 s. 4; No. 28 of 1996 s. 21.]

Division 2 — Lodging-houses

[Heading amended by No. 18 of 1964 s. 6.]

146. Registers of lodging-houses

- (1) Every local government shall keep a register in which shall be entered the names and residences of the keepers of all lodging-houses within its district, and the situation of every such

house, and the number of persons authorised by the local government to be received therein.

- (2) A copy of any entry in the register certified by the chief executive officer of the local government shall be received as evidence in all courts, and shall be sufficient proof of the matter registered without production of the register or of any document or thing on which the entry is founded.
- (3) A certified copy of any such entry shall be supplied by the chief executive officer to any person applying at a reasonable time for the same, on payment of the prescribed fee.

[Section 146 amended by No. 18 of 1964 s. 7; No. 113 of 1965 s. 8(1); No. 59 of 1991 s. 22; No. 14 of 1996 s. 4; No. 57 of 1997 s. 68(3).]

147. Registration

- (1) A person shall not keep a lodging-house or receive a lodger therein unless the house is registered, nor unless his name as the keeper thereof is entered in the register.
- (2) But on the death of a person so registered, the widow or widower of the person, a person who was a de facto partner of the person immediately before the death of the person, or any member of the person's family may continue to keep such house, for not more than 4 weeks after the person's death, without being registered.

[Section 147 amended by No. 18 of 1964 s. 8; No. 28 of 2003 s. 74.]

148. Conditions of registration

- (1) A house shall not be so registered until it has been inspected and approved by the local government.
- (2) The local government may refuse to register as the keeper of a lodging-house a person who is, in the opinion of the local government, an unfit person.

[Section 148 amended by No. 18 of 1964 s. 9; No. 14 of 1996 s. 4.]

149. Notice of registration to be affixed

Every keeper of a lodging-house shall, if required in writing by the local government so to do, affix and keep undefaced and legible a notice with the words "Registered Lodging-house" in some conspicuous place on the outside of such house.

[Section 149 amended by No. 14 of 1996 s. 4.]

150. Supply of water

- (1) When it appears to the local government that any lodging-house is without a proper supply of water for the use of the lodgers, the local government may, by notice in writing, require the owner or keeper of such house, within a time specified therein, to obtain such supply, and to do all works necessary for that purpose.
- (2) If the notice is not complied with accordingly, the local government may remove such house from the register until it is complied with.

[Section 150 amended by No. 18 of 1964 s. 10; No. 14 of 1996 s. 4.]

151. Cleansing of walls, etc.

Every keeper of a lodging-house shall, from time to time when required by the local government, cleanse the walls and ceilings of such house, and if he fails to do so, commits an offence.

[Section 151 amended by No. 18 of 1964 s. 11; No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 34; No. 14 of 1996 s. 4.]

152. Notification of disease

Every such keeper shall, immediately it comes within his knowledge that a person in such house is affected with any infectious disease, give notice thereof to the medical officer of health and to the secretary of the local government.

[Section 152 amended by No. 14 of 1996 s. 4.]

153. Inspection

- (1) Every such keeper, and every other person having or acting in the care or management of such house, shall, at all times when required by any officer of the local government give him free access to such house or any part thereof.
- (2) Every such keeper or person who refuses such access, or otherwise prevents or obstructs such officer, commits an offence.

[Section 153 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 35; No. 14 of 1996 s. 4.]

154. Offences by keepers

Every such keeper who —

- (a) after being required in writing by the local government so to do, refuses or neglects to affix or renew any notice;
- (b) receives any lodger in such house while the same is not registered under this Act; or
- (c) fails to give notice when any person in such house is affected with any infectious disease,

commits an offence.

[Section 154 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 36; No. 14 of 1996 s. 4.]

155. Conviction for third offence

When any such keeper is convicted of a third or subsequent offence, a court of summary jurisdiction may adjudge that he shall not keep a lodging-house at any time within 5 years after the conviction, or within such shorter period after the conviction as it thinks fit.

[Section 155 amended by No. 18 of 1964 s. 12; No. 59 of 2004 s. 141.]

156. Lodging-house keepers to report deaths

Upon any death occurring in any lodging-house, the manager or keeper thereof shall, within 12 hours thereafter, give notice of every such death and the cause thereof and the circumstances attendant thereon to the medical officer and to the nearest coroner; and if there is no coroner residing within 8 kilometres of such lodging-house, then to the police.

[Section 156 amended by No. 18 of 1964 s. 13; No. 30 of 1982 s. 4.]

157. Register of lodgers to be kept

- (1) The keeper of a lodging-house shall keep a register of lodgers in the form prescribed, and shall enter or cause to be entered therein the name and previous address of every lodger for the time being in the lodging-house and the date of the commencement of his lodging therein, and the register shall be signed by the lodger.
- (2) The register of lodgers shall be kept in the lodging-house, and shall be open to inspection at any time on demand by any member of the police force or environmental health officer.
- (3) The keeper of a lodging-house shall from time to time, if required by the local government, report to the local government in the prescribed form the name of every person who resorted to the lodging-house during the preceding day or night.
- (4) Any keeper of a lodging-house who —
 - (a) neglects or fails to keep a register of lodgers as provided by this section;
 - (b) neglects or fails to enter or cause to be entered in the register of lodgers the particulars required by this section to be entered therein;
 - (c) makes or causes to be made, or retains, in the register of lodgers any false or misleading entry in respect of any of the particulars required to be entered therein; or

- (d) refuses or neglects to produce the register of lodgers when required so to do under subsection (2),

commits an offence.

[Section 157 inserted by No. 18 of 1964 s. 14; amended by No. 113 of 1965 s. 8(1); No. 24 of 1970 s. 12; No. 80 of 1987 s. 37; No. 59 of 1991 s. 5; No. 14 of 1996 s. 4.]

158. Local laws in respect of lodging-house

Local laws may be made in accordance with Part XIV for all or any of the following purposes:

- (1) The registration and inspection of lodging-houses.
- (2)(a) Fixing and from time to time varying the number of lodgers who may be received into a lodging-house, and for the separation of the sexes therein.
- (b) Regulating the construction, cleanliness, lighting, ventilation, drainage, and sanitation thereof.
- (c) Enforcing the destruction of vermin therein.
- (d) The cleansing, painting and disinfecting of the premises, and the paving of the courts and court-yards thereof.
- (e) Enforcing the giving of notices, and the taking of precautions, in the case of any infectious disease occurring in such house.
- (f) Enforcing the construction of approved facilities for escape in case of fire, and the maintenance in approved places of fire extinguishing appliances approved by the local government.
- (g) Enforcing the provision of proper and sufficient bathrooms and ablutionary appliances, including plunge baths and heaters.
- (h) Requiring unsuitable bedsteads, bedding and bed-clothing to be removed from the premises.
- (i) Generally for the good conduct of such houses.

- (3) Prescribing fees to be paid for the registration of lodging-houses.
- (4) Prescribing the form of register of lodgers to be kept by keepers of lodging-houses and the form of report to be made to the local government under section 157(3).

[Section 158 amended by No. 30 of 1932 s. 24; No. 21 of 1944 s. 6; No. 18 of 1964 s. 15; No. 113 of 1965 s. 8(1); No. 2 of 1975 s. 4; No. 28 of 1984 s. 45; No. 59 of 1991 s. 23; No. 14 of 1996 s. 4.]

159. Evidence as to family in proceedings

If, in any proceedings for a breach of any of the provisions of this Act or of any local law relating to lodging-houses, it is alleged that any inmates of any house or part of a house are members of the same family, the burden of proving such allegation shall lie on the person making it:

Provided that, for the purposes of this section, no person shall be deemed to be a member of the family who is not the spouse or de facto partner or a child, parent, grand-parent, grand-child, brother or sister, nephew or niece of the occupier of the premises.

[Section 159 amended by No. 30 of 1932 s. 25; No. 18 of 1964 s. 16; No. 14 of 1996 s. 4; No. 28 of 2003 s. 75.]

Division 3 — Eating-houses

160. Interpretation

In this Division, unless the context requires otherwise —

“**Eating-house**” means any land, premises or place, or any part thereof, on or in which meals are prepared for service, or are served, to the public for gain or reward.

The term does not include —

- (a) any premises licensed under the *Licensing Act 1911*², other than a restaurant within the meaning of

section 44G of that Act in respect of which a restaurant licence under that Act is granted; or

- (b) any boarding-house or lodging-house; or
- (c) any building or other structure used temporarily for the preparation for service or service of meals to the public, at any fair, show, military encampment, races, or other public sports, games or amusements.

“Meals” means and includes any substance whether solid or liquid or partly solid and partly liquid used or intended to be used for food or drink by man.

The term does not include drugs, water, milk, ice cream, soda fountain or iced drinks commonly known as cool or soft drinks, or aerated waters.

“Prescribed date” in relation to any district means the date fixed by the local laws of the local government for such district.

“Proprietor” includes the owner, the occupier, and any person having the management or control of any eating-house.

[Section 160 inserted by No. 21 of 1944 s. 7; amended by No. 38 of 1960 s. 4; No. 30 of 1982 s. 5; No. 14 of 1996 s. 4.]

161. Operation of this Division

The provisions contained in this Division shall operate and have effect —

- (a) in the district of Perth; and
- (b) in the district of Fremantle; and
- (c) in any other district in which the Governor may from time to time declare by Order in Council that the said provisions shall operate and have effect, and such Order in Council remains unrevoked.

[Section 161 inserted by No. 21 of 1944 s. 7; amended by No. 14 of 1996 s. 4.]

162. Eating-houses to be registered and proprietors to be licensed

- (1) Subject as hereinafter provided, no person shall establish or carry on the business of an eating-house in any district after the prescribed date unless —
- (a) the eating-house is registered; and
 - (b) the proprietor thereof is licensed in accordance with the provisions of this Division;

Provided that —

- (i) any proprietor already carrying on the business of an eating-house on the prescribed date may make application for the requisite registration of the eating-house and for the requisite licence as the proprietor thereof at any time within one month after the prescribed date, and pending the consideration of the said application may continue to carry on the said business; and
 - (ii) a person already carrying on the business of an eating-house on the prescribed date shall not have or be deemed to have any right to the grant or registration of such eating-house or any right to the issue to the proprietor thereof of a licence in respect of such eating-house under the provisions of this Act.
- (2) Subject to this Act the registration of an eating-house and the issue of a licence to the proprietor of an eating-house shall be under the control and subject to the local laws of the local government for the district in which such eating-house is situated.
- (3) Application for registration of an eating-house or application for the issue of a licence to the proprietor thereof shall be made to the local government in accordance with the local laws of the local government and shall be accompanied by the registration fee or licence fee (as the case may be) for the time being prescribed by such local laws.

- (4) Any person who establishes or carries on an eating-house without the same being registered, or who acts as the proprietor of an eating-house without holding the requisite licence as required by this section commits an offence.

[Section 162 inserted by No. 21 of 1944 s. 7; amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 38; No. 14 of 1996 s. 4.]

163. Registration and licences to be annual

Registration of an eating-house, and a licence for the proprietor of an eating-house shall be applied for annually on or before a date to be prescribed by the local government by its local laws, and shall have effect for one year from such date.

Provided that where any such registration or licence is applied for within 14 days after the date prescribed by the local government as aforesaid, and is granted, such registration or licence (as the case may be) shall be deemed to have been applied for as from such date; and where such registration or licence (as the case may be) is applied for on a day more than 14 days after the date prescribed by the local government as aforesaid in any year such registration or licence (as the case may be) shall take effect as from the day when the same is actually granted or issued, but shall continue in force only for the unexpired portion of the then current year commencing on the date prescribed by the local government as aforesaid.

[Section 163 inserted by No. 21 of 1944 s. 7; amended by No. 14 of 1996 s. 4.]

164. Eating-houses may be classified

For the purposes of registration, and for the fixation and assessment of registration fees, and for any other purpose which it may think necessary or expedient under its local laws the local government may classify eating-houses and register the same as —

- (a) restaurants;

- (b) dining rooms;
- (c) tea rooms;
- (d) refreshment rooms; or
- (e) take-away food premises.

[Section 164 inserted by No. 21 of 1944 s. 7; amended by No. 30 of 1982 s. 6; No. 14 of 1996 s. 4.]

165. Power to grant, refuse and cancel registration of an eating-house

- (1) The local government may —
 - (a) grant registration of an eating-house; or
 - (b) refuse registration of an eating-house for any reason mentioned in subsection (2); or
 - (c) cancel the registration of an eating-house during the currency of such registration for any reason mentioned in subsection (3).
- (2) The local government may refuse registration of an eating-house for any one of the following reasons —
 - (a) if it considers the premises intended to be used as an eating-house are unsuitable for the purpose;
 - (b) if the said premises are not constructed in any respect in accordance with the local laws; or
 - (c) if in its opinion the proprietor of the premises in respect of which registration is applied for, is not a fit and proper person to have the conduct and management of an eating-house; or
 - (d) in the case of an application for renewal of a previous registration, if it considers that the eating-house is not being maintained, or the business therein is not being conducted, in accordance with the requirements of the local laws, or the proprietor thereof has been convicted of an offence against the local laws in respect of such eating-house.

- (3) The local government may cancel the registration of an eating-house during the currency of such registration for any one of the following reasons —
- (a) if in its opinion the premises in which the eating-house is established are not being maintained or the business of the eating-house is not being carried on in accordance with the requirements of the local laws; or
 - (b) if the proprietor fails or refuses to make in or to the premises in which the eating-house is established alterations, amendments or repairs as required by the local government by notice given by the local government under the provisions of this Act; or
 - (c) if the proprietor of the eating-house has been convicted of any offence against the local laws in respect of such eating-house.

[Section 165 inserted by No. 21 of 1944 s. 7; amended by No. 14 of 1996 s. 4; No. 55 of 2004 s. 484.]

166. Power to grant, refuse and cancel licences to proprietors

- (1) The local government may —
- (a) grant a licence to the proprietor of an eating-house; or
 - (b) refuse to issue a licence to the proprietor of an eating-house for any reason mentioned in subsection (2); or
 - (c) cancel the existing licence of the proprietor of an eating-house during the currency thereof for any reason mentioned in subsection (3).
- (2) The local government may refuse to issue a licence to the proprietor of an eating-house for any one of the following reasons —
- (a) the eating-house is not registered or the registration of the eating-house has been cancelled; or

- (b) if in its opinion the said proprietor is not a suitable or a fit and proper person to have the management or control of an eating-house; or
 - (c) if the applicant for the licence, while previously licensed as the proprietor of an eating-house has been convicted of an offence against the local laws of any local government in respect of an eating-house.
- (3) The local government may cancel the existing licence of the proprietor of an eating-house for any one of the following reasons —
- (a) the holder of the licence has ceased to be the proprietor of an eating-house; or
 - (b) the registration of the eating-house of which he is the proprietor has expired or has been cancelled; or
 - (c) the holder of the licence has been convicted of an offence against the local laws in respect of the eating-house; or
 - (d) the holder of the licence has procured the issue of such licence to him by means of any fraud or deceit; or
 - (e) the holder of the licence transfers or assigns or attempts to transfer or assign the licence to any other person; or
 - (f) if it considers that the holder of the licence has during the currency of the licence by reason of his conduct or on any other grounds become unsuitable or ceased to be a fit and proper person to have the control and management of an eating-house.

[Section 166 inserted by No. 21 of 1944 s. 7; amended by No. 14 of 1996 s. 4; No. 55 of 2004 s. 485.]

167. Executive Director, Public Health may require local government to refuse or cancel registration or licence

- (1) The Executive Director, Public Health may by notice in writing to the local government direct the local government —

- (a) to refuse to grant registration of an eating-house for which application has been made or is about to be made to the local government; or
 - (b) to cancel the existing registration of an eating-house during the currency thereof.
- (2) The local government shall comply with and give effect to any direction given to it by the Executive Director, Public Health under this section according to the tenor thereof.
- (3) If the local government fails or refuses to comply with any direction given by the Executive Director, Public Health under this section, any registration granted or any existing registration not cancelled by reason of such failure or refusal on the part of the local government as aforesaid shall as from a date to be fixed by the Executive Director, Public Health and to be communicated to the proprietor of the eating-house concerned by notice in writing under the hand of the Executive Director, Public Health be null and void.
- (4) When in accordance with the provisions of subsection (3) the registration of an eating-house has become null and void, any current licence held by the proprietor of such eating-house shall also simultaneously become null and void.

[Section 167 inserted by No. 21 of 1944 s. 7; amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

168. Registration to run with premises and licence personal to holder

- (1) Registration of an eating-house shall run with the eating-house registered notwithstanding any change of proprietor thereof during the currency of such registration.
- (2) Every licence issued to a proprietor shall be personal to the proprietor to whom it is issued, and shall not in any manner or in any event be transferable or assignable to any other person during the currency thereof.

Provided always that the local government may in its discretion on application in writing by the licensee and a proposed

transferee on the prescribed form and on payment of the prescribed fee transfer at any time during its currency the licence of any licensee to such transferee by endorsement upon the licence. Thereupon, subject to this Act, every transferee shall, until the end of the yearly period for which the licence was granted, possess all the rights of the original licensee, and shall be liable to the same duties, obligations and penalties as if such licence had been originally granted to him.

Provided further, that if a licensee shall —

- (a) die;
- (b) become bankrupt or assign his estate for the benefit of his creditors;
- (c) become a person in respect of whom an administration order is in force under Part 6 of the *Guardianship and Administration Act 1990*,

then the licence shall terminate so far as regards the licensee and shall enure for the benefit of and shall vest in —

- (d) the spouse, de facto partner, next-of-kin or executor entitled to apply for Letters of Administration of the deceased's estate or probate of his Will;
- (e) the licensee's Trustee in Bankruptcy or his assignee;
- (f) the administrator of his estate under the *Guardianship and Administration Act 1990*.

Every successor may exercise the licence for the unexpired balance of the then current yearly period thereof.

[Section 168 inserted by No. 21 of 1944 s. 7; amended by No. 24 of 1990 s. 123; No. 14 of 1996 s. 4; No. 28 of 2003 s. 76.]

169. Certificates of registration and licences to be in prescribed form

Every certificate of registration of an eating-house, and every licence issued to a proprietor shall be in the form prescribed by

the local laws of the local government which grants or issues the same.

[Section 169 inserted by No. 21 of 1944 s. 7; amended by No. 14 of 1996 s. 4.]

170. Cancellation of registration or licence

The registration of an eating-house, or a licence issued to a proprietor, may be cancelled by the local government which granted or issued the same by notice in writing signed by the chairman of the local government with the approval of the local government, and served upon the owner of the eating-house or the holder of the licence as the case may be.

[Section 170 inserted by No. 21 of 1944 s. 7; amended by No. 14 of 1996 s. 4.]

171. Local government may make requisitions regarding maintenance of eating-houses

- (1) If in the opinion of the local government any building used as an eating-house which is registered under this Act or any premises appurtenant thereto or used in connection therewith are not being maintained or kept in accordance with the requirements of the local laws of the local government, the local government may by notice in writing under the hand of the chairman of the local government and served upon the owner or occupier of such eating-house, require such owner or occupier to make in or to such building or premises such repairs, amendments or improvements as may be specified in such notice within a time to be stated in the notice.
- (2) If the owner or occupier who has received notice makes default in the due compliance with the requisition thereof he commits an offence.
- (3) If the owner or occupier who has received notice under subsection (1) makes default in the due compliance with the requisitions of such notice the local government may, and shall

if the Executive Director, Public Health so directs, cause the requisitions of the notice to be carried out at the expense of the owner or occupier. Any expenses incurred by the local government in the exercise of the power conferred by this subsection may be recovered by summary proceedings from the owner or occupier who has made default.

- (4) No provision of this section and no notice given or proceeding taken by the local government under this section shall prejudice or affect the right or power of the local government to cancel the registration of the eating-house in respect of which such notice has been given or such proceeding has been taken.

[Section 171 inserted by No. 21 of 1944 s. 7; amended by No. 113 of 1965 s. 8(1); No. 28 of 1984 s. 45; No. 80 of 1987 s. 39; No. 14 of 1996 s. 4.]

172. Local government may make local laws in respect of eating-houses

Local laws may be made in accordance with Part XIV for all or any of the following purposes:

- (1) Regulating the registration of eating-houses under any of the following classifications:
 - (i) Restaurants.
 - (ii) Dining Rooms.
 - (iii) Tea Rooms.
 - (iv) Refreshment Rooms.
 - (v) Take-away Food Premises.
- (2) Regulating the issue of licences to proprietors and prescribing the terms and conditions upon which such licences shall be issued and held.
- (3) Prescribing fees for registration of eating-houses, and for licences issued to proprietors.

- (4) Prescribing forms of application, certificate of registration, licence to a proprietor, notices and any other forms.
- (5) Prescribing the construction, drainage, ventilation, lighting, maintenance and cleanliness of buildings or premises occupied or used as an eating-house.
- (6) Prescribing and enforcing the provisions of proper and sufficient sanitary and ablutionary conveniences.
- (7) Requiring the production of plans and specifications in respect of buildings intended to be used for an eating-house when application for registration is made.
- (8) Requiring the provision of suitable stores or storage places for the keeping and storage of food for human consumption properly constructed, situated and ventilated and sufficient in capacity, and the making of proper provision for the cleansing of cooking, eating and drinking utensils.
- (9) Requiring that stores and storage places for the keeping and storage of foods shall be so constructed and maintained as to exclude flies and rodents and other vermin therefrom.
- (10) Prescribing the precautions to be taken in the method of preparation, sale and exposure for sale of food, and the construction, cleanliness, lighting, ventilation and sanitation of premises in which those operations are conducted.
- (11) The destruction and disposal of unsound food.
- (12) The disposal of all waste food, garbage and refuse.
- (13) Inspections of eating-houses.
- (14) Prohibiting or regulating the keeping or storing of kerosene, petrol, fuel oil or other volatile liquids in or about eating-houses.
- (15) Generally carrying into effect the purposes of the provisions of this Division.

*[Section 172 inserted by No. 21 of 1944 s. 7; amended by
No. 113 of 1965 s. 8(1); No. 30 of 1982 s. 7; No. 28 of 1984
s. 45; No. 80 of 1987 s. 40; No. 59 of 1991 s. 24; No. 14 of 1996
s. 4.]*

Part VI — Public buildings

[Heading inserted by No. 59 of 1991 s. 14.]

173. Interpretation

In this Part —

“authorised person” means —

- (a) an environmental health officer or other officer of the local government authorised in writing by the person holding or acting in the chief non-elective executive office of the local government;
- (b) a commissioned police officer, a non-commissioned police officer or the police officer in charge of the nearest police station; or
- (c) a person authorised in writing by the Executive Director, Public Health;

“certificate of approval” means the certificate of approval issued in relation to the public building under section 178(1);

“public building” means —

- (a) a building or place or part of a building or place where persons may assemble for —
 - (i) civic, theatrical, social, political or religious purposes;
 - (ii) educational purposes;
 - (iii) entertainment, recreational or sporting purposes; and
 - (iv) business purposes;and
- (b) any building, structure, tent, gallery, enclosure, platform or other place or any part of a building, structure, tent, gallery, enclosure, platform or other

place in or on which numbers of persons are usually or occasionally assembled,

but does not include a hospital;

“relevant certifying officer” means —

- (a) in relation to a direction given by an authorised person referred to in paragraph (a) of the definition of **“authorised person”**, the person holding or acting in the chief non-elective executive office of the local government;
- (b) in relation to a direction given by an authorised person referred to in paragraph (b) of the definition of an **“authorised person”**, a superintendent of the Police Force of Western Australia;
- (c) in relation to a direction given by an authorised person referred to in paragraph (c) of the definition of **“authorised person”**, the Executive Director, Public Health.

[Section 173 inserted by No. 59 of 1991 s. 14; amended by No. 14 of 1996 s. 4; No. 50 of 1996 s. 4.]

174. Application to the Crown

- (1) This Part does not bind the Crown.
- (2) Nothing in this section affects the question whether or not the Crown in right of the State is bound by any provision of this Act outside this Part.

[Section 174 inserted by No. 59 of 1991 s. 14.]

175. Relationship to other laws

The provisions of this Part are in addition to and not in derogation of the requirements of the *Local Government Act 1995* and the *Local Government (Miscellaneous Provisions) Act 1960* and any subsidiary legislation made under those Acts but where a provision of those Acts or any subsidiary legislation

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made under those Acts is inconsistent with a provision of this Part or subsidiary legislation made under this Part the provision of this Part or the subsidiary legislation made under this Part prevails to the extent of the inconsistency.

[Section 175 inserted by No. 59 of 1991 s. 14; amended by No. 14 of 1996 s. 4.]

176. Approval of plans

- (1) A person who proposes to construct, extend or alter a public building shall make application for that purpose to the local government.
- (2) An application under subsection (1) —
 - (a) shall be made in the prescribed manner;
 - (b) shall be accompanied by —
 - (i) such plans, certificates and other information as are specified by the local government; and
 - (ii) the fee prescribed by the regulations.
- (3) A person shall not construct, extend or alter a public building unless —
 - (a) an application for that purpose has been made under subsection (1); and
 - (b) the local government has approved of the application.
- (4) A person who contravenes or fails to comply with a provision of this section commits an offence.
- (5) This section does not apply to or in relation to the construction, extension or alteration of a public building in relation to which construction, extension or alteration a licence is issued under section 374 of the *Local Government (Miscellaneous Provisions) Act 1960*.

[Section 176 inserted by No. 59 of 1991 s. 14; amended by No. 14 of 1996 s. 4.]

177. Approval

An approval referred to in section 176 shall be in writing and may be issued subject to such conditions as may be specified in the approval including a condition limiting the time for which the approval is valid.

[Section 177 inserted by No. 59 of 1991 s. 14.]

178. Certificate of approval

- (1) A person shall not open or use a public building unless the local government has issued a certificate of approval in relation to the public building specifying —
 - (a) the purpose or purposes for which the public building may be used; and
 - (b) the maximum number of persons that the building may be used to accommodate.
- (2) Where a public building has been extended or altered the certificate of approval issued in relation to the public building before such extension or alteration ceases to be valid and any person who desires to open or use the public building shall apply for the issue of a certificate of approval under subsection (1) in relation to the public building as so extended or altered.
- (3) A person shall not —
 - (a) use a public building, or permit a public building to be used, for a purpose other than a purpose specified in the certificate of approval; or
 - (b) use a public building, or permit a public building to be used, to accommodate any number of persons in excess of the number specified in the certificate of approval.
- (4) A person who contravenes a provision of this section commits an offence.

[Section 178 inserted by No. 59 of 1991 s. 14; amended by No. 14 of 1996 s. 4.]

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179. Inspection and control of buildings used as public buildings

- (1) For the purposes of ascertaining whether any of the provisions of this Part or any regulation made under this Part has been contravened or is not being complied with an authorised person may at any time enter any public building.
- (2) An authorised person may direct a person to remove any obstruction from —
 - (a) any exit, entrance, gangway, passageway or aisle of a public building;
 - (b) any road, thoroughfare, lane, right of way or land abutting on an exit or entrance of a public building.
- (3) If it appears to an authorised person that —
 - (aa) a person has opened or is using a public building in respect of which no valid certificate of approval has been issued;
 - (bb) the number of persons in a public building exceeds the number specified in the relevant certificate of approval;
 - (cc) there are reasonable grounds to believe that a public building is going to be used to accommodate a number of persons in excess of the number specified in the relevant certificate of approval; or
 - (dd) whether or not a valid certificate of approval is issued in respect of a public building, the public building is unsafe or is unsuitable for the use to which it is being put, or is about to be put,

then the authorised person may do any one or more of the following —

- (a) close, or cause the closing of, the doors of the public building;
- (b) exclude any person or cause any person to be excluded from entering the public building;
- (c) direct any person to leave the public building;

- (d) direct the occupier, owner or person in charge of the public building to comply with one or both of the following requirements —
 - (i) to close the public building;
 - (ii) to refuse to allow any person to enter or remain in the public building.
- (4) A direction under subsection (2) or subsection (3)(c) or (d) may be given orally or in writing and if given orally shall be reduced to writing as soon as is practicable.
- (4a) A direction given under subsection (3)(d)(i) to close a public building remains in force until it is withdrawn by the written direction of an authorised person given to the occupier, owner or person in charge of the public building.
- (5) A person who —
 - (a) hinders or obstructs an authorised person from entering a public building;
 - (b) enters a public building that has been closed under subsection (3)(a);
 - (c) has been excluded from a public building under subsection (3)(b) and who enters the public building;
 - (d) refuses or fails to comply with a direction given under subsection (2) or subsection (3)(c) or (d); or
 - (e) publishes or disseminates material stating that an assembly is to be held, or inviting a person or persons to an assembly, in a public building contrary to action taken by an authorised person under subsection (3) with respect to the proposed assembly,commits an offence.
- (6) In any proceedings for an offence referred to in subsection (5)(d) a statement signed or purporting to be signed by the relevant certifying officer to which is attached a copy of a

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direction given under subsection (2) or subsection (3)(c) or (d) and stating that the direction —

- (a) was given;
- (b) was given by the authorised person referred to in the statement; and
- (c) was in force at the time specified in the statement,

is, in the absence of evidence to the contrary, sufficient evidence of the direction and the facts set out in the statement.

[Section 179 inserted by No. 59 of 1991 s. 14; amended by No. 50 of 1996 s. 5.]

180. Regulations

- (1) The Governor may make regulations providing for the safety and health of persons in public buildings.
- (2) Without derogating from the generality of subsection (1), regulations may be made —
 - (a) prescribing the design, strength and stability requirements applicable to public buildings;
 - (b) for the prevention of over-crowding of public buildings;
 - (c) prohibiting the obstruction of gangways, passageways, aisles, exits, entrances of public buildings and any roads, thoroughfares, lanes, rights of way or land abutting on an exit or entrance of a public building;
 - (d) for the prevention of fires in public buildings and protection of persons in the public building from fire;
 - (e) prescribing lighting and electrical requirements applicable to public buildings;
 - (f) limiting the number of persons that may be accommodated in a public building, and prescribing the minimum space to be provided for each person;
 - (g) prescribing proper and sufficient means of ingress and egress and access for a public building;

- (h) prescribing the floor-space and air-space, ventilation, drainage and sanitation to be provided for a public building;
- (i) prescribing the material to be used in the construction of seating accommodation and the design of seats;
- (j) providing for health, safety and convenience of persons in and about public buildings whether as members of the public or persons who are in public buildings in pursuance of their occupation or employment;
- (k) providing, where no structural alteration or extension of a public building is proposed, for the variation of a certificate of approval in relation to —
 - (i) the purpose for which a public building may be used; or
 - (ii) the maximum number of persons that a public building may be used to accommodate,or both, and enabling the local government to impose conditions in relation to such a variation;
- (l) requiring occupiers of public buildings to formulate emergency evacuation arrangements satisfactory to the local government in respect of prescribed public buildings or prescribed classes of public buildings whenever required to do so by the local government;
- [(m) deleted]*
- (n) prescribing such incidental, supplementary, savings and transitional provisions as are convenient or necessary.

[Section 180 inserted by No. 59 of 1991 s. 14; amended by No. 14 of 1996 s. 4; No. 28 of 1996 s. 11.]

Part VII — Nuisances and offensive trades

Division 1 — Nuisances

181. Removal of offensive matter

In any case where it appears to an environmental health officer or other officer that on any premises within any district there exists any such accumulation of manure, dung, filth, or other offensive matter as to be a nuisance or injurious or dangerous to health, the following provisions shall apply:

- (1) He may, by requisition to the occupier, or if there is no occupier, to the owner of the premises, require him within a specified time to remove such matter, and destroy the same, or otherwise dispose of it so that it shall cease to be offensive.
- (2) If default is made in duly complying with the requisition within the time specified in that behalf, then the owner or occupier, as the case may be, commits an offence.
- (3) If such default occurs, the officer by whom the requisition was issued shall cause the offensive matter to be removed at the expense of the local government.
- (4) The offensive matter so removed shall be destroyed, sold, or otherwise disposed of by or on behalf of the local government.
- (5) The surplus money (if any) remaining from such disposal after defraying the expenses of the removal and disposal shall be paid into the municipal fund, and the deficiency (if any) shall be recoverable by the local government in a summary way from the occupier or owner, as the case may be, of the premises, who shall be jointly and severally liable therefor.

[Section 181 amended by No. 113 of 1965 s. 8(1); No. 24 of 1970 s. 12; No. 80 of 1987 s. 47; No. 59 of 1991 s. 5; No. 14 of 1996 s. 4; No. 28 of 1996 s. 21.]

182. Definition of nuisances

A nuisance shall be deemed to be created in any of the following cases —

- (1) where a pool, ditch, gutter, watercourse, sanitary convenience, or drain is so foul or out of repair, or otherwise in such a state as to be offensive or injurious or dangerous to health; or
- (2) where any animal is so kept as to be a nuisance or injurious or dangerous to health; or
- (3) where there exists an accumulation or deposit which is offensive or injurious or dangerous to health; or
- (4) where any house or premises are in such a state as to be a nuisance or injurious or dangerous to health; or
- (5) where any way, lane, passage, yard, land, or premises are in such a state in regard to drainage as to be offensive or injurious or dangerous to health; or
- (6) where any house or part thereof is so overcrowded as to be injurious or dangerous to the health of the inmates; or
- (7) where any factory, workroom, laundry, shop, office, warehouse, or other business-place, or any portion thereof —
 - (a) is so structurally defective, or is so dilapidated as to be unsafe or dangerous or injurious to the health of the inmates; or
 - (b) is so unclean as to be offensive or injurious or dangerous to health; or
 - (c) is not with regard to the inmates sufficiently supplied with fresh air; or
 - (d) is not so ventilated as to render harmless, as far as practicable, all gases, fumes, dust, or other impurities generated in the course of the work carried on therein; or

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Part VII Nuisances and offensive trades

Division 1 Nuisances

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- (e) is so overcrowded as to be injurious or dangerous to the health of the persons employed therein; or
- (f) is insufficiently supplied with natural light; or
- (g) is not provided with sufficient sanitary conveniences;

or

- (8) where any house or premises are in such a state as to harbour rats; or
- (9) where an offensive trade is so carried on as to be injurious or dangerous to health or unnecessarily offensive to the public; or
- (10) where any fireplace or furnace is used in working engines by steam or in any manufacturing or trade process whatever and does not as far as practicable consume its own smoke; or
- (11) where any chimney sends forth smoke in such quantity or of such a nature as to be offensive to the public, or injurious or dangerous to health; or
- (12) where any drainage falls into any harbour or river or on to any foreshore so as to be offensive or injurious or dangerous to health; or
- (13) where any building or portion of any building set aside for the purpose of parking more than 3 vehicles is not so ventilated as to prevent the presence therein of carbon monoxide in excess of the concentration that is prescribed for the purposes of this subsection,

and any such nuisance may be abated and dealt with under any of the provisions of this Act applicable for the purpose:

Provided that in summary proceedings under this Act, as hereinafter provided, it shall be a sufficient defence if the accused satisfies the court of summary jurisdiction —

- (a) in the case of an alleged nuisance under subsection (3), that the accumulation or deposit is incident to the reasonable and proper carrying-on of a trade, and also

that it has not been kept longer than was necessary, and also that the best practicable means have been taken to prevent a nuisance and injury to health, and also that no danger to health exists; or

- (b) in the case of an alleged nuisance under subsection (9), that the offensiveness is not greater than might reasonably be expected, having regard to the nature of the trade, and also that the best practicable means have been used to minimise the offensiveness and abate any nuisance, and also that no danger to health exists; or
- (c) in the case of an alleged nuisance under subsection (10) that the fireplace or furnace is so constructed as to consume its own smoke as far as practicable, having regard to the nature of the process in connection with which the fireplace or furnace is used, and also that it has been carefully attended to by a competent person, and also that no danger to health exists.

Every person by whose act, default, or sufferance any nuisance within the meaning of this Act arises or continues commits an offence.

[Section 182 amended by No. 2 of 1975 s. 5; No. 80 of 1987 s. 48; No. 61 of 2004 s. 4; No. 59 of 2004 s. 141; No. 84 of 2004 s. 82.]

182A. Regulations as to section 182(13)

The Governor may make such regulations as are necessary or convenient for the purposes of section 182(13) and any regulation so made may be general in application or restricted in operation as to time, place or circumstance and may discriminate according to different buildings or different classes of buildings.

[Section 182A inserted by No. 2 of 1975 s. 6.]

183. Immediate action in respect of nuisances

If an environmental health officer or other officer is satisfied that the nuisance exists, and that immediate action for its abatement is necessary in order to check or prevent the spread of infectious disease, he may act under section 260, and in such case the provisions of that section shall, *mutatis mutandis*, apply, and the provisions of the next following section shall not apply.

[Section 183 amended by No. 24 of 1970 s. 12; No. 59 of 1991 s. 5; No. 28 of 1996 s. 21.]

184. Mode of dealing with nuisances

Subject as last aforesaid, any nuisance may be dealt with in manner following, that is to say:

- (1) On the report of any environmental health officer or other person that the nuisance exists on any premises, the local government may, and, if the Executive Director, Public Health so requires, shall, by requisition to the owner and occupier of the premises, require them to abate the nuisance in the manner and within the time specified in the requisition.
- (2) The owner and occupier are hereby jointly and severally empowered and required to comply with the requisition, and do whatever is necessary in order to effectually abate the nuisance.
- (3) If default is made in duly complying with the requisition within the time specified therein, then the owner and occupier each commits an offence.
- (4) If such default occurs, the local government shall cause the requisite work to be done at the expense in all things of the owner and occupier, who shall be jointly and severally liable therefor.
- (5) All such expenses shall be recoverable by the local government from the owner and occupier by action in a

court of competent jurisdiction, and until paid shall be a charge on the house and buildings, and also on the land on which the same is built or to which it appertains.

[Section 184 amended by No. 113 of 1965 s. 8(1); No. 24 of 1970 s. 12; No. 28 of 1984 s. 45; No. 80 of 1987 s. 49; No. 59 of 1991 s. 5; No. 14 of 1996 s. 4; No. 59 of 2004 s. 141.]

185. Proceedings when nuisance caused by default outside district

In any case where it appears that a nuisance existing within a district is wholly or partly caused by some act or default outside the district, proceedings may be taken by the local government against any person in respect of such act or default in the same manner and with the same incidents and consequences as if the act or default were wholly inside the district.

[Section 185 amended by No. 14 of 1996 s. 4.]

Division 2 — Offensive trades

186. Definition of “offensive trade”

- (1) In this Division the term “**offensive trade**” means and includes any of the trades specified in Schedule 2, and any other trade declared to be offensive by proclamation⁵.
- (2) The Governor may by proclamation —
 - (a) amend Schedule 2 by deleting therefrom any of the trades specified therein; or
 - (b) declare that any process or class of trade within any trade that is an offensive trade for the purposes of this Division, is a process or class of trade to which the provisions of this Division, other than section 194, do not apply.
- (3) A proclamation made under subsection (1) or subsection (2), whether before or after the commencement of this subsection,

may be cancelled or from time to time varied by a subsequent proclamation.

[Section 186 amended by No. 35 of 1966 s. 5; No. 26 of 1985 s. 6.]

187. Consent necessary for establishing offensive trade

- (1) After the commencement of this Act, it shall not be lawful to establish any offensive trade, unless with the consent, in writing, of the local government.

[(2) repealed]

- (3) Any person applying for such consent shall, with his application, lodge with the local government plans and specifications of any proposed buildings.

[Section 187 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4; No. 55 of 2004 s. 486.]

188. Penalty for breach

Every person who establishes an offensive trade in breach of this Act commits an offence.

[Section 188 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 50.]

189. Penalty for illegally carrying on offensive trade

Every person who carries on any offensive trade established in breach of this Act, or of any Act repealed by this Act, commits an offence, whether there has or has not been a conviction in respect of the establishing of the trade.

[Section 189 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 51.]

190. Local laws regulating offensive trades

Local laws may be made in accordance with Part XIV to regulate the conditions on which offensive trades may be carried

on in order to prevent or diminish the offensiveness of the trades and to safeguard the public health.

[Section 190 inserted by No. 14 of 1996 s. 4.]

191. Offensive trades to be registered

- (1) Subject to the provisions of subsection (4) no person shall carry on an offensive trade within a district unless the house or premises in or upon which such trade is carried on, whether established before or after the commencement of this Act, is registered annually at the office of the local government during the first week in July in every year.

[(2) repealed]

- (3) Where an offensive trade is established after the first week in July in any year, the house or premises shall be registered within one week after such trade is established.
- (4) A person who carries on a piggery is not required to register the premises, in or upon which it is carried on unless —
- (a) the premises are situated in an area prescribed as one in which a piggery may be carried on, only if registered as required by this section; or
 - (b) the pigs in the piggery, wherever the premises are situated, are fed wholly or partly on pig-swill.

[Section 191 amended by No. 25 of 1952 s. 5; No. 113 of 1965 s. 8(1); No. 2 of 1975 s. 7; No. 59 of 1991 s. 25; No. 14 of 1996 s. 4.]

192. Local government may refuse to register or to renew registration

- (1) The local government may refuse to register or to renew the registration of any house or premises used for an offensive trade unless constructed and maintained in accordance with its local laws.

- (2) Without limiting section 36, that section applies to any decision of the local government to grant or renew the registration or to refuse to grant or renew the registration.

[Section 192 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4; No. 55 of 2004 s. 487.]

193. Power to restrict offensive trades to certain portions of proclaimed areas

- (1) The Governor may by proclamation declare that no offensive trade or no offensive trade of any specified class shall be established within any area defined in the proclamation, except within such portion of the area as may be declared in the proclamation to be open to the establishment of such trade; and the Governor may in like manner revoke or vary any such proclamation, and every such proclamation shall, notwithstanding anything in this Act, be observed and have effect according to its tenor.
- (2) A person who in any manner contravenes a proclamation issued under this section commits an offence.

[Section 193 inserted by No. 17 of 1918 s. 18; amended by No. 80 of 1987 s. 52.]

194. Offensive trades

Where any trade process, whether an offensive trade or not, has been established in any district, and is of such a nature that the carrying on thereof will unavoidably result in fumes, dust, vapour, gas, or other chemical elements which, in the opinion of the Executive Director, Public Health, are likely to be injurious to health, escaping into the air, the Governor may, on the recommendation of the Executive Director, Public Health, by proclamation —

- (a) define any area surrounding the place where such trade process is carried on, within which, after the issue of the proclamation and whilst the same remains unrevoked, no dwelling-house shall be erected or used for habitation; and

- (b) define any area surrounding the place where such trade process is carried on, within which, after the issue of the proclamation and whilst the same remains unrevoked, no rainwater tanks shall be erected or used, and no rainwater shall be collected or stored for human consumption:

Provided that, where any dwelling-house has, prior to the issue of a proclamation under this subsection, been erected within the area defined by such proclamation as an area within which dwelling-houses shall not be erected or used, the Executive Director, Public Health may, notwithstanding the proclamation, grant a permit in writing signed by him to any person to use such dwelling-house for purposes of habitation, upon and subject to such conditions as the Executive Director, Public Health may deem fit to impose and which are specified in the permit so granted.

[Section 194 inserted by No. 30 of 1932 s. 26; amended by No. 28 of 1984 s. 45.]

195. Construction, drainage and equipment of slaughter-houses

A person who uses any premises as a slaughter-house commits an offence unless the construction, drainage and equipment of the premises are of the prescribed standards.

[Section 195 inserted by No. 52 of 1968 s. 5; amended by No. 80 of 1987 s. 53.]

196. Slaughter-houses to be kept in accordance with Act

- (1) If, in the opinion of the local government, any slaughter-house, or any premises connected therewith, are not constructed and kept in accordance with this Act, the local government may, by notice in writing, require the owner or occupier to make such improvements as may be specified in such notice within a time to be therein stated.
- (2) Whenever any owner or occupier fails to comply with a notice served upon him under subsection (1), he commits an offence.

- (3) The local government may, and shall if the Executive Director, Public Health so requires, carry out the requirements of such notice; and may, by summary proceedings, recover all expenses incurred from the owner or occupier in addition to the penalties incurred; or
- (4) The local government may, and shall if the Executive Director, Public Health so recommends, cancel or refuse to renew the registration of the premises.

[Section 196 amended by No. 113 of 1965 s. 8(1); No. 28 of 1984 s. 45; No. 80 of 1987 s. 54; No. 14 of 1996 s. 4.]

197. No swine, etc., to be kept at slaughter-house

No person in charge of any slaughter-house shall keep or permit or suffer to be, in or about any slaughter-house, any swine, unless intended for immediate slaughter, or any dog or poultry.

198. Swine not to be fed on raw offal

No person shall permit any swine to feed upon any offal, unless such offal has been first boiled for at least 2 hours, or upon any blood, manure, filth, or any other refuse matter.

[Section 198 amended by No. 29 of 1955 s. 3.]

Division 3 — Local laws

[Heading amended by No. 14 of 1996 s. 4.]

199. Local laws in respect of nuisances and offensive trades

Local laws may be made in accordance with Part XIV for all or any of the following purposes:

- (1) Defining localities in the district within which the keeping of any swine or pigsty is forbidden.
- (1a) Prescribing areas in which piggeries may be carried on, only if the premises in or upon which they are carried on, are registered as required by section 191.

- (2) Prohibiting the keeping of animals on any premises so as to be a nuisance or injurious to health.
- (3) Regulating the situation, construction, and cleansing of structures, stables, and other buildings in which animals are kept.
- (4) Regulating the keeping of poultry, pigeons, and other birds upon any premises.
- (5) The removal and destruction of dead, dying or diseased animals found upon any street or land under the control of the local government, or any land not securely fenced off from such street or land.
- (6) Compelling any owner of a diseased animal to forthwith destroy same, and empowering any officer of the local government, on default being made by such owner, to seize and destroy such animal, and for that purpose to enter upon any premises.
- (7) Preventing the overcrowding of persons in houses and premises.
- (8) Prohibiting expectoration on any public place, or on any public vehicle, and for the cleansing of public vehicles.
- (9) Defining localities in the district within which noxious or offensive trades, businesses, or manufactures may be established or carried on and prohibiting the establishing or carrying on of noxious or offensive trades, businesses, or manufactures, elsewhere than in localities so defined.
- (10) The registration of and regulating offensive trades, businesses, or manufactures, and prescribing fees for registration.
- (11) Prescribing the construction, drainage, ventilation, lighting, and cleanliness of premises occupied for the purpose of any offensive trade.
- (12) Defining localities in the district within which no animal shall be slaughtered.
- (13) The prevention of nuisances.

- (14) Prohibiting the sale, within its district, of any fresh meat of any animal slaughtered in any slaughter-house situated outside the district, unless such slaughter-house has been approved by the local government or the Executive Director, Public Health.
- (15) For the prevention of danger to the public from manufactories, or places for the storage, keeping, or sale of inflammable materials.
- (16) For the disinfection of and the prevention of a nuisance, or injury or danger to health from rags or other material used or stored in premises of a type prescribed by regulation, or flock, bedding, or furniture manufactories.
- (17) Prohibiting the sale or storage for sale in any place of any second-hand furniture, bedding, or clothing which is filthy or verminous, and prescribing the method of cleansing or purifying the same, or requiring or authorising the destruction thereof.
- (18) Prohibiting any person who is in a verminous condition from entering or remaining in any public vehicle, lodging-house, public house or public place, but so that no prosecution for a breach of any local law made under this paragraph shall be instituted except by an environmental health officer.
- (19) The prevention of nuisances or injury to health from the transport, deposit, use or storage as manure, of nightsoil, urine, offal, blood, or other offensive matter.
- (20) The destruction of mosquitoes and Argentine ants and other insect pests as may by regulations be prescribed from time to time.
- (21) Specifying what are toxic substances and what are hazardous substances, prescribing generally, or in any class or case, or in any particular case, how they shall be branded or labelled; and with respect to the prevention of nuisance or injury to health from the transport,

deposit, use, manufacture, sale or storage, of substances so specified.

[Section 199 amended by No. 3 of 1912 s. 2; No. 30 of 1932 s. 27; No. 22 of 1948 s. 3; No. 25 of 1952 s. 6; No. 29 of 1955 s. 4; No. 18 of 1964 s. 18; No. 24 of 1970 s. 12; No. 28 of 1984 s. 45; No. 59 of 1991 s. 5; No. 88 of 1994 s. 100; No. 14 of 1996 s. 4; No. 28 of 1996 s. 21; No. 84 of 2004 s. 80.]

200. Regulations as to medical examinations for persons in prescribed industries

The Governor may make regulations requiring persons engaged in prescribed industries to submit themselves for periodical medical examination at the times and in the manner prescribed.

[Section 200 inserted by No. 71 of 1948 s. 6.]

Part VIIA — Animal produce, drugs, medicines, disinfectants, therapeutic substances and pesticides

[Heading inserted by No. 26 of 1985 s. 7.]

Division 1 — Preliminary

[Heading inserted by No. 26 of 1985 s. 7.]

[201. Repealed by No. 80 of 1987 s. 55.]

202. Drug Advisory Committee

- (1) There is hereby established a committee to be known as the Drug Advisory Committee.
- (2) The Drug Advisory Committee shall consist of 6 members of whom —
 - (a) one shall be the Executive Director, Public Health, or a medical officer nominated by him;
 - (b) one shall be the Government Analyst;
 - (c) one shall be the principal pharmaceutical chemist of the Department;
 - (d) one shall be the person who is for the time being holding the office of Secretary of the Drug Advisory Committee under subsection (6);
 - (e) one shall be a person appointed by the Minister to represent consumer interests; and
 - (f) one shall be a person appointed by the Minister to represent the drug industry,

together with such person or persons as the regular members may for the time being co-opt to advise the Drug Advisory Committee on the drug industry.

- (3) The Executive Director, Public Health, or the medical officer referred to in subsection (2)(a), as the case requires, shall be the

Chairman of the Drug Advisory Committee (in this section called “**the Chairman**”).

- (4) The Minister may appoint a deputy for a regular member and, at any meeting of the Drug Advisory Committee at which the regular member is not present but his deputy is present, his deputy shall have all the functions of the regular member.
- (5) At any meeting of the Drug Advisory Committee —
 - (a) the Chairman or, in his absence, his deputy shall preside, but if neither the Chairman nor his deputy is present the other regular members present shall elect one of their number to preside;
 - (b) each regular member and, in relation to matters in respect of which he is co-opted under subsection (2), each co-opted member present has a deliberative vote and, in the event of an equality of votes, the person presiding at that meeting shall also have a second or casting vote; and
 - (c) any 3 regular members constitute a quorum.
- (6) The Minister shall appoint a person to the office of Secretary of the Drug Advisory Committee, but that office may be held in conjunction with any other office under Part 3 of the *Public Sector Management Act 1994*.
- (7) An appointed member or his deputy shall be —
 - (a) appointed for such period not exceeding 3 years as is specified in the instrument of his appointment; and
 - (b) eligible for reappointment.
- (8) The Minister may at any time remove from office an appointed member or his deputy.
- (9) Each member may be paid such attendance fees as are prescribed in his case.

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(10) In this section —

“**appointed member**” means person referred to in subsection (2)(e) or (f);

“**co-opted member**” means person co-opted under subsection (2);

“**member**” means regular member or co-opted member;

“**regular member**” means person referred to in subsection (2)(a), (b), (c), (d), (e) or (f).

[Section 202 inserted by No. 26 of 1985 s. 7; amended by No. 32 of 1994 s. 3(2).]

203. Registration of analysts

(1) Subject to subsection (3), the Executive Director, Public Health, shall cause —

(a) to be maintained a register of analysts; and

(b) every analyst —

(i) who is appointed as such under section 6 of the *Health Legislation Administration Act 1984*, or under section 27; or

(ii) who is a qualified person approved by the Executive Director, Public Health, for the purpose of this section,

to be registered in the register referred to in paragraph (a) on payment of the prescribed fee.

(2) A person who performs the functions of an analyst under this Act without being registered under subsection (1) commits an offence.

(3) The Minister may by notice published in the *Gazette* —

(a) exempt any analyst or class of analysts from the obligation to pay the prescribed fee referred to in subsection (1)(b); or

(b) revoke an exemption granted under this subsection,
and every such notice shall have effect according to its tenor.

*[Section 203 inserted by No. 26 of 1985 s. 7; amended by
No. 80 of 1987 s. 56.]*

Division 2 — Slaughtering of animals and meat

[Heading inserted by No. 26 of 1985 s. 7.]

203A. Interpretation

In this Division, unless the contrary intention appears —
“**animal**” includes the carcass of an animal, whether dressed or
not.

[Section 203A inserted by No. 28 of 1996 s. 12.]

204. Power to inspect and seize food animals

- (1) A medical officer or environmental health officer may at any
time —
 - (a) enter into or on any house, land or premises; and
 - (b) inspect any animal offered, or being prepared, for sale or
slaughter for human consumption.
- (2) If, on an inspection under subsection (1), it appears to the
medical officer or environmental health officer concerned that
there are reasonable grounds to believe that the animal inspected
is diseased, unsound, unwholesome or unfit for human
consumption, he may cause that animal to be seized, or seized
and carried away, for inspection under section 205 and shall, if
he does so, cause the owner of that animal to be notified
forthwith.

*[Section 204 inserted by No. 26 of 1985 s. 7; amended by
No. 59 of 1991 s. 5.]*

205. Disposal of food animals seized, or seized and carried away, for inspection

- (1) Subject to this section, if, after having inspected an animal seized, or seized and carried away, under section 204(2), a medical officer or environmental health officer —
 - (a) is satisfied that that animal is diseased, unsound, unwholesome or unfit for human consumption and should forthwith be destroyed, he shall cause it to be destroyed;
 - (b) considers that he requires more time in which to decide whether or not he is satisfied within the meaning of paragraph (a), he shall cause that animal to be detained for such period not exceeding 14 days as he considers necessary; or
 - (c) is not satisfied within the meaning of paragraph (a), he shall cause that animal to be restored to the person from whose possession it was seized.
- (2) On being notified under section 204(2), the owner of an animal seized or seized and carried away under that section shall, if he intends to submit the matter to the Magistrates Court under this section, forthwith give notice in writing of that intention to the medical officer or environmental health officer who caused that animal to be so seized or seized and carried away.
- (3) When a medical officer or environmental health officer receives notice given under subsection (2), he shall, if he has not already performed any duty imposed on him by subsection (1) in relation to the animal to which that notice relates, refrain from performing any such duty in relation to that animal and shall cause that animal to be kept at the expense of the owner of that animal for a period of 48 hours commencing at the time when he received that notice, and that owner may within that period apply to the Magistrates Court for an order under subsection (5), in which case that owner shall forthwith notify the medical officer or environmental health officer of —

- (a) the fact that he has so applied; and
- (b) the time, date and place appointed by the court for the hearing of the application.

[(4) repealed]

- (5) The Magistrates Court may hear and determine an application made under subsection (3) and may, if it appears to it that the animal to which the application relates —
 - (a) is diseased, unsound, unwholesome or unfit for human consumption, by order —
 - (i) condemn that animal and direct it to be destroyed or otherwise disposed of at the expense of the complainant so as to prevent it from being used for human consumption; and
 - (ii) fix the expenses incurred in seizing and keeping, or seizing, carrying away and keeping, that animal until the determination of the application and require the applicant to pay those expenses and the costs of the proceedings;
 - or
 - (b) is not diseased, unsound, unwholesome or unfit for human consumption, order that animal to be restored to the applicant.
- (6) A person to whom an order made under subsection (5) is directed and who does not comply with that order commits an offence.
- (7) If the owner of an animal, having given notice in writing to a medical officer or environmental health officer under subsection (2), does not make an application within the period referred to in subsection (3), the medical officer or environmental health officer to whom notice was so given shall perform the appropriate duty imposed on him by subsection (1) in relation to the animal forthwith on the expiry of that period.

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- (8) Subject to subsection (3), the owner of an animal seized, or seized and carried away, under section 204(2) and destroyed under subsection (1), shall, if that animal was diseased, unsound, unwholesome or unfit for human consumption, pay to the local government concerned all expenses incurred by that local government in that inspection and seizure or seizure and carrying away, and destruction, as the case requires.
- (9) A local government may, if any expenses payable to it under subsection (8) are not paid to it, recover those expenses from the owner of the animal concerned in a court of competent jurisdiction.
- (10) For the purposes of this section, it shall be presumed, until the contrary is proved, that an animal inspected under section 204(1) is intended to be sold, or prepared for sale, for human consumption.

[Section 205 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 57; No. 59 of 1991 s. 5; No. 14 of 1996 s. 4; No. 59 of 2004 s. 141.]

206. Officer acting under reasonable belief immune

A medical officer or environmental health officer who causes an animal to be seized, or seized and carried away, under section 204(2) is not liable for any costs, damages or expenses on account of any such seizure or seizure and carrying away if he acted under a reasonable belief that the animal was diseased, unsound, unwholesome or unfit for human consumption.

[Section 206 inserted by No. 26 of 1985 s. 7; amended by No. 59 of 1991 s. 5.]

207. Local laws as to premises where meat dealt with

- (1) Local laws may be made in accordance with Part XIV (other than section 342(1)(b)) for all or any of the following purposes —

- (a) authorising the local government to direct the occupier of, or any other person using, any premises to maintain, repair, cleanse or disinfect the premises and any fixtures, fittings, equipment and utensils thereon in the manner specified in a notice issued by the local government to that occupier or other person;
 - (b) requiring premises to be registered with the local government;
 - (c) requiring the occupiers of premises to be licensed by the local government;
 - (d) requiring —
 - (i) plans of premises and of any alterations of or extensions to premises; and
 - (ii) plans showing the disposition of equipment, fixtures and fittings on premises,
to be lodged with and approved by the local government before —
 - (iii) the premises concerned are constructed, altered or extended; or
 - (iv) any equipment, fixtures or fittings are included on, or removed from, the premises concerned,
as the case requires;
 - (e) prescribing the equipment, fixtures, fittings and utensils to be provided on premises, and the manner in which that equipment and those fixtures, fittings and utensils are to be set out or arranged;
 - (f) prescribing the setting out and arrangement of the operations conducted on premises; and
 - (g) relating to any other matter incidental to the matters for which local laws may be made under this subsection.
- (2) In subsection (1) —
“premises” means premises as defined by section 3, which premises are used or intended to be used for the

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manufacture, processing, preparation or packaging of meat or products containing meat.

- (3) Local laws may be made in accordance with Part XIV (other than section 342(1)(b)) for all or any of the following purposes —
- (a) the precautions to be taken and the methods and times to be observed for —
 - (i) the slaughtering of animals, and the transport, preparation, manufacture, storage or carriage of meat; and
 - (ii) the protection of meat from flies and dust when exhibited for sale;
 - (b) the precautions to be taken in the method of carriage, storage, distribution, manufacture, inspection, preparation, sale and exposure for sale of food, ice, ice cream and other similar products, and the construction, cleanliness, lighting, ventilation, drainage and sanitation of premises in which those operations are conducted and the precautions to be taken in, and the construction and method of, cleansing vehicles and utensils used in connection therewith;
 - (c) the destruction and disposal of unsound food, and the destruction of cases and packing material which may have contained or surrounded the same;
 - (d) prescribing some place or places at which all fish, meat or perishable food must be produced for inspection before being sold or offered or exposed for sale within the district of the local government;
 - (e) prescribing and limiting the hours of slaughtering at any slaughter-house;
 - (f) prohibiting the exchange by or the return to the vendor of any food, except by reason of the food being unwholesome;

- (g) prohibiting the sale of food by itinerant vendors without a licence issued by the local government; and
- (h) requiring the registration without fee with the local government of all makers and vendors (not being persons licensed to sell or supply liquor) of ice creams, ices, aerated waters, temperance drinks, cordials and syrups.

[Section 207 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 58; No. 14 of 1996 s. 4.]

Division 2A — Game meat

[Heading inserted by No. 59 of 1991 s. 16.]

207A. Interpretation in Division 2A

In this Division —

“field depot” means a building, tent, trailer or other structure, whether permanent or temporary, used or intended to be used for the storage and preliminary treatment of game carcasses intended for sale;

“game” means buffalo, goat, kangaroo, pig, rabbit, or such other kind or class of animal or bird as is prescribed, in its wild state;

“game carcass” means the body or any portion of the body of any game;

“game meat” means the flesh or any other edible product, including offal, derived from a game carcass for the purpose of sale;

“processing establishment” means premises used or intended to be used for the preparation, handling, treatment or packing of game meat;

“sale” means sale for human consumption.

[Section 207A inserted by No. 59 of 1991 s. 16.]

207B. Executive Director, Public Health may prohibit slaughter of game

- (1) The Executive Director, Public Health may, by notice published in the Gazette —
 - (a) prohibit the slaughter for sale of all game or a specified kind or class of game in a specified district or specified part of a district; and
 - (b) vary or revoke a prohibition under this section.
- (2) In subsection (1) —
“**specified**” means specified in the notice.
- (3) A person who slaughters game in contravention of a notice published under subsection (1) commits an offence.

[Section 207B inserted by No. 59 of 1991 s. 16.]

207C. Slaughter of game

A person who —

- (a) slaughters for sale any game that shows signs of disease or injury; or
- (b) takes for sale the carcass of any game that died naturally or otherwise than by a method of slaughter prescribed in the regulations,

commits an offence.

[Section 207C inserted by No. 59 of 1991 s. 16.]

207D. Regulations

The Governor may make regulations under section 341 —

- (a) with respect to the precautions to be taken in, and the methods to be used for, the slaughter of game for the purpose of sale;
- (b) regulating the handling, treatment and storage of game carcasses intended for sale;

- (c) with respect to the qualifications, training and duties of persons engaged in the slaughter of game for the purpose of sale;
- (d) regulating the transport of game carcasses intended for sale and the capacity, construction, equipment and maintenance of vehicles used for that transport;
- (e) providing for the registration of field depots and processing establishments;
- (f) regulating the construction, equipment, operation and maintenance of field depots and processing establishments;
- (g) requiring plans and specifications to be lodged with and approved by the Executive Director, Public Health before field depots or processing establishments are constructed or altered;
- (h) providing for the inspection, classification and branding of game carcasses;
- (i) prescribing the design, dimensions and other particulars of brands to be applied to game carcasses after inspection;
- (j) with respect to the removal or disposal of game carcasses that, on inspection, are found to be diseased, unwholesome or otherwise unfit for human consumption;
- (k) prohibiting the use of brands other than brands that comply with the requirements of the regulations;
- (l) prohibiting the manufacture or possession of brands falsely purporting to be, or resembling, brands referred to in paragraph (i);
- (m) with respect to the precautions to be taken in the preparation, handling, treatment, storage and packing of game meat at processing establishments;

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- (n) prohibiting the preparation, handling, treatment or packing of game meat otherwise than at a processing establishment registered under those regulations;
- (o) providing for the hygiene requirements to be observed by persons employed at field depots or processing establishments;
- (p) providing for the duties of persons employed at field depots or processing establishments who are or may be suffering from disease or injury or are or may be carriers of disease and the precautions to be taken in respect of any such person;
- (q) providing for the inspection of vehicles used for the transport of game carcasses or game meat, field depots and processing establishments;
- (r) regulating or prohibiting the movement of game carcasses or game meat within the State or the importation of game carcasses or game meat from another State or a Territory;
- (s) prescribing the fees payable in respect of the registration of field depots and processing establishments;
- (t) prescribing the fees payable for the inspection of game carcasses for the purposes of those regulations, which fees may vary according to the class, description or kind of inspection carried out, and prescribing the persons by whom and to whom and the places and times where and when those fees shall be paid;
- (u) prescribing the forms to be used for the purposes of those regulations; and
- (v) adopting by reference specifications, standards or requirements of codes of practice specified in those regulations, either wholly or in part or with modifications and as amended from time to time.

[Section 207D inserted by No. 59 of 1991 s. 16.]

207E. Saving of other laws

Nothing in this Division, or in regulations made under this Division, shall be construed as in any way derogating from the requirements of any other written law.

[Section 207E inserted by No. 59 of 1991 s. 16.]

Division 3 — Sale of horseflesh

[Heading inserted by No. 26 of 1985 s. 7.]

208. Interpretation in Division 3

In this Division, unless the contrary intention appears —

“**horse**” includes ass or mule;

“**horseflesh**” includes any part of the carcass of a horse.

[Section 208 inserted by No. 26 of 1985 s. 7.]

209. Restriction on slaughter of horses

- (1) Subject to the *Abattoirs Act 1909*⁶, a person who slaughters or causes or permits or suffers any other person to slaughter a horse at an abattoir or slaughter-house at which any animals are slaughtered for human consumption commits an offence.
- (2) A person who at any place slaughters or causes or permits or suffers any other person to slaughter a horse for human consumption commits an offence.

[Section 209 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 59.]

210. Prohibition of sale, preparation or manufacture of horseflesh for human consumption

A person who —

- (a) sells any horseflesh or any food substance or article containing any horseflesh; or

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- (b) prepares any horseflesh or prepares or manufactures any food substance or article containing any horseflesh,

for human consumption commits an offence.

[Section 210 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 60.]

211. Prohibition of sale or possession of horseflesh from, at or on certain places and vehicles

- (1) A person who sells any horseflesh or any food substance or article containing horseflesh at or from any shop, stall, vehicle or place at or from which —
 - (a) any fresh uncooked meat (including sausages) is sold for human consumption; or
 - (b) any food substance or article is sold for human consumption, unless that horseflesh or food substance or article containing horseflesh is contained in a sealed metal container bearing a label indicating that the contents of such container consist wholly or partly of horseflesh and are not for human consumption,commits an offence.
- (2) The owner or occupier of —
 - (a) any shop, stall or other place at or from which any fresh uncooked meat (including sausages) is sold for human consumption; or
 - (b) any factory or other place at which any food substance or article is prepared or manufactured for human consumption, who has at that shop, stall, factory or place or causes or permits or suffers to be or to remain at that shop, stall, factory or place any horseflesh or any food substance or article containing horseflesh commits an offence.
- (3) The owner or occupier of any shop, stall or other place at or from which any food substance or article is sold for human

consumption who has at that shop, stall or place or causes or permits or suffers to be or to remain at that shop, stall or place any horseflesh or food substance or article containing horseflesh which is not contained in a sealed metal container labelled within the meaning of subsection (1)(b) commits an offence.

- (4) The owner or person in charge of any vehicle from or on which any fresh uncooked meat (including sausages) is sold or carried for human consumption who has in or on that vehicle or causes or permits or suffers to be or to remain in or on that vehicle any horseflesh or any food substance or article containing horseflesh commits an offence.
- (5) The owner or person in charge of any vehicle from or on which any food substance or article is sold or carried for human consumption who has in or on that vehicle or causes or permits or suffers to be or to remain in or on that vehicle any horseflesh or any food substance or article containing horseflesh which is not contained in a sealed metal container labelled within the meaning of subsection (1)(b) commits an offence.

[Section 211 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 61.]

212. Prohibition of sale of meat, etc., from boiling down works

A person who at or from any works for boiling down meat, blood, bones or offal sells for human consumption any part of the carcass of an animal commits an offence.

[Section 212 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 62.]

Division 3A — Pet meat

[Heading inserted by No. 80 of 1987 s. 63.]

212A. Interpretation in Division 3A

In this Division —

“**pet meat**” means flesh of any source animal intended to be used for pet food;

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“source animal” means buffalo, camel, cattle, donkey, emu, goat, horse, kangaroo, mule, pig, poultry, rabbit or sheep.

[Section 212A inserted by No. 80 of 1987 s. 63.]

212B. Regulations as to pet meat

- (1) The Governor may make regulations under section 341 providing for —
 - (a) the handling and treatment of carcasses of source animals from the time of slaughter onwards;
 - (b) the chilling of carcasses of source animals;
 - (c) the capacity, construction, operation and maintenance of the freezers and boxes used by persons shooting animals for pet food;
 - (d) the mode of transport of carcasses of source animals and the capacity, construction, operation and maintenance of any insulated boxes or refrigerated units or vehicles used for that transport;
 - (e) the registration and conduct of knackereries and the circumstances in which carcasses of source animals or pet meat can be sold at knackereries;
 - (f) the registration and conduct of pet meat processing establishments;
 - (g) the capacity, construction, operation and maintenance of pet meat processing establishments;
 - (h) the equipment and utensils to be provided at pet meat processing establishments and the location, installation, size, construction, characteristics, operation and maintenance of that equipment and those utensils;
 - (i) the construction of the floors of chiller units in pet meat processing establishments;
 - (j) the handling and treatment of carcasses of source animals at pet meat processing establishments;
 - (k) the means by which pet meat processing establishments may or shall be allocated brands identifying themselves

- and belonging to the Department, and the fees, if any, payable in respect of those brands;
- (l) the use of brands referred to in paragraph (k) for the brand marking of pet meat processed in pet meat processing establishments to which those brands relate;
 - (m) the design, dimensions and other particulars of brands referred to in paragraph (k);
 - (n) the prohibition of the use of devices other than brands referred to in paragraph (k) for the brand marking of pet meat processed in pet meat processing establishments;
 - (o) the prohibition of the manufacture or possession of brands falsely purporting to be, or resembling, brands referred to in paragraph (k);
 - (p) the prohibition of the affixing or implantation, or the attempted affixing or implantation, or the causing or permitting of the affixing or implantation, of a brand mark to or in any pet meat unless the pet meat has been processed at a pet food processing establishment to which the relevant brand referred to in paragraph (k) has been allocated;
 - (q) the prohibition of the removal or defacing, or the attempted removal or defacing, or the causing or permitting of the removal or defacing, of any brand mark affixed to or implanted in any pet meat under those regulations;
 - (r) in the case of pet meat packed in closed cartons, the labelling of any such cartons and the information to be contained in the labels of any such cartons and the colouring and lettering of any such labels;
 - (s) in the case of pet meat packed in bulk in plastic bags, the sealing of any such plastic bags with tags, the information to be contained in any such tags and the colouring and lettering of any such tags;

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- (t) the prohibition of the removal of any pet meat from any pet meat processing establishment until the pet meat has been brand marked under those regulations;
- (u) the seizure and destruction of any pet meat not correctly identified by brand marking or labelling under those regulations;
- (v) the prohibition of the storage, handling or processing of the flesh of animals other than pet meat at a pet meat processing establishment;
- (w) the removal from any meat or carcass brand marked as fit for consumption by man of any such brand marking on the arrival of that meat or carcass at a pet meat processing establishment and the immediate brand marking of that meat or carcass as pet meat under those regulations;
- (x) the prohibition of the use of the word “butcher” or any name resembling or related to that word in connection with the premises of a pet meat processing establishment, or the use of any other word or expression implying or suggesting that those premises are not those of a pet meat processing establishment;
- (y) in the case of pet meat enclosed in casings, whether made of natural or artificial substances, the printing of statements on those casings;
- (z) the colour marking of carcasses of source animals used for pet food immediately after the removal of hide, skin or hair from those carcasses, including the distinctive colour marking of carcasses belonging to different kinds of source animals;
- (za) the recognition, if any, to be extended to the colour marking outside the State of carcasses of source animals brought into the State and used for pet meat;
- (zb) the inspection of pet meat in carcass or boneless form;
- (zc) the inspection of pet meat processing establishments;

- (zd) the registration of any body corporate, whether formed or incorporated, or taken to be registered (within the meaning of the *Corporations Act 2001* of the Commonwealth), in or outside the State, carrying on within the State the business of importing pet meat in carcass or boneless form into the State;
- (ze) the prohibition of the storage, handling or processing of pet meat otherwise than at a pet meat processing establishment registered under those regulations;
- (zf) the prohibition, except with the approval in writing of the Executive Director, Public Health, of the processing of pet meat derived from unhealthy source animals;
- (zg) the prohibition of the manufacture of pet food derived from animals which are not source animals;
- (zh) the brand marking and colour marking of pet meat exported from the State to any part of Australia outside the State and a requirement to notify the Executive Director, Public Health, before any such export takes place;
- (zi) the brand marking, colour marking and packing of pet meat exported from the State to any country outside Australia;
- (zj) the adoption by those regulations of the whole or any part of a law of another State or of a Territory or of the Commonwealth;
- (zk) the issue of certificates containing such details as are prescribed of consignments of pet meat exported from or imported into the State and the use to which any such certificate or copies thereof shall be put;
- (zl) the hygiene requirements to be observed by persons employed at pet meat processing establishments;
- (zm) the precautions to be taken in the storage, handling and dressing of carcasses of source animals at pet meat processing establishments, and in the preparation,

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- storage, handling and packing of pet meat or products derived therefrom at pet meat processing establishments;
- (zn) the duties of persons employed at pet meat processing establishments who are or may be suffering from disease or injury or are or may be carriers of disease and the precautions to be taken in respect of any such person;
 - (zo) the cleansing and disinfection of the clothing, equipment, furniture and areas used by or occupied by persons employed at pet meat processing establishments;
 - (zp) the precautions to be taken in connection with detergents, disinfectants and other cleansing or sanitizing agents used in pet meat processing establishments;
 - (zq) the prohibition of the preparation, processing or sale of pet meat on premises other than premises registered under those regulations;
 - (zr) the registration of shops at which pet meat is sold;
 - (zs) the fees payable in respect of the registration of knackeries, pet meat processing establishments and shops referred to in paragraph (zr); and
 - (zt) the forms to be used for the purposes of those regulations.
- (2) In subsection (1) —
- “knackery”** means establishment at which source animals are slaughtered and processed.

[Section 212B inserted by No. 80 of 1987 s. 63; amended by No. 10 of 2001 s. 96.]

Division 4 — Milk and dairy produce

[Heading inserted by No. 26 of 1985 s. 7.]

213. Interpretation in sections 214, 216 and 217

In sections 214, 216 and 217 —

“milk” includes cream.

[Section 213 inserted by No. 26 of 1985 s. 7.]

214. Contamination of milk

- (1) A person who —
- (a) sells, offers, or delivers for sale, keeps or has in his possession for sale, or supplies to any person —
 - (i) impure or unwholesome milk, or milk drawn from animals fed on unwholesome food or from animals affected with any disease of livestock, whether contagious, infectious, or otherwise, capable of causing the milk to become unwholesome for food; or
 - (ii) milk drawn from animals within 15 days before or 5 days after parturition;
 - (b) uses any milk referred to in paragraph (a) for human consumption;
 - (c) mixes any milk referred to in paragraph (a) with other milk intended for sale or for human consumption or for butter or cheesemaking;
 - (d) uses any milk referred to in paragraph (a)(i) for the food of swine or other animals; or
 - (e) allows any person suffering from any infectious or contagious disease to —
 - (i) milk any animal;
 - (ii) handle any vessel used for the reception of milk intended for sale or for human consumption;
 - (iii) take part or assist in the business of dairyman, cowkeeper or vendor of milk; or
 - (iv) be employed in a dairy,
- commits an offence.
- (2) It is not a defence to a prosecution under —
- (a) subsection (1)(a)(i) relating to an animal affected with any disease of livestock referred to therein to show that

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the accused did not know that that animal was so affected; or

- (b) subsection (1)(e) to show that the accused did not know that the person concerned was suffering from an infectious or contagious disease,

unless it is also shown that it was not practicable to discover by the exercise of reasonable diligence that that animal was so affected or that that person was so suffering, as the case requires.

[Section 214 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 64; No. 84 of 2004 s. 82.]

215. Dairy premises to be properly constructed

A local government may refuse to register or to renew the registration of any premises as a dairy, unless those premises are constructed in accordance with local laws made under section 342 as read with section 220(1).

[Section 215 inserted by No. 26 of 1985 s. 7; amended by No. 14 of 1996 s. 4.]

216. Supplier of milk to supply certain information in certain circumstances

- (1) A person who supplies milk obtained from other persons or from his dairy to customers shall, on the production to him of a certificate of a medical officer of health that —
- (a) an epidemic of infectious or contagious disease exists; or
- (b) the milk supplied by that person is suspected of causing disease,

furnish to the local government and, if so required, to the Executive Director, Public Health, a list of the names and addresses of his customers and, if the milk supplied by that person is obtained from other persons, a full statement of the names and addresses of those other persons.

- (2) A person who does not comply with a requirement of, or made under, subsection (1) commits an offence.

*[Section 216 inserted by No. 26 of 1985 s. 7; amended by
No. 80 of 1987 s. 65; No. 14 of 1996 s. 4.]*

217. Sale of milk

- (1) A person who sells or offers or delivers for sale any milk which has been carried over a milk round or any part thereof thereafter and returned to the dairy premises, milk depot or refrigerating or cooling chamber from which it was so carried commits an offence.
- (2) A person engaged in the carriage, delivery or sale of milk who has, at the same time and in the same vehicle, any water or skimmed milk commits an offence.
- (3) An environmental health officer may at any time search and inspect any vehicle used for or in connection with the carriage, delivery or sale of milk, and every part thereof, for the purpose of ascertaining whether or not any breach of subsection (2) has been or is being committed.
- (4) In any prosecution under this section with respect to the carriage, delivery or sale of milk, it shall be no defence that the accused is only the employee or agent of the owner of the milk, or is only entrusted for the time being with the milk by that owner, but that employee or agent and that owner shall both be liable.
- (5) If the accused in a prosecution referred to in subsection (4), being an employee or agent of the owner of the milk concerned, proves that he delivered that milk in the same state in which he received it from that owner, and without knowledge that the nature, substance or quality of the milk was injuriously affected, he may, notwithstanding that that owner has himself been convicted and fined, recover from that owner the amount of any penalty imposed on him as a result of conviction in respect of that prosecution, together with the costs paid, or to be paid, by him on that conviction, and those incurred by him in and about his defence thereto.

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- (6) If an employee or agent is convicted within the meaning of subsection (5), the court so convicting him may, if it thinks fit, suspend the operation of the penalty imposed on him for any period not exceeding 3 months to enable the accused to recover the amount of the fine and the costs from the owner of the milk concerned.

[Section 217 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 66; No. 59 of 1991 s. 5; No. 28 of 1996 s. 20 and 21; No. 59 of 2004 s. 141; No. 84 of 2004 s. 82.]

[218, 219. Repealed by No. 80 of 1987 s. 67.]

220. Local laws as to dairies

- (1) Local laws may be made in accordance with Part XIV (other than section 342(1)(b)) for all or any of the following purposes —
- (a) for the annual licensing of cowkeepers, dairymen and vendors of milk;
 - (b) for the annual registration of dairies, milk stores and milk shops;
 - (c) prohibiting the sale of milk except by licensed persons, and except from registered dairies, milk stores or milk shops;
 - (d) for the inspection of cattle bred or kept for dairying purposes and of dairy farms and grazing grounds, dairies, milk stores and milk shops, and prohibiting the use thereof if likely, in the opinion of a medical officer of health, to be injurious or dangerous to health by affecting the milk or otherwise;
 - (e) for preserving the health and good and cleanly condition of cattle kept at any dairy, and for the inspection and the testing for the presence of tuberculosis in and among the same, and empowering the local government to order the isolation or destruction of diseased cattle bred or kept for dairying purposes;

- (f) prescribing and regulating the situation, construction, lighting, ventilation, cleansing, paving, draining, and water supply of dairies, milk stores and milk shops;
 - (g) prescribing the precautions to be taken for protecting milk against infection or contamination;
 - (h) for the sterilisation and delivery of milk;
 - (i) for cleansing and disinfecting dairies, milk stores and milk shops, and for destroying or removing any diseased animals, and for removing any sick persons from the premises of any dairy, milk store or milk shop;
 - (j) for the prevention of the adulteration of milk and dairy produce;
 - (k) for temporarily prohibiting the sale of milk from dairies where animals are diseased or supposed to be diseased, or where persons are suffering, or supposed to be suffering, from an infectious disease, or if there are reasonable grounds for suspecting that the milk supply from those dairies is causing the spread of infectious disease;
 - (l) prescribing the fees to be paid for every annual licence and registration;
 - (m) defining areas within the district of the local government within which it shall not be lawful to establish and open dairies and prohibiting the establishment and opening of dairies in those areas.
- (2) The Governor may make regulations under section 341 providing for payment of such compensation as he may think just by the local government to the owner of any cattle destroyed under any local law made in accordance with subsection (1), and providing for such total or partial reimbursement of the local government as he may think just out of such moneys as may be provided by Parliament for that purpose.

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[Section 220 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 68; No. 14 of 1996 s. 4.]

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[Heading inserted by No. 26 of 1985 s. 7.]

221. Mixture of drugs, etc. with injurious ingredients and selling the same

- (1) Subject to subsection (2), a person who —
- (a) except for the purpose of compounding, as hereinafter described, mixes, colours, stains or powders, or orders or permits any other person to mix, colour, stain or powder, a drug with any ingredient or material so as to affect injuriously the quality or potency of the drug, with intent that the same may be sold in that state; or
 - (b) sells a drug mixed, coloured, stained or powdered with any ingredient or material so as to affect injuriously the quality or potency of the drug,

commits an offence.

- (2) A person shall not be liable to be convicted of an offence under this section in respect of the sale of any drug, if he shows, to the satisfaction of the court of summary jurisdiction, that he did not know of the drug sold by him being mixed, coloured, stained or powdered within the meaning of subsection (1), and that he could not with reasonable diligence have obtained that knowledge.

[Section 221 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 69; No. 59 of 2004 s. 141.]

222. Mixing for sale drugs to increase bulk

A person who, for purposes of sale, mixes or causes or permits to be mixed any ingredient or material with any drug in order

thereby fraudulently to increase its mass, bulk or measure, or to conceal its inferior quality, commits an offence.

[Section 222 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 70.]

223. Sale of drugs not of nature, substance and quality demanded

- (1) A person who —
- (a) sells any drug which is not of the nature, substance and quality of the drug demanded by the purchaser;
 - (b) sells any compounded drug which is not compounded of ingredients in accordance with the demand of the purchaser; or
 - (c) exposes for sale or deposits in any place for the purpose of sale or preparation for sale any drug, which is not of the standard referred to in section 229,
- commits an offence.
- (2) In any prosecution under this section, it shall not be a defence to prove that —
- (a) the purchaser bought only for examination or analysis; or
 - (b) the drug, though defective in nature or in substance or in quality, was not defective in all 3 respects.

[Section 223 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 71.]

224. Labelled description

- (1) A person who sells any drug shall deliver the same to the purchaser in its pure state, and in strict accordance with its labelled description (if any), and with the name under which it is sold, unless it is sold as a mixture, in which case the added ingredients shall be pure; and the fact of the admixture, with the names of the added ingredients, shall be distinctly and legibly written or printed on a label affixed to the outside of the

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containing vessel or parcel, or to the outside wrapper, of the drug.

- (2) Any person who contravenes subsection (1) commits an offence.

[Section 224 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 72.]

225. Employment of infected persons prohibited

- (1) A person who —
- (a) is suffering from any infectious or contagious disease; and
 - (b) engages or is employed in the manufacture, manipulation, preparation, handling, storage or sale of drugs,

commits an offence.

- (2) A medical officer may examine any person engaged or employed within the meaning of subsection (1) who is suspected of suffering from any infectious or contagious disease, and every such person who refuses to submit to such an examination on being required by a medical officer so do commits an offence.

[Section 225 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 73.]

226. Executive Director, Public Health, may examine and report on advertised drugs and appliances

- (1) The Executive Director, Public Health, may, at his own instance or at the request of a local government, cause to be examined for the purpose of ascertaining its composition and properties any drug or appliance which is advertised, exhibited or offered for sale, and shall compare the results of such an examination with any advertisement which relates to that drug or appliance, and with the price at which it is sold, and shall prepare and

forward to the Minister a report thereon, and that report may include any comment which the Executive Director, Public Health, thinks desirable in the public interest.

- (2) The Executive Director, Public Health, may, with the approval of the Minister, cause a report prepared and forwarded under subsection (1) to be published in —
- (a) the *Gazette*; and
 - (b) any newspaper or public print which circulates within the State,

and to be distributed among the public in any other way, and no action shall lie in respect of that publication.

- (3) The proprietor or manager of a newspaper or public print may republish any report which has been published by the Executive Director, Public Health, under subsection (2), and no action shall lie against that proprietor or manager in respect of that republication.
- (4) In this section —
- “appliance”** includes any instrument or contrivance which is advertised, exhibited or offered for sale as of use for curative purposes.

[Section 226 inserted by No. 26 of 1985 s. 7; amended by No. 14 of 1996 s. 4.]

227. Sample of drug may be obtained for analysis

- (1) A medical officer of health, environmental health officer or any other officer authorised in that behalf by the Executive Director, Public Health, or a local government (in this section called a **“competent officer”**) may procure a sample of a drug, and submit the same to an analyst.
- (2) If, when a competent officer applies to purchase a drug from any person having the same for sale, or from the employee or agent of such a person, and tenders the price for the quantity of the drug which he requires for the purpose of analysis, that

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person, or his employee or agent, refuses to sell the same, he, and also the employee or agent, if any, commits an offence.

- (3) A competent officer who purchases a drug with the intention of submitting the same to analysis (in this section called “**the purchaser**”) shall forthwith notify to the seller or his employee or agent selling the same his intention to have the same analysed, and shall offer to divide the drug so purchased into 3 parts to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature permits by the purchaser in the presence of the seller or his employee or agent, and, if the seller or his employee or agent so desires, with the seal or distinguishing mark of the seller or his employee or agent as well as that of the purchaser.
- (4) The purchaser shall, if the offer made by him under subsection (3) is accepted, proceed accordingly, and shall deliver one of the parts concerned to the seller or his employee or agent, retain another of those parts for future comparison and submit the third of those parts to an analyst, if he thinks it right to have the drug concerned analysed.
- (5) If the purchaser of the drug concerned has under subsection (3) notified the seller or his employee or agent selling the same of his intention to have the same analysed, he shall also, within 3 days after giving that notice, give a similar notice to the manufacturer of that drug, if that manufacturer is other than the seller and his name and address are known to the purchaser and he resides or carries on business within the State.
- (6) If the seller of a drug or his employee or agent, having accepted the offer of the purchaser under subsection (3) to divide the drug, prevents or attempts to prevent the completion of the proceedings prescribed by subsection (4), whether by departing from the place where the purchase was made or otherwise, then the purchaser may proceed as if the offer had not been accepted.
- (7) If the seller of a drug or his employee or agent does not accept the offer of the purchaser under subsection (3) to divide the drug, the analyst receiving the same shall divide it into 2 parts,

and shall seal or fasten up one of those parts, and cause it to be delivered to the purchaser, either when that analyst receives the drug or when he supplies his certificate to the purchaser, and the purchaser shall retain the part so delivered to him and produce the same if any proceedings are afterwards taken in the matter.

- (8) If an analyst does not reside within 3 kilometres of the residence of the person requiring a drug to be analysed for the purposes of this section, the drug may be forwarded to the analyst through a post office as a registered letter or packet, or by such other means or in such other manner or may be prescribed.
- (9) An analyst analysing a drug for the purposes of this section shall give a certificate of the result of his analysis and examination in the prescribed form, and in any proceedings before any court the production of a certificate purporting to be signed by that analyst shall be sufficient evidence of the identity of the drug analysed and of the result of that analysis, without proof of the signature of the person appearing to have signed the same.
- (10) Notwithstanding anything in subsection (9), the accused in any proceeding arising out of an analysis under this section may require the analyst concerned to be called as a witness, and the part of the drug concerned retained by the person who purchased the same to be produced.
- (11) A court hearing a prosecution or an appeal may cause a drug to be sent to an analyst to make an analysis or examination thereof and give a certificate to the court of the result.
- (12) The cost of any analysis or examination of a drug sent to an analyst under subsection (11) shall be paid as the court in its discretion directs.
- (13) A competent officer purchasing a drug under this section may require the seller to state his name and address, and, if default is made in complying with that requirement, the seller commits an offence.
- (14) In any prosecution under this Division proof of non-compliance, or failure to prove compliance, on the part of a competent officer with any of the provisions of this section which ought to

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have been complied with by him shall not entitle the accused to have the prosecution dismissed or prevent his conviction unless he shall show that the non-compliance has in fact prejudiced him.

[Section 227 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 74; No. 59 of 1991 s. 5; No. 14 of 1996 s. 4; No. 28 of 1996 s. 20; No. 84 of 2004 s. 80 and 82.]

228. Power of medical officer of health, environmental health officer, etc., in relation to drugs

- (1) Any medical officer of health, or environmental health officer, or any other officer authorised in that behalf by the Executive Director, Public Health, or a local government (in this section called “**the competent officer**”) may, in the exercise of the powers conferred on him by this Division —
 - (a) at all reasonable hours have access to all public or private salerooms occupied or used by merchants, brokers, wholesale dealers or other persons, and to all public and private warehouses, factories, stores, quays, sheds, ships or barges where drugs are offered for sale, or deposited for the purpose of sale, and seize or procure samples of any drugs so offered for sale;
 - (b) seize or procure samples of any drugs at their place of delivery, or at any railway station or other place during transit, or on the premises of or elsewhere in the possession of any person for the purpose of carriage;
 - (c) seize on board any vessel or procure at the port of entry or elsewhere samples of any drugs imported as merchandise;
 - (d) seize or procure samples of any drug which the competent officer may suspect to have been sold or to be intended to be sold as a drug with the standard appointed for which it is not in conformity;

- (e) for any purpose referred to in paragraph (a), (b), (c) or (d), open any package in which any drugs referred to in that paragraph may be contained.
- (2) A person having the possession, custody or control of any drug referred to in subsection (1) who refuses to permit samples to be seized or procured under that subsection commits an offence.
- (3) A competent officer who seizes or procures under subsection (1) a sample of a drug which is consigned to any person shall forthwith divide that sample into 3 parts, and shall deliver or forward one of the parts to the consignor, if he resides or carries on business in the State, and his name and his address within the State appear on the package containing the drug, but if he does not reside or carry on business in the State or his name and address do not so appear, the part shall be delivered or forwarded by the competent officer to the consignee.
- (4) A competent officer who has delivered or forwarded one part of a sample under subsection (3) shall retain one of the other 2 parts of the sample for future comparison, and shall submit the third part thereof to an analyst, if he thinks it right to have that third part analysed.
- (5) In addition to complying with subsections (3) and (4), a competent officer shall, within 3 days after seizing or procuring the sample concerned, give to the manufacturer of the drug concerned, if that manufacturer is other than the consignor and his name and address are known to the competent officer and he resides or carries on business within the State, notice in writing of the intention of the competent officer to submit the third part of that sample to an analyst.
- (6) Whenever it is desired to forward any portion of a sample under this section, that portion may be sent through a post office as a registered letter or packet, or by such other means or in such other manner as may be prescribed.
- (7) A competent officer who seizes or procures under this section a sample of a drug which is not consigned to any person shall

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submit the whole sample to an analyst if he thinks it right to have the same analysed.

(8) Section 227(8), (9), (10), (11), (12) and (14) shall be deemed to be repeated in this section (with the words “seized or procured” substituted for the word “purchased” in subsection (10) of that section), and shall have effect in connection with the foregoing provisions of this section accordingly.

(9) In this section —

“**package**” includes parcel, box, barrel, basket, bag, case or tin.

[Section 228 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 75; No. 59 of 1991 s. 5; No. 14 of 1996 s. 4.]

229. The appointed standard or *The British Pharmacopoeia* to be standard

(1) In every proceeding under this Act with respect to any drug, the standard settled and appointed by regulations under this Act shall be the standard, or if no such standard shall have been settled and appointed in respect of any drug, the pharmacopoeia as defined by *The British Pharmacopoeia* shall be taken as the standard.

(2) A purchaser of a drug for which a standard referred to in subsection (1) exists shall, in the absence of proof to the contrary, be deemed to have demanded the standard quality of that drug.

(3) A drug for which a standard referred to in subsection (1) exists shall, for the purposes of this Act, be deemed to be pure if it is in conformity with that standard.

[Section 229 inserted by No. 26 of 1985 s. 7.]

230. Right of recourse by accused in certain cases

If the accused in any prosecution under this Act for the sale of a drug, having purchased the drug, proves that he sold it —

- (a) in the state in which he received it from the person from whom he purchased it; and
- (b) without knowledge that —
 - (i) the nature, substance, or quality of the drug was not that of the drug demanded by the purchaser;
 - (ii) any ingredient or material had been mixed with the drug contrary to any provisions of this Act;
 - (iii) the drug was unfit for human consumption or use; or
 - (iv) otherwise any provisions of this Act with regard to the nature, substance, quality or labelling of the drug had been contravened,

as the case requires, he may recover, in any court of competent jurisdiction, from the person from whom he purchased the drug, the amount of any penalty imposed on him on conviction as a result of that prosecution, together with the costs thereof, paid or payable by him on his conviction, and those paid or payable by him in and about his defence thereto; and the court that imposes that penalty on him may suspend the operation of that penalty for any period not exceeding 3 months to enable him to recover, as hereinbefore provided, from the person from whom he purchased the drug.

[Section 230 inserted by No. 26 of 1985 s. 7; amended by No. 84 of 2004 s. 82.]

231. Responsibility of manufacturer as well as that of seller of drugs

- (1) In this section —
 - “**deficient product**” means manufactured drug, which, when sold by its manufacturer, is not —
 - (a) of the quality, nature, substance, degree of purity, standard or composition;
 - (b) free from admixture, colouring, staining, powder, ingredient, material or substance; or

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(c) labelled,
as required by this Act;

“manufacturer” means manufacturer of a deficient product;

“vendor” means person who, not being a manufacturer or wholesaler, sells a deficient product whether he purchases it directly or indirectly from its manufacturer or wholesaler or otherwise.

- (2) A person who sells a deficient product commits an offence.
- (3) When in the district of a local government a vendor commits an offence under subsection (2), the local government may —
- (a) prosecute the vendor, or the manufacturer, or both of them; or
 - (b) the vendor or the wholesaler, or both of them,
- as the case requires, for their respective offences under that subsection.
- (4) Notwithstanding that anything constituting or partly constituting the sale by the manufacturer or wholesaler of a deficient product was done or omitted, or caused to be done or omitted, by that manufacturer or wholesaler elsewhere than in the district of a local government, the local government may prosecute that manufacturer or wholesaler for an offence under subsection (2) in all respects as if the sale had been effected in that district by that manufacturer or wholesaler.
- (5) When a prosecution for an offence under subsection (2) is instituted against both the vendor and the manufacturer or both the vendor and the wholesaler, the local government concerned may, notwithstanding Schedule 1 clause 2(2) and (3) of the *Criminal Procedure Act 2004*, join both matters in the one prosecution notice.
- (6) The provisions of this section do not derogate from those of section 230.

*[Section 231 inserted by No. 26 of 1985 s. 7; amended by
No. 80 of 1987 s. 76; No. 14 of 1996 s. 4; No. 59 of 2004 s. 141;
No. 84 of 2004 s. 78.]*

232. Liability of agent or employee

- (1) In any prosecution for an offence under this Act in respect of the sale of a drug, it shall be no defence that the accused is only the agent or employee of the owner of or person dealing in the drug or having the same for sale, but the agent or employee and that owner or person shall both be liable.
- (2) Notwithstanding anything in subsection (1), it shall be a defence in a prosecution referred to in that subsection if the accused, being an employee referred to in that subsection, proves that the offence concerned was committed in a store, shop, stall or other similar place in which business was, at the time of the commission of that offence, conducted under the personal superintendence of some other person.
- (3) If the accused in a prosecution referred to in subsection (1), being an agent or employee referred to in that subsection, proves that he sold the drug concerned without knowledge that —
 - (a) the nature, substance or quality of that drug was not that of the drug demanded by the purchaser;
 - (b) any ingredient or material had been mixed with that drug contrary to any provisions of this Act;
 - (c) that drug was unfit for human consumption or use; or
 - (d) otherwise any provisions of this Act with regard to the nature, substance, quality or labelling of that drug had been contravened,

as the case requires, he may, notwithstanding that his principal or employer has been convicted and fined, recover in any court of competent jurisdiction from his principal or employer the amount of any penalty imposed on him on conviction as a result of that prosecution, together with the costs thereof paid or

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payable by him on his conviction, and those paid or payable by him in and about his defence to that prosecution.

- (4) When an agent or employee has been convicted of an offence referred to in subsection (1) the court may, if it thinks fit, suspend the operation of the penalty imposed on that conviction for any period not exceeding 3 months to enable him to recover from his principal or employer the penalty and costs referred to in subsection (3).

[Section 232 inserted by No. 26 of 1985 s. 7; amended by No. 28 of 1996 s. 20; No. 84 of 2004 s. 82.]

233. Unfit drug may be destroyed

Whenever, after the conviction of a person for an offence under this Act in respect of the selling of a drug, the court of summary jurisdiction is of opinion that the drug is unfit for use as a drug, it may order the drug to be forfeited and to be destroyed or otherwise disposed of as it thinks fit.

[Section 233 inserted by No. 26 of 1985 s. 7; amended by No. 59 of 2004 s. 141.]

234. Importation of adulterated drugs, etc.

- (1) The consignee or other person having the custody of a drug imported into the State who does not permit any medical officer of health, environmental health officer or any other officer authorised in that behalf by the Executive Director, Public Health, or the local government to take such samples of any such consignment as may be necessary for the enforcement of the provisions of this Act commits an offence.
- (2) When an officer referred to in subsection (1) takes a sample of a consignment referred to in that subsection, he shall divide it into 3 parts, deliver or send one of the parts to the consignee or his agent, retain one of the parts for future comparison and submit the third part to an analyst or to a bacteriologist or pathologist appointed under section 6 of the *Health Legislation Administration Act 1984*.

- (3) If on analysis or examination a sample submitted to an analyst or bacteriologist or pathologist under subsection (2) is found to be adulterated or impoverished, or if it has been mixed with any other substance, or if any part of it has been abstracted so as in any case to affect injuriously its quality, substance or nature, the drug from which that sample was taken shall not be delivered to the consignee except with the sanction of the Executive Director, Public Health, and subject to such terms and conditions as he thinks fit to impose.

[Section 234 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 77; No. 59 of 1991 s. 5; No. 14 of 1996 s. 4.]

235. Drugs may be declared dangerous by Executive Director, Public Health

- (1) If the Executive Director, Public Health, is of opinion that any quantity of a drug, even if it is correctly administered, would or may in the circumstances be injurious or dangerous to health, owing to some extraneous matter being by mistake or fraudulently mixed with the drug in the process of preparation, deterioration of the drug, chemical change in the drug or for any other reason whatsoever, the Executive Director, Public Health, may, with the approval of the Minister, declare that the quantity of the drug is dangerous.
- (2) While a declaration made under subsection (1) is in force, the Executive Director, Public Health, may from time to time order in writing the owner or person having possession of the drug concerned to —
- (a) secure that drug in a safe place and ensure that it is not removed from his possession or used or sold;
 - (b) deliver up that drug to a person specified in that order at a place, and within a time, so specified; or
 - (c) do such things in relation to that drug as the Executive Director, Public Health, deems necessary for the protection of the public health and specifies in that order,

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but before any action is taken under paragraph (b) or (c) the Executive Director, Public Health, shall give 7 days' notice in writing to the wholesaler or manufacturer of that drug of his intention to exercise his powers under that paragraph.

- (3) When the Executive Director, Public Health, is of opinion that the drug to which a declaration under subsection (1) relates is no longer dangerous or injurious to health, he shall forthwith give notice of the fact to the owner of that drug and revoke any order made by him under subsection (2) relating to that drug, but if at any time after a period of 30 days of the date of the making of such an order the Executive Director, Public Health, is of the opinion that that drug is still dangerous or injurious to health he may destroy or otherwise dispose of it as he thinks fit.
- (4) The Executive Director, Public Health, may at any time revoke a declaration made under subsection (1).
- (5) A person shall not be entitled to any compensation either from the Crown or the Executive Director, Public Health, by reason of anything done, or the destruction of or damage to or loss of value of any drugs as a result of any action taken, in accordance with an order made by the Executive Director, Public Health, under subsection (2) or as a result of any action taken by the Executive Director, Public Health, under subsection (3).

[Section 235 inserted by No. 26 of 1985 s. 7.]

236. False trade description of drug

- (1) A person who sells, or exchanges, or offers, stores, keeps, exposes, advertises or delivers for sale or exchange, or authorises, directs or allows the sale or exchange of any drug —
 - (a) to which a false trade description is applied; or
 - (b) which bears a description which, or the advertised description of which, is misleading, or which, if relied on, might cause injury or danger to health,

commits an offence.

- (2) A trade description shall be deemed, for the purposes of subsection (1), to be applied to a drug, if it is —
- (a) applied to the drug itself;
 - (b) applied to any covering, label, reel or thing used in connection with the drug; or
 - (c) applied to the drug by way of advertisement.
- (3) In subsection (2) —
- “advertisement”** includes statements made in circulars or pamphlets, whether issued with the drug concerned or not;
- “covering”** includes any stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper;
- “label”** includes any band or ticket.
- [Section 236 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 78.]*

Division 6 — Medicines and disinfectants

[Heading inserted by No. 26 of 1985 s. 7.]

237. Sale of patent or proprietary medicines may be prohibited

- (1) The Executive Director, Public Health, may, from time to time, on the advice of the Drug Advisory Committee, prohibit the sale of any patent or proprietary medicine which, in the opinion of the Drug Advisory Committee, is deleterious or dangerous to health.
- (2) A person who sells, or offers to sell, or advertises for sale, or has in his possession for sale, any patent or proprietary medicine, the sale of which has been prohibited under subsection (1), commits an offence.
- (3) In this section —
- “patent or proprietary medicine”** means medicine or medicinal preparation for external or internal use which —

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- (a) the maker or vendor has any exclusive right to make under the authority of letters patent; or
- (b) is recommended to the public by advertisement, price list, handbill or label for the prevention, cure or relief of any malady or disorder incident to or otherwise affecting the human body.

[Section 237 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 79.]

238. Publication of false statements concerning medicines, etc.

- (1) A person who publishes, or causes to be published, any statement which is intended by the person or any other person to promote the sale of an article as a medicine, preparation or appliance for the prevention, alleviation or cure of any human ailment or physical defect, and which is false in any material particular relating to the ingredients, composition, structure, nature or operation of the article, or to the effects which have followed, or may follow, the use thereof, commits an offence.
- (2) A statement shall be deemed to be published within the meaning of this section if it is —
 - (a) inserted in any newspaper printed and published in the State;
 - (b) publicly exhibited in view of persons in any road, street or other public place;
 - (c) contained in any document which is —
 - (i) sent to any person through the post office;
 - (ii) gratuitously delivered to any person; or
 - (iii) left on premises in the occupation of any person;or
 - (d) made and knowingly communicated by spoken word or transmission of sound or light or partly by each.
- (3) Subject to subsection (4), if any statement referred to in subsection (1) is published in a newspaper printed and published

in the State, the printer, publisher and proprietor of that newspaper severally, and without excluding the liability of any other person, commit an offence.

- (4) A prosecution shall not be instituted against the printer, publisher or proprietor of any newspaper printed and published in the State for the publication of any statement referred to in subsection (1), unless within the period of 3 months immediately preceding the day of the publication thereof a warning has been delivered to that printer, publisher or proprietor, as the case requires, under the hand of the Executive Director, Public Health, that that statement, or some other statement substantially to the same effect, is false within the meaning of that subsection, and that the publication thereof is an offence.
- (5) Subject to subsection (6), a person who sells, or offers for sale, or has in his possession for sale, any newspaper or publication published outside the State containing any statement which is intended or apparently intended to promote the sale of an article as a medicine, preparation or appliance for the prevention, alleviation or cure of any human ailment or physical defect, and which is false in any material particular relating to the ingredients, composition, structure, nature or operation of the article, or to the effects which have followed, or may follow, the use thereof commits an offence.
- (6) A prosecution shall not be instituted against any person for an offence under subsection (5), unless within the 3 months immediately preceding the day on which the newspaper or publication concerned came into his possession he has been warned by the Executive Director, Public Health, of the falsity within the meaning of that subsection of that statement or of some other statement substantially to the same effect, and that the sale, offering for sale or possession for sale of that newspaper or publication is an offence.

[Section 238 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 80.]

239. Application of section 227 to disinfectants and pesticides

The provisions of section 227 apply to disinfectants and pesticides in all respects as if they were drugs, but if a disinfectant or a pesticide is contained in packages it shall be a sufficient compliance with the provisions of subsection (3) of that section if, instead of a division into 3 parts, 3 unopened packages are purchased, in which case each such package shall be regarded as a division of the disinfectant or pesticide into one-third, and shall be marked and sealed or fastened in accordance with the provisions of that subsection.

[Section 239 inserted by No. 26 of 1985 s. 7.]

240. Disinfectants, etc.

- (1) A person who sells or exposes for sale any substances or compound under the name or description of, or with intent that the same may be used as, a disinfectant, deodoriser, germicide, insecticide, preservative, antiseptic, sanitary powder or sanitary fluid, without disclosing the names or name of those substances or that compound and the percentage of the active ingredients contained in the same by a label distinctly and legibly written or printed on or with those substances or that compound, commits an offence.
- (2) The provisions of this Act relating to the analysis or examination or labelling of drugs shall apply to all substances and compounds referred to in subsection (1).

[Section 240 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 81.]

241. False trade description of disinfectant

- (1) A person who sells, or exchanges, or offers, stores, keeps, exposes, advertises, or delivers for sale or exchange, or authorises, directs, or allows the sale or exchange of any disinfectant —
 - (a) to which a false trade description is applied; or

- (b) which bears a description which, or the advertised description of which, is misleading, or which, if relied on, might cause injury or danger to health,
commits an offence.
- (2) A trade description shall be deemed, for the purposes of subsection (1), to be applied to a disinfectant, if it is —
- (a) applied to the disinfectant itself;
 - (b) applied to any covering, label, reel or thing used in connection with the disinfectant; or
 - (c) applied to the disinfectant by way of advertisement.
- (3) In subsection (2) —
- “advertisement”** includes statements made in circulars or pamphlets, whether issued with the disinfectant concerned or not;
- “covering”** includes any stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper;
- “label”** includes any band or ticket.

[Section 241 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 82.]

Division 7 — Manufacture of therapeutic substances

[Heading inserted by No. 26 of 1985 s. 7.]

242. Therapeutic substances to be manufactured on licensed premises

- (1) A person shall not manufacture for sale any therapeutic substance unless the therapeutic substance is manufactured on premises which are licensed by the Executive Director, Public Health, for the purpose.

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- (2) An application for a licence in respect of premises shall be made —
- (a) to the Executive Director, Public Health, by a person who manufactures a therapeutic substance for sale; and
 - (b) in the prescribed form accompanied by the prescribed fee,

and the Executive Director, Public Health, may grant or refuse that application.

- (3) A person who manufactures for sale a therapeutic substance on any premises, other than premises which are licensed under this Division, commits an offence and is liable to a penalty not exceeding \$2 500.

[Section 242 inserted by No. 26 of 1985 s. 7.]

243. Duration of licences and licences to stipulate premises and be subject to conditions

A licence granted by the Executive Director, Public Health, under section 242(2) —

- (a) shall specify the premises to which it relates;
- (b) may be renewed from time to time by the Executive Director, Public Health, for a period of 12 months from the date of renewal;
- (c) shall continue in force, unless sooner suspended or revoked under this section, for a period of 12 months from the date of issue or renewal;
- (d) may be granted or renewed subject to such conditions and limitations as the Executive Director, Public Health, considers necessary for the proper production of the therapeutic substances to be manufactured on the premises the subject of that licence;
- (e) may specify the therapeutic substances which may alone be manufactured on the premises the subject of that licence;

- (f) may be suspended for such time as the Executive Director, Public Health, thinks fit or revoked, if in the opinion of the Executive Director, Public Health —
- (i) the manufacturer of a therapeutic substance has not complied with any condition attached to the licence of the premises whereon the therapeutic substance is being or is manufactured; or
 - (ii) for any reason the premises, apparatus, processes, materials or staff used or employed in the manufacture of a therapeutic substance have become inadequate, obsolete or unsuitable, as the case requires, or do not comply with the prescribed standards having regard to the nature of the therapeutic substance being manufactured for sale on those premises.

[Section 243 inserted by No. 26 of 1985 s. 7.]

244. Review of decision of Executive Director, Public Health

- (1) A person aggrieved by a decision of the Executive Director, Public Health, refusing to grant or renew a licence or suspending or revoking a licence may apply to the State Administrative Tribunal for a review of the decision.

[(2) repealed]

[Section 244 inserted by No. 26 of 1985 s. 7; amended by No. 55 of 2004 s. 488.]

245. Regulations as to therapeutic substances

- (1) The Governor on the advice of the Drug Advisory Committee may make regulations under section 341 prescribing forms and fees and other matters and things which appear to him to be necessary or convenient for the protection of health in relation to therapeutic substances, including regulating the manufacture, preparation, packaging, labelling, storage, carriage, distribution, sale or use of therapeutic substances, prescribing a substance or

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compound to be a therapeutic substance when used for a prescribed purpose and prescribing the purpose and prescribing a substance or compound to be a therapeutic substance.

- (2) The regulations made under section 341 as read with subsection (1) may prescribe a penalty not exceeding \$2 500 for a breach of any regulation thereof.

[Section 245 inserted by No. 26 of 1985 s. 7.]

Division 8 — Pesticides

[Heading inserted by No. 26 of 1985 s. 7.]

246. Interpretation in Division 8

In this Division, unless the context requires otherwise —

“the Pesticides Advisory Committee” means the Pesticides Advisory Committee referred to in section 246B.

[Section 246 inserted by No. 26 of 1985 s. 7.]

246A. Crown bound, but *Pharmacy Act 1964* and *Poisons Act 1964* not affected by Division 8

- (1) This Division binds the Crown in right of the State.
- (2) Nothing in subsection (1) affects the question whether or not the Crown in right of the State is bound by any provision of this Act outside this Division.
- (3) The provisions of this Division do not affect the provisions of the *Pharmacy Act 1964* or the *Poisons Act 1964*.

[Section 246A inserted by No. 80 of 1987 s. 84.]

246B. Pesticides Advisory Committee

- (1) The Pesticides Advisory Committee which was, immediately before the coming into operation of the *Health Amendment Act 1985*¹, appointed by the Minister under section 241C as section 241C existed immediately before that coming into

operation is hereby preserved and continued in existence under this Act.

- (2) The Pesticides Advisory Committee shall consist of 6 members of whom —
- (a) one shall be the Executive Director, Public Health, or a medical officer nominated by the Executive Director, Public Health;
 - (b) one shall be the Director of the Chemistry Centre (WA) or an analyst from the Chemistry Centre (WA) nominated by the Director;
 - (c) one shall be the Director of Agriculture or an officer of the Department of Agriculture nominated by the Director of Agriculture;
 - (d) one shall be the person who is for the time being holding the office of Secretary of the Pesticides Advisory Committee under subsection (7);
 - (e) one shall be the chief executive officer of the Department within the meaning of the *Environmental Protection Act 1986* or an officer of that department nominated by the chief executive officer; and
 - (f) one shall be the chief executive officer of the department within the meaning of the *Occupational Safety and Health Act 1984*, or an officer of that department nominated by the chief executive officer,

together with such person or persons as the regular members may for the time being co-opt to advise the Pesticides Advisory Committee on the pesticides industry.

- (3) The Executive Director, Public Health, or the medical officer referred to in subsection (2)(a), as the case requires, shall be the Chairman of the Pesticides Advisory Committee (in this section called “**the Chairman**”).
- (4) The Minister may appoint a deputy for a regular member and, at any meeting of the Pesticides Advisory Committee at which the

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regular member is not present but his deputy is present, his deputy shall have all the functions of the regular member.

- (5) Those members of the Pesticides Advisory Committee and their deputies who were appointed by the Minister and who held office immediately before the coming into operation of the *Health Amendment Act 1985*¹ shall, subject to this section, continue in office until the expiry of the respective terms of their appointments.
- (6) At any meeting of the Pesticides Advisory Committee —
- (a) the Chairman, or in his absence, his deputy shall preside, but if neither the Chairman nor his deputy is present the other regular members present shall elect one of their number to preside;
 - (b) each regular member present and, in relation to matters in respect of which he is co-opted under subsection (2), each co-opted member present has a deliberative vote and, in the event of an equality of votes, the person presiding at that meeting shall also have a second or casting vote; and
 - (c) any 2 regular members constitute a quorum.
- (7) The Minister shall appoint a person to the office of Secretary of the Pesticides Advisory Committee, but that office may be held in conjunction with any other office under Part 3 of the *Public Sector Management Act 1994*.
- (8) Each member may be paid such attendance fees as are prescribed in his case.
- (9) In this section —
- “**co-opted member**” means person co-opted under subsection (2);
 - “**member**” means regular member or co-opted member;
 - “**regular member**” means person referred to in subsection (2)(a), (b), (c) or (d).

*[Section 246B inserted by No. 26 of 1985 s. 7; amended by
No. 32 of 1994 s. 3(2); No. 28 of 1996 s. 13.]*

246BA. General powers of Pesticides Advisory Committee

Subject to section 246C, the Pesticides Advisory Committee may —

- (a) advise the Executive Director, Public Health, on any matter whatsoever concerning pesticides, whether that matter is referred to it by the Executive Director, Public Health, or not;
- (b) consider and adopt or reject wholly or in part any recommendations made in relation to pesticides by a body prescribed for the purposes of this paragraph; or
- (c) exercise any power or perform any duty conferred or imposed on it by regulations made under section 341 as read with section 246C.

[Section 246BA inserted by No. 80 of 1987 s. 85.]

246C. Regulations relating to pesticides

- (1) The Governor on the advice of the Pesticides Advisory Committee may make regulations under section 341 —
 - (a) prescribing a substance or compound to be a pesticide;
 - (b) prescribing forms and fees (including fees payable in respect of applications for registration or licences or in respect of the analysis or examination of pesticides);
 - (c) providing for the registration by the Executive Director, Public Health, of pesticides and labels relating thereto and for the imposition by him of conditions on any such registration;
 - (d) prohibiting the registration by the Executive Director, Public Health, of any pesticide in respect of which a body prescribed for the purposes of section 246BA(b) has recommended against the use of that pesticide;

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- (e) regulating or prohibiting the manufacture, preparation, packaging, labelling, storage, carriage, distribution, sale and use of pesticides;
- (f) regulating or prohibiting the advertising of pesticides;
- (g) requiring disclosure by an applicant for the registration of a pesticide of the composition of the pesticide and of other information relevant to his application;
- (h) requiring disclosure by an applicant for the licensing of a person or firm in respect of the use of pesticides of information relevant to his application;
- (i) regulating the disposal of pesticides and used pesticide containers;
- (j) providing for the registration by the Executive Director, Public Health, of firms in respect of the undertaking or carrying out of fumigation and for the imposition by him of conditions on any such registration;
- (k) providing for the licensing by the Executive Director, Public Health, of persons in respect of the carrying out of fumigation and for the imposition by him of conditions on the granting by him of any such licence;
- (l) providing for the registration by the Executive Director, Public Health, of firms carrying on the trade, business or profession of the use of pesticides for reward and for the imposition by him of conditions on any such registration;
- (m) providing for the licensing by the Executive Director, Public Health, of persons in respect of the use of pesticides for reward as pesticide operators or provisional pesticide operators and for the imposition by him of conditions on the granting by him of any such licence;
- (n) prescribing the qualifications required of applicants for licensing as pesticide operators or provisional pesticide operators;

- (o) prescribing the records to be kept by firms registered or persons licensed under regulations made under section 341 as read with this section;
- (p) requiring the notification to the Executive Director, Public Health, of accidents involving the use of pesticides;
- (q) enabling the Executive Director, Public Health, to require persons using pesticides to submit themselves to medical examinations or tests for the purpose of ascertaining the effect on their health of exposure to pesticides;
- (r) setting standards for the composition of pesticides;
- (s) prohibiting persons from adulterating any pesticide, or having in their possession for sale any pesticide which has been adulterated, by the admixture of any foreign substance;
- (t) prescribing standards of the amount of deterioration or variation from nominal strength, if any, to be permitted in any pesticide;
- (u) prescribing methods of analysis and examination (either exclusive or optional) whereby the composition, quality or conformity or want of conformity with a prescribed standard of any pesticide shall or may be ascertained;
- (v) requiring any pesticide to be labelled, prescribing what information relating to the pesticide should be set out on its label, prohibiting the use on its label of any particular words or expressions, regulating generally the wording, printing, size, colour and styles of labels of pesticides to be used under this Act, prohibiting the sale (except to an officer appointed under section 6 of the *Health Legislation Administration Act 1984* demanding a sample of the pesticide concerned under this Act) of any pesticide which is not labelled in accordance with this Act, and granting conditional exemption from any requirement of regulations so made relating to the

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- labelling of any pesticide and prescribing the conditions of that exemption;
- (w) preventing the adulteration or contamination of pesticides and prohibiting the sale (except to an officer appointed under section 6 of the *Health Legislation Administration Act 1984* demanding a sample of the pesticide concerned under this Act) of any pesticides not in conformity with a prescribed standard;
 - (x) providing for the isolation or removal of pesticides which are or may be hazardous; and
 - (y) prescribing all matters that are required or permitted by this Division to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Division or for the protection of health in relation to pesticides.
- (2) Nothing in subsection (1)(d) affects any power conferred by regulations made under section 341 as read with this section on the Executive Director, Public Health, to register or refuse to register any pesticide or label relating thereto.

[Section 246C inserted by No. 80 of 1987 s. 86.]

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[Heading inserted by No. 26 of 1985 s. 7.]

246D. Regulations as to Part VIIA

- (1) The Governor on the advice of the Drug Advisory Committee may from time to time make regulations under section 341 —
- (a) prescribing the fees to be paid by analysts applying to be registered under section 203;
 - (b) prescribing the fees to be paid by persons for the analysis or examination of drugs or disinfectants;
 - (c) for the taking of samples of drugs and disinfectants, and for the examination or analysis thereof;

- (d) settling and appointing standards for the composition of drugs and disinfectants, and the amount of dilution, if any, to be allowed in the sale by retail of any drugs;
- (e) prohibiting persons having in their possession for sale any drug or disinfectant which has been adulterated by the admixture of any foreign substance;
- (f) prohibiting the manufacture, sale and offering for sale of any textile substance or leather —
 - (i) which is intended for, or is capable of being used in, wearing apparel for use by man; and
 - (ii) which contains arsenic, lead, antimony or barium in any form or compound;
- (g) settling and appointing standards of the amount of deterioration or natural poverty, if any, in any drug to be permitted without prosecution under the provisions of this Act;
- (h) settling and appointing methods of analysis and examination (either exclusive or optional) whereby the composition, quality or conformity or want of conformity to standard of any drug shall or may be ascertained;
- (i) ordaining that any drug shall be labelled;
- (j) prescribing what information relative to a drug shall be set out on its label, and prohibiting the use on such a label of any particular words or expressions;
- (k) prohibiting the sale (except to an environmental health officer or public health official demanding a sample of the drug concerned under the authority of this Act) or offering or exposing for sale of any drug which is not labelled as prescribed;
- (l) granting conditional exemption from any requirement of the regulations regarding labelling in respect of any drug and prescribing the conditions of such an exemption;

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- (m) regulating marks to be applied to drugs or disinfectants deemed by the Executive Director, Public Health, wholesome or effective, and prescribing the fees to be paid for the inspection and marking of drugs or disinfectants;
 - (n) discriminating in respect of labelling between drugs supplied on the order of a medical practitioner within the meaning of section 3 of the *Medical Act 1894* or by a pharmaceutical chemist and drugs not so supplied;
 - (o) for the prevention of adulteration or contamination of drugs and disinfectants, and for the prohibition of the sale (except to an environmental health officer or other officer demanding a sample of a drug or disinfectant under the authority of this Act) or offering or exposure for sale of drugs or disinfectants not in conformity with the prescribed standard; and
 - (p) generally for all other matters and things necessary to give effect to this Part.
- (2) The Governor may from time to time make regulations under section 341 —
- (a) regulating the sale, offer or exposure for sale, movement and storage of meat and, without limiting the generality of the foregoing —
 - (i) providing for meat that is slaughtered for food or imported for food to be inspected to determine whether it is wholesome and appointing places at which meat may be exhibited for that inspection;
 - (ii) imposing rates of fees for the purpose of recovering the costs of carrying out inspections of meat for the purposes of the regulations, which rates may vary according to the class, description or kind of inspection carried out, and prescribing the persons by whom and to whom and the places and times where and when those fees shall be paid;

- (iii) prescribing marks and brands to be applied to meat inspected for the purposes of the regulations;
- (iv) prohibiting the sale, or the offer or exposure for sale, within any prescribed district or prescribed part of a district, of meat that —
 - (A) is not accompanied by a certificate evidencing that it has been inspected for the purposes of the regulations and passed as wholesome; or
 - (B) is not marked or branded with prescribed marks or brands in accordance with the regulations;
- (b) requiring persons who in any shops, vehicles or places exhibit meat that is or has been frozen for sale or have it in their possession for sale to cause notices of that fact to be legibly printed and conspicuously displayed to the satisfaction of an environmental health officer on or in those shops, vehicles or places and to keep and maintain those notices conspicuously displayed thereon or therein during the whole time that any such meat is exhibited or kept therein; and
- (c) generally for all other matters and things necessary to give effect to this Part.

[Section 246D inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 87; No. 59 of 1991 s. 5; No. 28 of 1996 s. 21.]

246E. Offence in case of uncertificated, unmarked or unbranded meat

A person commits an offence if, in a district or part of a district in which a regulation made under section 341 as read with section 246D(2)(a)(iv) is in force, he sells or offers or exposes for sale, or supplies or offers to supply for reward, any meat, or prepared article of food, which consists wholly or partly of meat

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from a carcass which has not been marked or branded as required by that regulation.

[Section 246E inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 88.]

246F. Meat inspection fees

- (1) In this section and sections 246FA and 246FB —
“**the meat inspection regulations**” means the regulations in force from time to time under section 341 as read with section 207D or 246D(2)(a).
- (2) The rates of fees prescribed in respect of any class, description or kind of inspections carried out for the purposes of the meat inspection regulations shall be fixed so that as nearly as may be the proceeds thereof do not exceed the costs of carrying out such inspections.
- (3) No fee shall be payable in respect of an inspection for the purposes of the meat inspection regulations unless the inspection is carried out by an officer appointed under section 6 of the *Health Legislation Administration Act 1984* or section 27.
- (4) The proceeds of all fees prescribed by the meat inspection regulations to be paid and paid or recovered in respect of inspections carried out for the purposes of the meat inspection regulations shall be credited —
 - (a) in the case of fees paid to or recovered by the Executive Director, Public Health, to a special account at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*, to be called the “State Meat Inspection Account”; or
 - (b) in the case of fees paid to a local government, to a special account, which the local government is hereby authorised to establish and maintain, to be called the “(name of local government) Meat Inspection Account”.

- (5) Money standing to the credit of the State Meat Inspection Account shall be applied only to the payment of the costs of inspections carried out for the purposes of the meat inspection regulations by officers appointed under section 6 of the *Health Legislation Administration Act 1984* and acting on behalf of the Executive Director, Public Health.
- (6) Money to the credit of an account established by a local government under subsection (4)(b) shall be applied only to the payment of the costs of inspections carried out for the purposes of the meat inspection regulations by —
- (a) officers appointed by the local government under section 27; or
 - (b) officers appointed under section 6 of the *Health Legislation Administration Act 1984* and acting on behalf of the local government.

[Section 246F inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 89; No. 59 of 1991 s. 17; No. 27 of 1994 s. 42; No. 14 of 1996 s. 4; No. 28 of 1996 s. 14; No. 49 of 1996 s. 64.]

246FA. Financial security may be required in respect of meat inspection fees

- (1) The Executive Director, Public Health or a local government may, at any time, require financial security in relation to the payment of fees in respect of inspections of meat under the meat inspection regulations.
- (2) The financial security referred to in subsection (1) may take such form as the Executive Director, Public Health or the local government considers appropriate.
- (3) If the Executive Director, Public Health or a local government requests that security in the form of a contract of insurance be taken out under this section, then the Executive Director, Public Health or the local government may require that the Executive Director, Public Health or the local government be a joint insured or a beneficiary.

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- (4) A person who has provided financial security under this section may apply in writing to the Executive Director, Public Health or the local government, as is relevant, at any time to have the security discharged.
- (5) Where fees due under the meat inspection regulations are not paid within 30 days after notice requiring the payment of outstanding fees has been served on the person by whom the fees are owed then the Executive Director, Public Health or the local government, as is relevant, may use any financial security provided by that person to recover the amount of outstanding fees due from that person.
- (6) Subsection (5) does not affect any other means of recovering fees that are owed under the meat inspection regulations.

[Section 246FA inserted by No. 28 of 1996 s. 15.]

246FB. Meat inspection service may be withdrawn

- (1) Subject to subsection (2), the Executive Director, Public Health or a local government may refuse to inspect meat for a person until —
 - (a) any fees owed by that person under the meat inspection regulations are paid;
 - (b) a lawful direction given to the person under this Act is complied with; or
 - (c) financial security requested of the person under section 246FA has been provided.
- (2) Before refusing to inspect meat for a person because fees are owed under subsection (1)(a) or financial security has not been provided under subsection (1)(c), the Executive Director, Public Health or the local government shall give at least 7 days written notice to the person.

[Section 246FB inserted by No. 28 of 1996 s. 15.]

Part VIII — Food generally

[Heading inserted by No. 26 of 1985 s. 7.]

Division 1 — Preliminary

[Heading inserted by No. 26 of 1985 s. 7.]

246G. Interpretation

- (1) In this Part, unless the contrary intention appears —
- “**adulterated**”, in relation to food, means deemed to be adulterated by virtue of section 246I;
- “**advertisement**” means —
- (a) words, whether written or spoken;
 - (b) symbolic or pictorial representation or design; or
 - (c) other representation by any means whatever, used or apparently used to promote directly or indirectly the sale or disposal of food;
- “**analysis**” means analysis or examination carried out by an analyst;
- “**analyst**” includes bacteriologist or pathologist appointed under section 6 of the *Health Legislation Administration Act 1984*;
- “**animal**” includes bird, fish, crustacean, mollusc and reptile;
- “**appliance**” means whole or part of any utensil, machinery, instrument, apparatus or other thing used or capable of being used in or for preparing, packing, storing, handling, conveying, serving, selling or supplying food and includes thing specified in this definition used or capable of being used in cleaning any other thing so specified;
- “**appropriate designation**”, in relation to any food, means name or description or name and description sufficiently specific in each case to indicate generally the kind of food to which it is or they are applied;

“article” means —

- (a) food;
- (b) appliance;
- (c) package;
- (d) material used in packing food;
- (e) whole or a part of any thing used for or in connection with the sale or conveyance for sale of food; or
- (f) labelling or advertising material used or capable of being used in connection with the sale of food;

“corresponding law” means law of another State or of a Territory of the Commonwealth declared under subsection (2) to be a corresponding law for the purposes of this Part;

“examine” includes weigh, count, test and measure;

“food premises” means premises where food is stored, kept, prepared, manufactured, processed, cooked or served or otherwise dealt with for subsequent sale to the public, either directly or indirectly, and includes eating house, food stores, premises and places;

“food vehicle” means vehicle kept or used for the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food;

“food vending machine” means machine or mechanical device used or capable of being used for selling or supplying food without any intervention or attention by or on behalf of the vendor at the time of that sale or supply;

“ingredient” includes ingredient of an ingredient;

“label” includes tag, brand, mark, statement in writing, representation, design or other descriptive matter on or attached to or used or displayed in connection with or accompanying food or a package of food;

“owner” includes consignor, consignee, indenter, importer, agent, broker, manufacturer’s or seller’s agent, or person in possession of the food concerned;

“package” means thing in or by which food is wholly or partly cased, covered, enclosed, contained or packed;

“premises” includes land (whether or not appurtenant to a building), building or part thereof, or tent, stall or other structure, whether permanent or temporary;

“prepare” includes manufacture, process or treat;

“proprietor”, in relation to —

(a) any food premises, means owner of the food premises or, if the owner of the food premises is not the occupier thereof, occupier of the food premises and includes person in charge or apparently in charge of the food premises;

(b) a food vehicle, means —

(i) if the food vehicle is not the subject of a hire-purchase agreement and is not otherwise hired or leased, owner; or

(ii) if the food vehicle is the subject of a hire-purchase agreement or is otherwise hired or leased, hirer or lessee under the agreement concerned,

of the food vehicle and includes person in charge or apparently in charge of the food vehicle; or

(c) an appliance, means —

(i) if the appliance is in or at any food premises, proprietor of the food premises; or

(ii) if the appliance is in or on a food vehicle, proprietor of the food vehicle;

“publish” means —

(a) insert in a newspaper or other publication;

(b) send to a person by post or otherwise;

- (c) deliver to a person;
- (d) leave on premises or any other place in the occupation of a person;
- (e) disseminate by broadcast, telecast or projected image, whether moving or still; or
- (f) bring to the notice of the public in any other manner;

“sample” includes part or unit of a sample;

“servicing”, in relation to a food vending machine, means stocking or replenishing the food vending machine with food;

“substance” includes mixture or compound;

“the regulations” means the regulations, if any, made under section 341 as read with section 247;

“this Part” includes —

- (a) the regulations; and
- (b) Schedule 3;

“vehicle” means device, whether or not operational, that is usually a means of conveyance by land, water or air and includes cart, caravan, trailer, bicycle, motor vehicle, railway carriage or wagon, ship, boat, barge, hulk, aircraft, airship or air cushion vehicle.

- (2) The Governor may by order —
 - (a) declare a law of another State or of a Territory of the Commonwealth to be a corresponding law for the purposes of this Part; and
 - (b) amend or repeal a declaration made under this subsection.
- (3) Section 42 of the *Interpretation Act 1984* applies with respect to orders made under subsection (2) and, for the purposes of that application, that section shall be read and construed as if references to regulations therein were references to orders so made.

- (4) This Part applies in relation to food —
- (a) offered as a prize or reward, whether in connection with entertainment or for the purpose of advertisement or in furtherance of trade or business or otherwise, as if that food were or had been exposed for sale by each person offering the prize or reward;
 - (b) given away for the purpose of advertisement or in furtherance of trade or business as if that food were or had been sold by the person giving away that food; or
 - (c) exposed or deposited in any premises or other place for the purpose of being offered as a prize or reward, or given away, within the meaning of paragraph (a) or (b) as if that food were or had been exposed for sale by the occupier of the premises or other place.
- (5) If a provision of a written law other than this Part is inconsistent with a provision of this Part, the provision of this Part prevails, and the provision of that written law is inoperative, to the extent of that inconsistency.

[Section 246G inserted by No. 26 of 1985 s. 7.]

246H. Food Advisory Committee

- (1) There is hereby established a committee to be known as the Food Advisory Committee.
- (2) The Food Advisory Committee shall consist of 6 members of whom —
 - (a) one shall be the Executive Director, Public Health, or a medical officer nominated by him;
 - (b) one shall be the Government Analyst;
 - (c) one shall be the principal food scientist of the Department;
 - (d) one shall be a medical practitioner of the Department who specialises in public health microbiology;

- (e) one shall be a person appointed by the Minister to represent consumer interests; and
- (f) one shall be a person appointed by the Minister to represent the food industry,

together with such person or persons as the regular members may for the time being co-opt to advise the Food Advisory Committee on the food industry.

- (3) The Executive Director, Public Health or the medical officer referred to in subsection (2)(a), as the case requires, shall be the Chairman of the Food Advisory Committee (in this section called “**the Chairman**”).
- (4) The Minister may appoint a deputy for a regular member and, at any meeting of the Food Advisory Committee at which the regular member is not present but his deputy is present, his deputy shall have all the functions of the regular member.
- (5) At any meeting of the Food Advisory Committee —
 - (a) the Chairman or, in his absence, his deputy shall preside, but if neither the Chairman nor his deputy is present the other regular members present shall elect one of their number to preside;
 - (b) each regular member and, in relation to matters in respect of which he is co-opted under subsection (2), each co-opted member present has a deliberative vote and, in the event of an equality of votes, the person presiding at that meeting shall also have a second or casting vote; and
 - (c) any 3 regular members constitute a quorum.
- (6) The Minister shall appoint a person to the office of secretary of the Food Advisory Committee, but that office may be held in conjunction with any other office under Part 3 of the *Public Sector Management Act 1994*.

- (7) An appointed member of the Food Advisory Committee or his deputy shall be —
- (a) appointed for such period not exceeding 3 years as is specified in the instrument of his appointment; and
 - (b) eligible for reappointment.
- (8) The Minister may at any time remove from office an appointed member.
- (9) Each member may be paid such attendance fees as are prescribed in his case.
- (10) In this section —
- “appointed member”** means person referred to in subsection (2)(e) or (f);
 - “co-opted member”** means person co-opted under subsection (2);
 - “member”** means regular member or co-opted member;
 - “regular member”** means person referred to in subsection (2)(a), (b), (c), (d), (e) or (f).

[Section 246H inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 91; No. 32 of 1994 s. 3(2).]

246I. When food deemed to be adulterated

- (1) Subject to any declaration made under subsection (2), food shall be deemed to be adulterated for the purposes of this Part when —
- (a) being labelled or otherwise represented as being food of a particular class or description —
 - (i) it contains or is mixed or diluted with a substance in a quantity which diminishes in any manner any of its properties as compared with food of that class or description in a pure state and in an undeteriorated condition;

- (ii) any of its constituents has been wholly or partly extracted or removed from it so that its properties, as compared with those of food of that class or description in a pure state and in an undeteriorated condition, are diminished; or
 - (iii) it has been prepared, stored or otherwise dealt with so that its taste or smell is not the taste or smell ordinarily associated with food of that class or description;
 - (b) it contains a substance prescribed as prohibited generally or in relation to food of that class or description;
 - (c) the regulations specify that food generally or food of the class or description concerned is to contain no more than a specified quantity or proportion of a particular substance and the food contains more than that quantity or proportion;
 - (d) it is prepared in a manner whereby damage, deterioration or inferiority is or may be concealed;
 - (e) it is wholly or partly the product of a diseased animal or of an animal which has died —
 - (i) naturally; or
 - (ii) in the case of a warm blooded animal, otherwise than by slaughter;
 - (f) it is injurious to health, dangerous or offensive;
 - (g) a package or a thing included in a package or any thing or matter with which food comes into contact consists wholly or partly of a substance which may render the food concerned injurious to health, dangerous or offensive; or
 - (h) it contains a foreign substance or matter.
- (2) The Executive Director, Public Health, may by notice published in the *Gazette* —

- (a) declare that a food of a class or description specified in that notice, which food, but for that notice, would be deemed to be adulterated for the purposes of this Part in a particular referred to in paragraph (a)(i) or (ii), or in subsection (1)(h), shall not be deemed to be adulterated for the purposes of this Part if it is in a condition specified in that notice; and
- (b) amend or repeal a declaration made under this subsection.

[Section 246I inserted by No. 26 of 1985 s. 7.]

246J. Crown bound by Part VIII

- (1) This Part binds the Crown in right of the State.
- (2) Nothing in this section affects the question whether or not the Crown in right of the State is bound by any provision of this Act outside this Part.

[Section 246J inserted by No. 26 of 1985 s. 7.]

246K. Power of Executive Director, Public Health, to make orders directed to local governments

- (1) The Executive Director, Public Health, may —
 - (a) make an order directed to a local government with respect to any act, matter or thing required by or under this Part to be performed or done by a local government; and
 - (b) amend or repeal an order made under this subsection.
- (2) A local government to which an order made under subsection (1) is directed shall comply with that order.

[Section 246K inserted by No. 26 of 1985 s. 7; amended by No. 14 of 1996 s. 4.]

Division 2 — Offences in connection with sale of food

[Heading inserted by No. 26 of 1985 s. 7.]

246L. Prohibition on sale of certain food

A person who sells food that is —

- (a) unfit for consumption by man;
- (b) adulterated; or
- (c) damaged, deteriorated or perished,

commits an offence.

[Section 246L inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 92.]

246M. Prohibition on preparation for sale of certain food

(1) A person who prepares for sale food that is —

- (a) unfit for consumption by man;
- (b) adulterated; or
- (c) damaged, deteriorated or perished,

commits an offence.

(2) A person who prepares for sale food for which there is a prescribed standard commits an offence unless that food complies with the prescribed standard.

[Section 246M inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 93.]

246N. Prohibition on packing for sale of certain food

(1) A person who packs for sale food that is —

- (a) unfit for consumption by man;
- (b) adulterated; or
- (c) damaged, deteriorated or perished,

commits an offence.

- (2) A person who packs for sale food for which there is a prescribed standard commits an offence unless that food complies with the prescribed standard.

[Section 246N inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 94.]

246O. Protection for purchasers of food

- (1) A person who sells food that is not of the —
- (a) nature;
 - (b) substance; or
 - (c) quality,

of the food demanded by the purchaser commits an offence.

- (2) A person who sells food that does not comply with the standard prescribed for the food demanded by the purchaser commits an offence.
- (3) A person who demands food by a name prescribed for a food for which there is a prescribed standard shall be taken to have demanded food that complies with the prescribed standard.

[Section 246O inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 95.]

246P. Sale of food not complying with prescribed standard

A person who sells food —

- (a) that bears or has attached to it, or is in a package that bears or has attached to it, a name prescribed for a food;
or
- (b) that is otherwise designated or represented as being a food,

for which there is a prescribed standard commits an offence unless the food complies with the prescribed standard.

[Section 246P inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 96.]

246Q. False packing or labelling of food

- (1) A person who packs for sale or labels for sale food in a manner that is false or misleading in any particular or deceptive commits an offence.
- (2) A person who sells food that is packed or labelled in a manner that is false or misleading in any particular or deceptive commits an offence.
- (3) A person who packs for sale or labels for sale food in a manner contrary to or otherwise than in compliance with this Part commits an offence.
- (4) A person who sells food that is packed or labelled in a manner contrary to or otherwise than in accordance with this Part commits an offence.

[Section 246Q inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 97.]

246R. False advertising

- (1) Subject to subsection (3), a person who, for the purpose of effecting or promoting the sale of food, publishes or causes to be published an advertisement that is false or misleading in any particular or deceptive commits an offence.
- (2) In a prosecution for an offence under subsection (1) against a vendor or any manufacturer, packer, producer or importer of food, the onus of proving that he did not publish or cause to be published the advertisement concerned lies on the accused.
- (3) It is a defence to a charge of an offence under subsection (1) for the accused to prove that —
 - (a) he did not know and could not with reasonable diligence have ascertained that the advertisement concerned was false or misleading in any particular or deceptive; or
 - (b) being a person whose business it is to publish or to arrange for the publication of advertisements, he received the advertisement concerned for publication in the ordinary

course of business and did not himself make or cause to be made a material alteration to that advertisement.

[Section 246R inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 98; No. 84 of 2004 s. 82.]

246S. Advising use of artificial food for infants

A person who, for the purpose of promoting the sale of any artificial food for infants, advises the mother or any person in charge of a child under the age of 6 months to use any particular class or description of artificial food, in preference to natural food or the purpose of feeding that child commits an offence.

[Section 246S inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 99.]

246T. Prohibition on despatch of certain food

A person who in or from the State sells food that —

- (a) is to be despatched from outside Western Australia; and
- (b) is unfit for consumption by man, adulterated or damaged, deteriorated or perished or is packed or labelled contrary to or otherwise than in compliance with this Part,

whether that sale is effected or to become effective in the State or elsewhere commits an offence.

[Section 246T inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 100.]

Division 3 — Labelling requirements

[Heading inserted by No. 26 of 1985 s. 7.]

246U. Labelling requirements generally

- (1) Subject to subsections (3) and (4), every package of food intended for sale shall bear on it a label setting out in the manner prescribed —

- (a) if there is a standard prescribed for that food and a name has been prescribed to be used in relation to that food, the name so prescribed or, in any other case, an appropriate designation for that food;
 - (b) the name and business address of the manufacturer or vendor of that food or the packer of the contents of that package or, in the case of imported food, the name and business address in Australia of the importer of that food; and
 - (c) such other particulars as are prescribed.
- (2) Food other than packed food that is displayed for sale shall be labelled in accordance with the regulations.
- (3) The regulations may prescribe —
- (a) the food or class or description of food to which; or
 - (b) the circumstances in which,
- all or any of the provisions of subsection (1) or of subsection (2) shall not apply.
- (4) Subsection (1) shall not, unless the regulations otherwise prescribe in relation to food of a specified class or description, apply when the food was packed before or at the time of sale and in the presence of the purchaser.

[Section 246U inserted by No. 26 of 1985 s. 7.]

246V. Further labelling requirements

- (1) Regulations made under the power conferred by clause 15 of Schedule 3 may require that the label specified in section 246U shall set out, in addition to the particulars set out in that section —
- (a) a statement of the ingredients of the food concerned in such detail as is prescribed;
 - (b) the place of manufacture of the food concerned;
 - (c) the country of origin of the food concerned; or

(d) a date marking in respect of the food concerned in the manner prescribed,

or any 2 or 3, or all 4, of the particulars referred to in paragraphs (a), (b), (c) and (d).

- (2) Regulations referred to in subsection (1) may apply requirements referred to in that subsection to all or any food or food of a special class or description and may prescribe different provisions with respect to foods of different classes or descriptions.
- (3) For the purposes of subsection (1)(d), the regulations may specify in relation to food of a specified class or description the period from the date of packing during which the food in the package may reasonably, if the package is stored in a specified manner, be expected to retain without appreciable deterioration its normal wholesomeness, nature, substance and quality.
- (4) A statement of ingredients on a label on a package of food shall set out —
- (a) in the manner prescribed; or
 - (b) if a manner is not prescribed, in descending order of their relative proportions by mass,
- the ingredients present in that food.
- (5) A label on a package of food shall not, except when the regulations otherwise prescribe, set out a statement in relation to any particular ingredient present in the food in that package unless the proportion by mass in which that ingredient is present in the food is also set out in that label.
- (6) An article that is sold or described on a label or advertisement as food for animals shall not be described on the label or advertisement or otherwise as suitable or safe for consumption by man unless it is prepared, packed and sold in accordance with this Part.

[Section 246V inserted by No. 26 of 1985 s. 7.]

Division 4 — Control of food cultivation, food premises, food vehicles, appliances and food vending machines

[Heading inserted by No. 26 of 1985 s. 7.]

246W. Prohibition of cultivation, etc., of food in certain circumstances

- (1) The Executive Director, Public Health, may by order prohibit the cultivation, taking, harvesting or otherwise obtaining of food generally or food of a specified class or description set out in that order in or from an area specified in that order except in accordance with such conditions, if any, as are specified in that order if he is of the opinion that food generally or food of a specified class or description if cultivated, taken, harvested or otherwise obtained in or from that area may be dangerous or injurious to persons who consume that food.
- (2) A person who cultivates, takes, harvests or otherwise obtains food or food of the specified class or description set forth in an order under subsection (1) in or from an area specified in that order except in accordance with such conditions, if any, as are specified in that order commits an offence unless he has first obtained the approval in writing of the Executive Director, Public Health.

[Section 246W inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 101]

246X. Employment of infected persons on food premises or food vehicles or using appliances prohibited

- (1) A person who —
 - (a) is suffering from any infectious or contagious disease; and
 - (b) engages or is employed in the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food in food premises or a food vehicle or by means of an appliance,commits an offence.

- (2) A medical officer may examine any person engaged or employed within the meaning of subsection (1) who is suspected of suffering from any infectious or contagious disease, and every such person who refuses to submit to such an examination on being required by a medical officer to do so commits an offence.

[Section 246X inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 102.]

246Y. Food premises, food vehicles and appliances

- (1) If the Executive Director, Public Health, or a local government is satisfied from —
- (a) an inspection made or caused to be made by him or it; or
 - (b) the report of an environmental health officer,
- that any food premises, food vehicle or appliance is in an unclean or insanitary condition, he or it may, by order in writing served on the proprietor of the food premises, food vehicle or appliance, direct that the food premises, food vehicle or appliance specified in that order be put into a clean and sanitary condition to the satisfaction of an environmental health officer within such period as is specified in that order.
- (2) If, on the expiry of the period specified in an order made under subsection (1), the food premises, food vehicle or appliance specified in that order have or has not been put into a clean and sanitary condition to the satisfaction of an environmental health officer, the Executive Director, Public Health, or the local government concerned may, by a further order in writing served on the proprietor of those food premises or that food vehicle or appliance, as the case requires, direct that —
- (a) those food premises shall not be kept or used for the sale or preparation, packing, storing, handling, serving or supplying for sale of food;
 - (b) that food vehicle shall not be kept or used for the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food; or

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- (c) that appliance shall not be used in or for the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food or in the cleaning of any other appliance,

as the case requires, until an environmental health officer has given to the proprietor of those food premises or that food vehicle or appliance, as the case requires, a certificate in writing that those food premises or that food vehicle or appliance have or has been put into and are or is in a clean and sanitary condition.

- (3) A further order made under subsection (2) may specify conditions with respect to the keeping or use of the food premises, food vehicle or appliance concerned for the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food and, if that further order so specifies, those food premises or that food vehicle or appliance shall not be kept or used otherwise than in accordance with those conditions.
- (4) The proprietor of any food premises, food vehicle or appliance on whom a further order made under subsection (2) is served may at any time after the date of service of that further order request in writing the Executive Director, Public Health, or the local government concerned, as the case requires, to cause the food premises, food vehicle or appliance the subject of that further order to be inspected by an environmental health officer.
- (5) For the purposes of an inspection referred to in subsection (4), the Executive Director, Public Health, or the local government concerned, as the case requires, shall, in the case of a food vehicle or appliance, specify the time and place at which that inspection is to be carried out.
- (6) If an environmental health officer on the completion of an inspection by him following a request under subsection (4) of any food premises, food vehicle or appliance refuses to give to the proprietor thereof in respect of the food premises, food vehicle or appliance so inspected a certificate that those food premises or that food vehicle or appliance have or has been put into and are or

is in a clean and sanitary condition, that proprietor may apply to the State Administrative Tribunal for a review of the decision.

[(7), (8) repealed]

- (9) If any food premises, food vehicle or appliance in respect of which a request has been made under subsection (4) have or has not been inspected within a period of 2 days after receipt of the request by the Executive Director, Public Health, or the local government concerned, as the case requires, a certificate referred to in subsection (6) in respect of those food premises or that food vehicle or appliance shall for the purposes of subsection (10) be deemed to have been given to the proprietor of those food premises or that food vehicle or appliance on the expiry of that period unless the Executive Director, Public Health, or that local government has caused a notice in writing to be served on that proprietor within that period stating that the failure to inspect has been occasioned by the act, default or neglect of that proprietor.
- (10) If, a further order made under subsection (2) having been served on the proprietor of any food premises, food vehicle or appliance —
- (a) a certificate in respect of the food premises, food vehicle or appliance has not been given subsequently under this section or is not deemed under subsection (9) to have been given; or
 - (b) on a review in proceedings commenced under subsection (6) against the refusal of an environmental health officer to give a certificate in respect of the food premises, food vehicle or appliance under that subsection, the decision has not been set aside,
- a person who —
- (c) contrary to that further order —
 - (i) keeps or uses the food premises for the sale or preparation, packing, storing, handling, serving or supplying for sale of food;

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- (ii) keeps or uses the food vehicle for the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food; or
 - (iii) uses the appliance in or for the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food or in the cleaning of any other appliance,
as the case requires; or
 - (d) does not comply with a condition of that further order,
commits an offence.
- (11) An order made under subsection (1) or a further order made under subsection (2) may be so made with respect to —
- (a) any food premises, food vehicle or appliance specified in that order or further order;
 - (b) any food premises or food vehicle specified in that order or further order and all appliances contained therein or all appliances specified in that order or further order and contained in those food premises or that food vehicle; or
 - (c) all appliances contained in food premises or a food vehicle specified in that order or further order.

[Section 246Y inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 103; No. 59 of 1991 s. 5; No. 14 of 1996 s. 4; No. 28 of 1996 s. 21; No. 55 of 2004 s. 489.]

246Z. Food vending machines

- (1) Subject to this section, a person who uses or intends to use a food vending machine for the purpose of selling or supplying food to others shall register and at all times keep registered the food vending machine with the local government in the district of which the food vending machine is or is to be so used.
- (2) The Executive Director, Public Health, may by writing signed by him —

- (a) exempt from the operation of subsection (1) any food vending machine or class or description of food vending machine specified in that writing; and
 - (b) amend or repeal an exemption granted under this subsection.
- (3) A food vending machine shall be registered only in the name of some person who, the local government concerned is satisfied, receives or shares in or intends to receive or share in the proceeds of the sale or supply of food from the food vending machine.
- (4) A local government shall not register or keep registered a food vending machine that sells or supplies food that contravenes this Part.
- (5) A person who services a food vending machine which to his knowledge is not registered or exempted under this section commits an offence.
- (6) A person who installs or uses or permits to be used for the purpose of selling or supplying food to others a food vending machine which is not exempted under subsection (2) in, at or on any premises or any other place or any vehicle other than the premises, other place or vehicle —
- (a) approved by the local government registering; and
 - (b) specified in the certificate of registration for the time being in force in respect of,
- the food vending machine commits an offence.
- (7) A local government shall, when considering whether or not to approve any premises or other place or any vehicle for the purposes of subsection (6), have regard to the provisions of this Part relating to the wholesomeness and purity of food.
- (8) For the purposes of this Part, food that is sold or supplied through a food vending machine shall be deemed to be sold or supplied —
- (a) by the person in whose name the food vending machine is or is required to be registered under this Part or, if the

food vending machine is not required to be so registered, by the person who receives or shares in the proceeds of the sale or supply of food from the food vending machine; and

- (b) on the day when and at the place where that food is received by the purchaser.
- (9) When under or for the purposes of this Part a purchaser of food (whether for analysis or otherwise) is required or authorised to give or deliver to a person a notice or part of a sample of food and the food concerned was sold or supplied to the purchaser through a food vending machine, the notice or part of a sample shall be deemed to be sufficiently given or delivered for the purposes of this Part if the notice or that part is given or delivered personally or by registered post —
- (a) to a person in whose name the food vending machine is or is required to be registered under this Part; or
 - (b) whether or not the food vending machine is registered under this Part, to a person then present who admits to being in charge of the food vending machine.

[Section 246Z inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 104; No. 14 of 1996 s. 4.]

Division 5 — Enforcement and administration

[Heading inserted by No. 26 of 1985 s. 7.]

246ZA. Food may be declared dangerous by Executive Director, Public Health

- (1) If the Executive Director, Public Health, is of opinion that a food would or may in the circumstances be injurious or dangerous to health, he may, with the approval of the Minister, declare that the food is dangerous.
- (2) While a declaration made under subsection (1) is in force, the Executive Director, Public Health, may from time to time order

in writing the owner or person having possession of the food concerned to —

- (a) secure that food in a safe place and ensure that it is not removed from his possession or used or eaten or sold;
- (b) deliver up that food to a person specified in that order at a place, and within a time, so specified; or
- (c) do such things in relation to that food as the Executive Director, Public Health, deems necessary for the protection of the public health and specifies in that order,

but before any action is taken under paragraph (b) or (c) the Executive Director, Public Health, shall give 7 days' notice in writing to the wholesaler or manufacturer of that food of his intention to exercise his powers under that paragraph.

- (3) When the Executive Director, Public Health, is of opinion that the food to which a declaration under subsection (1) relates is no longer dangerous or injurious to health, he shall forthwith give notice of the fact to the owner of that food and revoke any order made by him under subsection (2) relating to that food, but if at any time after a period of 30 days commencing on the date of the making of such an order the Executive Director, Public Health, is of the opinion that that food is still dangerous or injurious to health he may destroy or otherwise dispose of it as he thinks fit.
- (4) The Executive Director, Public Health, may at any time revoke a declaration made under subsection (1).
- (5) A person shall not be entitled to any compensation either from the Crown or the Executive Director, Public Health, by reason of anything done, or the destruction of or damage to or loss of value of any food as a result of any action taken, in accordance with an order issued by the Executive Director, Public Health, under subsection (2) or as a result of any action taken by him under subsection (3).

[Section 246ZA inserted by No. 26 of 1985 s. 7.]

246ZB. Powers of environmental health officers

- (1) For the purposes of this Part and subject to this section, an environmental health officer may —
 - (a) enter any premises or other place in or at which he believes on reasonable grounds any article is sold or prepared, packed, stored, handled, served or supplied for sale and may therein —
 - (i) make such investigation and enquiry as are necessary to ascertain whether or not this Part is being complied with;
 - (ii) make an inspection and examination thereof and of any articles, fittings or fixtures found, including anything that he believes on reasonable grounds is used or capable of being used for or in connection with the sale or preparation, packing, storing, handling, serving or supplying for sale of any article;
 - (iii) subject to section 246ZC(6), take and remove therefrom any article or samples of any article;
 - (iv) open or order to be opened any container used for the conveyance of goods, or any package or other receptacle of any kind that he believes on reasonable grounds to contain any article;
 - (v) require a person to produce to him any licence, registration, permit, approval, certificate or authority granted and issued under this Part to the person or alleged by the person to have been so granted and issued to him or any books, accounts, records or documents, and may inspect, examine and make copies of or extracts from any licence, registration, permit, approval, certificate or authority or any book, account, record or document

- produced to him or remove it for the purpose of making copies thereof or extracts therefrom;
- (vi) seize and detain for such time as is necessary any article found by means of, or in relation to, which he believes on reasonable grounds an offence under this Part has been committed or this Part has been contravened;
 - (vii) mark, fasten, secure or seal —
 - (A) an article found; or
 - (B) any door, gate or opening that he believes on reasonable grounds affords access to an article;
 - (viii) take and remove therefrom —
 - (A) any thing; or
 - (B) any sample of any thing, (other than an article) found that he believes on reasonable grounds may be used as evidence in a proceeding under this Part;
 - (ix) question any person to ascertain whether or not this Part is being complied with and require that person to answer any question put to him; or
 - (x) take such photographs or films or audio or visual recordings as he considers necessary;
- (b) at any time purchase food from a person selling or preparing, packing, storing, handling, serving, supplying or conveying for sale food by payment or offer of the current market value of that food;
- (c) require a person —
- (i) who is found by him committing an offence under this Part;
 - (ii) who he believes on reasonable grounds has committed an offence under this Part; or

- (iii) whose name and address are in his opinion reasonably required,
to state his full name and the address of his usual place of residence and, if he suspects on reasonable grounds that a name or address so stated is false, may require him to produce evidence of the correctness thereof;
- (d) if he is obstructed or believes on reasonable grounds that he may be obstructed in the exercise of the powers or authorities conferred, or the discharge of the functions or duties imposed, on him by or under this Part call to his aid —
 - (i) another environmental health officer; or
 - (ii) a member of the Police Force of Western Australia, whereupon it shall be the duty of such a member so called to aid him as required and such a member while so aiding shall have the same powers and authorities as are conferred on an environmental health officer by or under this Part;
- (e) stop, detain and search any vehicle —
 - (i) which is being used, or which he believes on reasonable grounds is being or is likely to be used, for the conveyance of any article; or
 - (ii) in or on which he believes on reasonable grounds any article is sold or prepared, packed, stored, handled, served or supplied for sale,
and may in relation to that vehicle discharge any of the functions imposed on him by or under this subsection;
- (f) call to his aid a person who he thinks is competent to assist him in the discharge of his functions and that person has, while acting in aid of the environmental health officer, the same powers and authorities as are conferred on an environmental health officer by or under this Part; and

- (g) use such force as is reasonably necessary in the discharge of the functions imposed on him by or under this Part.
- (2) For the purpose of gaining entry to any premises or other place, an environmental health officer may call to his aid such persons as he thinks necessary and those persons, while acting in aid of the environmental health officer in the lawful exercise by him of his power of entry, have a like power of entry.
- (3) If an article is sold or prepared, packed, handled, served, supplied or conveyed for sale during the night-time, an entry and inspection under this section may be made at all reasonable times during the day-time or night-time, but otherwise such an entry and inspection may be made at all reasonable times during the day-time only.
- (4) A person is not obliged under this Part to answer any question or give any information or evidence tending to incriminate him.
- (5) The functions imposed by or under this Part on an environmental health officer who is an officer of a local government shall be discharged by that environmental health officer only —
 - (a) within the district of the local government of which he is an officer or on any vessel deemed under section 350 to be within that district for the purposes of this Act; and
 - (b) so far as the discharge of those functions is required for or directed towards the discharge of a function imposed on the local government by or under this Part.

[Section 246ZB inserted by No. 26 of 1985 s. 7; amended by No. 59 of 1991 s. 5; No. 14 of 1996 s. 4; No. 28 of 1996 s. 21.]

246ZC. Procedure on taking samples

- (1) When an environmental health officer takes or otherwise obtains under this Part a sample of food with the intention that it be submitted for analysis, he shall, before or as soon as practicable after obtaining that sample, inform the owner of the food

comprised in that sample or, if that owner is not present or readily available, the person from whom that sample was obtained or the person having charge of that food of his intention to have that sample analysed.

- (2) An environmental health officer acting under subsection (1) shall comply with all regulations that prescribe the number of samples to be obtained, or a method of obtaining samples or of dealing with samples obtained, in relation to the class or description of food concerned or the analysis proposed to be carried out.
- (3) Subject to subsection (4), if the regulations do not otherwise prescribe in relation to the class or description of food concerned or the analysis proposed to be carried out and an environmental health officer obtains a sample of food with the intention that that sample be submitted for analysis, the environmental health officer shall —
 - (a) divide that sample into 3 separate parts and mark and seal or fasten each part in such manner as its nature will permit;
 - (b) leave one part with the owner of that food or other person from whom that sample was obtained or a person appearing to be the employee or agent of that owner or other person;
 - (c) submit one of the remaining parts for analysis; and
 - (d) retain the other remaining part for future comparison.
- (4) If the regulations do not prescribe a method of dealing with a sample in relation to the class or description of food concerned or the analysis proposed to be carried out and if the division of a sample for analysis into 3 separate parts in accordance with subsection (3) would in the opinion of the environmental health officer concerned —
 - (a) so affect or impair the composition or quality of the sample as to render the separate parts unsuitable for accurate analysis;
 - (b) furnish parts insufficient for accurate analysis; or

- (c) render the sample in any other way unsuitable for analysis, including a method of analysis prescribed in relation to the food from which the sample was taken, that environmental health officer shall deal with the sample in such manner as is appropriate in the circumstances having regard to this Part.
- (5) When a sample of food is taken by an environmental health officer in the form of separate or severable objects, it shall not be necessary for him in dividing that sample into parts in accordance with this section to divide any one of those objects and it shall be sufficient compliance with this section if he —
- (a) takes a number of those objects;
 - (b) divides the number so taken into the requisite number of parts so that each part consists of one or more than one of those separate or severable objects; and
 - (c) deals with those parts in accordance with subsection (2), (3) or (4), as the case requires.
- (6) Notwithstanding this Part, when food is kept for retail sale in a closed package a person shall not be required by an environmental health officer to provide a sample that is less than the whole of that package.
- (7) An environmental health officer shall be deemed to have complied with this section notwithstanding failure by the owner of the food or other person referred to in subsection (3)(b) to accept any part or parts required to be left with him in accordance with this section.
- (8) This section does not apply to the procuring for analysis of a sample of food sold through a food vending machine if the environmental health officer concerned obtains the sample by properly making payment for it and no person present at the time that environmental health officer obtains the sample admits to being in charge of the food vending machine.

[Section 246ZC inserted by No. 26 of 1985 s. 7; No. 59 of 1991 s. 5; No. 28 of 1996 s. 20 and 21.]

246ZD. Offences with respect to environmental health officers and articles

A person who —

- (a) except with the authority of an environmental health officer or under an order of a court —
 - (i) removes, alters or interferes in any way with —
 - (A) an article seized and detained under this Part; or
 - (B) any article or other thing or a sample of any article or other thing taken or otherwise obtained by an environmental health officer under section 246ZB;
 - or
 - (ii) erases, alters, opens, breaks or removes a mark, security, fastening or seal placed by an environmental health officer in the discharge of his functions under this Part on —
 - (A) an article other than part of a sample or any sample unit or package left by the environmental health officer with a person from whom a sample was taken or otherwise obtained; or
 - (B) any door, gate or opening affording access to an article;
- (b) refuses to sell food to an environmental health officer or to allow him to take a sample of food or any other article in such quantity as he reasonably requires;
- (c) does not, when required by or under this Part to do so, render assistance or furnish information to an environmental health officer or other person;
- (d) does not on demand duly made produce to an environmental health officer for examination any book, account, record or document required or authorised by

or under this Part to be produced or does not allow an environmental health officer to examine or to make a copy of or an extract from any book, account, record or document so produced;

- (e) does not comply with any lawful direction or order of an environmental health officer;
- (f) does not on demand duly made orally by an environmental health officer deliver up to him an article authorised by or under this Part to be seized by him or delivered up to him;
- (g) knowingly makes a false or misleading statement orally or in writing to an environmental health officer discharging a function under this Part;
- (h) assaults, threatens, abuses, insults, intimidates or attempts to intimidate an environmental health officer or other person in the discharge of his functions under this Part;
- (i) when required by an environmental health officer to do so, does not state his name and the address of his usual place of residence or states a false such name or address;
- (j) prevents a person from being questioned by an environmental health officer; or
- (k) in any manner other than a manner referred to in paragraphs (a) to (j) obstructs or attempts to obstruct an environmental health officer or other person in the discharge of his functions under this Part,

commits an offence.

[Section 246ZD inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 105; No. 59 of 1991 s. 5; No. 28 of 1996 s. 21.]

246ZE. Duties of environmental health officer on seizure and detention of article

An environmental health officer shall, on the seizure and detention by him of an article under this Part, forthwith —

- (a) give notice in the prescribed form of that seizure and detention to the person apparently in charge of the article;
- (b) if there is no person apparently in charge of the article and the name and address in the State of a person appearing to the environmental health officer to be the consignor or owner of the article is set out on or attached to the article or a package containing the article, give notice in the prescribed form of that seizure and detention to that person; or
- (c) in any other case, if the name and address of the importer or consignee of the article or of his agent are known to the environmental health officer, give notice in the prescribed form of that seizure and detention to such one of those persons as the environmental health officer determines.

[Section 246ZE inserted by No. 26 of 1985 s. 7; amended by No. 59 of 1991 s. 5; No. 28 of 1996 s. 21.]

246ZF. Keeping and storage of certain articles

An article that has been seized and detained or taken or otherwise obtained under this Part by an environmental health officer may, at the direction of an environmental health officer —

- (a) be kept and stored in, at or on the premises or other place or vehicle where it was seized and detained or taken or otherwise obtained; or
- (b) be removed to any other proper place and there kept and stored.

[Section 246ZF inserted by No. 26 of 1985 s. 7; amended by No. 59 of 1991 s. 5; No. 28 of 1996 s. 21.]

246ZG. Remedy in respect of articles seized

- (1) When an article is seized and detained by an environmental health officer under section 246ZB, the person from whom the article was seized may within 5 days after that seizure apply to the State Administrative Tribunal for a review of the decision.
- (2) An applicant under subsection (1) shall forthwith give to the environmental health officer responsible for the seizure and detention of the article concerned a copy of the application made under that subsection.

[Section 246ZG inserted by No. 26 of 1985 s. 7; amended by No. 59 of 1991 s. 5; No. 14 of 1996 s. 4; No. 28 of 1996 s. 21; No. 55 of 2004 s. 490.]

246ZH. Destruction or other disposal of seized food

- (1) When, an environmental health officer having seized and detained food under this Part —
 - (a) the owner of the food consents to the destruction or other disposal thereof; or
 - (b) the food is in the opinion of the environmental health officer decayed, deteriorated or putrefied,

the environmental health officer may notwithstanding sections 246ZF and 246ZG —

- (c) destroy or otherwise dispose of the food; or
 - (d) if the owner of the food or the person in whose possession the food was at the time of seizure so requests, permit that owner or person to destroy or otherwise dispose of the food subject to such reasonable conditions as the environmental health officer stipulates in that permission.
- (2) An owner or person permitted under subsection (1)(d) to destroy or otherwise dispose of any food subject to a reasonable condition who destroys or otherwise disposes of that food

otherwise than in accordance with that condition commits an offence.

[Section 246ZH inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 106; No. 59 of 1991 s. 5; No. 28 of 1996 s. 21.]

246ZI. Liability for costs and expenses of storage or destruction or other disposal of seized article

(1) When, an article having been seized and detained under this Part —

(a) an application is not made for review of the decision under section 246ZG; or

(b) the article is destroyed or otherwise disposed of —

(i) in the case of an article other than food, under section 246ZQ; or

(ii) in the case of food, under section 246ZH,

the owner of the article at the time of its seizure or, if the article is at the time of its seizure in the possession of a person who is not its owner and the identity of its owner is not known, the person in whose possession the article is when seized shall be liable to pay the costs and expenses incurred in or in connection with the storage and destruction or other disposal of that article.

(2) Costs and expenses referred to in this section which remain unpaid may be recovered by action in a court of competent jurisdiction —

(a) in the case of costs and expenses incurred by or on behalf of the Department, as a debt due and owing to the Crown; or

(b) in the case of costs and expenses incurred by or on behalf of a local government, as a debt due and owing to the local government.

[Section 246ZI inserted by No. 26 of 1985 s. 7; amended by No. 14 of 1996 s. 4; No. 55 of 2004 s. 491.]

246ZJ. Supply of results of analysis

When an article has been seized, taken or otherwise obtained from a person under section 246ZB by an environmental health officer —

- (a) acting on behalf of the Department, the Executive Director, Public Health; or
- (b) acting on behalf of a local government, the local government,

shall, on demand made in that behalf and on payment of the prescribed fee, supply a copy of the result of an analysis of the article carried out under this Part by an analyst to the person or to the manufacturer, packer or importer, or to the agent of the manufacturer, of the article or to the agent in the State of that agent, as the case requires.

[Section 246ZJ inserted by No. 26 of 1985 s. 7; amended by No. 59 of 1991 s. 5; No. 14 of 1996 s. 4; No. 28 of 1996 s. 21.]

246ZK. Prohibition of use of result of analysis for certain purposes

A person who for the purposes of any trade or advertisement uses in whole or in part the result of an analysis made for the purposes of this Part commits an offence.

[Section 246ZK inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 107.]

246ZL. Power of delegation

- (1) The Minister, or the Executive Director, Public Health, with the approval of the Minister, may, either generally or otherwise as provided by the instrument of delegation, by writing signed by him, delegate —

- (a) to a person; or
- (b) to the holder of an office, specifying its title but not the name of its holder for the time being,

(in this section called “**the delegate**”) all or any of his functions under this Part except this power of delegation.

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- (2) A function delegated under subsection (1) shall, if discharged by the delegate, be discharged in accordance with the instrument of delegation.
- (3) The Minister or the Executive Director, Public Health, as the case requires, may make such and so many delegations of the same function and to such number of persons or holders of offices as he considers necessary or desirable.

[Section 246ZL inserted by No. 26 of 1985 s. 7.]

246ZM. Secrecy

- (1) Subject to subsection (2), a person who —
- (a) discloses information; or
 - (b) publishes a book, account, record or document or part thereof,
- obtained by him in connection with the administration of this Part otherwise than —
- (c) with the consent of the person from whom the information or book, account, record or document or part thereof was obtained;
 - (d) in connection with the administration of this Part;
 - (e) by or with the prior approval of the Minister or the Executive Director, Public Health; or
 - (f) for the purposes of a proceeding under or arising out of this Part or a report of such a proceeding,
- commits an offence.
- (2) An environmental health officer or other person who is so authorised by the Executive Director, Public Health, generally or in a particular case may communicate information that comes to his knowledge in the discharge of his functions under this Part to an officer or authority administering a corresponding law or to such Commonwealth department or authority as the Executive Director, Public Health, specifies.

[Section 246ZM inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 108; No. 59 of 1991 s. 5; No. 28 of 1996 s. 21.]

Division 6 — Miscellaneous provisions

[Heading inserted by No. 26 of 1985 s. 7.]

246ZN. Defence in respect of food for export

It is a defence to a charge of an offence under section 246L, 246M, 246N or 246T or section 246Q(3) or (4) as read with sections 246U and 246V or under regulations containing the requirements specified in section 246V for the accused to prove that —

- (a) the food in respect of which that charge is brought is to be exported to another country; and
- (b) the sale, preparation, packing and labelling of the food referred to in paragraph (a) complies with the laws in force in the country to which the food is exported at the time at which it is exported.

[Section 246ZN inserted by No. 26 of 1985 s. 7; amended by No. 84 of 2004 s. 82.]

246ZO. Liability of defendant for certain costs and expenses

- (1) Save as is otherwise expressly provided by this Part, a person who is convicted of an offence under this Part or who is charged with an offence under this Part —

- (a) of which he is found guilty; or
- (b) to which he pleads guilty,

and in respect of which a conviction is not recorded is liable, in addition to any penalty or costs or both in respect of the taking of proceedings for that offence, to pay the costs and expenses incurred in or in connection with the examination, seizure, analysis, destruction or other disposal of any article in respect of which the proceedings concerned are taken and the court concerned shall, on that conviction or finding or plea of guilty, as the case requires, make an order accordingly.

- (2) Costs and expenses ordered to be paid by a court under subsection (1) shall be deemed to form part of the costs of and incidental to the proceedings concerned and shall be recoverable in the same manner as those costs are recoverable.

[Section 246ZO inserted by No. 26 of 1985 s. 7.]

246ZP. Power of court to order forfeiture

- (1) A court —
- (a) which convicts a person of an offence under this Part; or
 - (b) before which a person is charged with an offence under this Part of which he is found guilty or to which he pleads guilty and in respect of which a conviction is not recorded,
- may order that the article by means of or in relation to which that offence was committed, or any similar article belonging to and found in the possession of the accused at the time of the commission of that offence, be forfeited —
- (c) in the case of an offence the prosecution for which was instituted by the Department, to the Crown; or
 - (d) in the case of an offence the prosecution for which was instituted by a local government, to the local government.
- (2) Subject to subsection (3), a court, in addition to exercising the powers conferred on it by subsection (1), may, on the application of an environmental health officer and on such notice as the court determines being given to such persons as the court determines, order that any article seized by the environmental health officer under this Part, or any article of a nature similar to that of an article so seized and found with the article so seized, be forfeited —
- (a) if the environmental health officer was acting on behalf of the Department, to the Crown; or
 - (b) if the environmental health officer was acting on behalf of a local government, to the local government.

- (3) A court is not empowered to order forfeiture of an article under subsection (2) unless it is satisfied that the article is one by means of or in relation to which an offence under this Part is or has been committed or this Part is or has been contravened.

[Section 246ZP inserted by No. 26 of 1985 s. 7; amended by No. 59 of 1991 s. 5; No. 14 of 1996 s. 4; No. 28 of 1996 s. 21; No. 84 of 2004 s. 82.]

246ZQ. Disposal of articles forfeited

An article forfeited to —

- (a) the Crown under this Part shall be disposed of in the manner determined by the Executive Director, Public Health; or
- (b) a local government under this Part shall be disposed of in the manner determined by the local government.

[Section 246ZQ inserted by No. 26 of 1985 s. 7; amended by No. 14 of 1996 s. 4.]

246ZR. Proceedings for offences

- (1) Save as otherwise expressly provided by this Part, a prosecution for an offence under this Part —
- (a) shall be taken by way of summary proceedings under the *Criminal Procedure Act 2004* within 12 months after that offence is committed or within 12 months after the commission of that offence first comes to the knowledge of the prosecutor, whichever period is the later to expire; and
 - (b) may be instituted by the Executive Director, Public Health, or, in an appropriate case, the local government of the district in which the offence is committed or by an environmental health officer or by a person authorised in writing in that behalf by the Minister or the Executive Director, Public Health, or that local government.
- (2) The summons in a prosecution for an offence under this Part in which the certificate of an analyst is used shall be made

returnable not less than 14 days after the date on which it is served.

- (3) A copy of the certificate of an analyst proposed to be used by the prosecution shall be served with the summons referred to in subsection (2).
- (4) An endorsement on the certificate of an analyst that a copy of it was duly served with the summons referred to in subsection (2) shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of that service.
- (5) A prosecution for an offence under this Part in respect of food seized, taken or otherwise obtained for analysis under section 246ZB shall be instituted not later than 12 months after the day on which the food was so seized, taken or otherwise obtained.
- (6) Notwithstanding this Act or any other Act, in a prosecution for an offence under this Part the court concerned may make an order on any matter within its jurisdiction though no application is made in respect of that matter.

[Section 246ZR inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 109; No. 59 of 1991 s. 5; No. 6 of 1993 s. 11; No. 14 of 1996 s. 4; No. 28 of 1996 s. 21; No. 49 of 1996 s. 64; No. 10 of 1998 s. 39(2); No. 59 of 2004 s. 141; No. 84 of 2004 s. 78 and 80.]

246ZS. Certificate of analyst to be evidence

- (1) When in respect of a proceeding for an offence under this Part a copy of the certificate of an analyst (which certificate purports to be signed by the analyst) —
 - (a) if obtained on behalf of the prosecution, is served with the summons concerned; or
 - (b) if obtained on behalf of the accused, is given to the prosecutor at least 3 days before the return day of the summons concerned,

that certificate, a copy of which has been so served or given, shall, on its production in that proceeding, be sufficient evidence of the matters set forth therein unless an order is made in accordance with subsection (2).

- (2) When a certificate to which subsection (1) applies is produced or it is proposed to produce such a certificate, the court concerned, if it is satisfied, whether on an application or by other means, that in the circumstances of the case the analyst who issued that certificate should be called as a witness in the proceeding concerned, may order that that analyst be called as a witness by the party who produces or proposes to produce that certificate and for that purpose may grant any necessary adjournment.
- (3) An order made under subsection (2) may provide that the analyst concerned be called in lieu of the production by the party concerned of the certificate in question.
- (4) When an order is made under subsection (2), the court concerned shall adopt such procedure as to it seems just and equitable to enable the analyst to be called and to be examined by the parties irrespective of the stage reached in the proceeding concerned.

[Section 246ZS inserted by No. 26 of 1985 s. 7; amended by No. 84 of 2004 s. 82.]

246ZT. Independent analysis

When in a proceeding for an offence under this Part in respect of food, a sample of which has been taken or otherwise obtained under this Part, there is disagreement between the evidence of the analyst for the prosecution and that of the analyst for the defence, the court concerned shall, on the application of a party to that proceeding, and may, if it thinks fit, without such an application having been made, order that the environmental health officer concerned deliver up or send in such manner as the court determines the part or parts of any sample retained under section 246ZC to —

- (a) an independent analyst for analysis; or

- (b) the analyst for the prosecution and the analyst for the defence for joint analysis.

[Section 246ZT inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 110; No. 59 of 1991 s. 5.]

246ZU. Protection of information and reports

In a proceeding for an offence under this Part —

- (a) a witness on behalf of the prosecution shall not be compelled to disclose the fact that he received information, the nature of the information received or the name of the person who furnished the information; and
- (b) an environmental health officer shall not be compelled to produce a report made or received by him confidentially in his official capacity or containing confidential information.

[Section 246ZU inserted by No. 26 of 1985 s. 7; amended by No. 59 of 1991 s. 5; No. 28 of 1996 s. 21.]

246ZV. Liability for offence by employee

- (1) When a person commits an offence under this Part as an employee, the employer of the person shall, without derogating from section 7 of *The Criminal Code*, be deemed to have committed that offence and, notwithstanding section 23 of *The Criminal Code* or any rule of law or practice, to be criminally responsible for the act or omission concerned therein and may be charged with that offence and punished accordingly.
- (2) It is immaterial that an offence referred to in subsection (1) was committed without the authority of or contrary to the instructions of the employer concerned.
- (3) A person is not liable to be convicted of an offence under this Part committed by him as an employee if he satisfies the court concerned that that offence was committed while the business of his employer was being conducted under the personal superintendence of that employer or of a manager or any other

representative of that employer and that that offence was committed with the knowledge of that employer, manager or representative.

- (4) Save as provided by subsection (3), this section applies so as not to prejudice liability imposed by or under this Part on any person by whom an offence under this Part is actually committed.

[Section 246ZV inserted by No. 26 of 1985 s. 7; amended by No. 28 of 1996 s. 20.]

246ZW. Liability for offence by body corporate

- (1) When a body corporate commits an offence under this Part, every person who at the time that offence is committed —
- (a) is the chairman of directors, managing director or other governing officer of the body corporate, by whatever name called, or any other member of the governing body thereof, by whatever name called; or
 - (b) manages or acts or takes part in the management, administration or government of the business in the State of the body corporate,

shall, without derogating from section 7 of *The Criminal Code*, be deemed to have committed that offence and, notwithstanding section 23 of *The Criminal Code* or any other rule of law or practice, to be criminally responsible for the act or omission concerned therein and may be charged with that offence and punished accordingly.

- (2) This section applies so as not to limit or affect in any way the liability of a body corporate to be proceeded against and punished for an offence under this Part committed by it.
- (3) It is a defence to a charge for an offence under this Part brought against a person referred to in subsection (1)(a) or (1)(b) to prove that that offence was committed without the consent or connivance of that person and that he exercised due diligence to prevent the commission of that offence.

[Section 246ZW inserted by No. 26 of 1985 s. 7.]

246ZX. Right of accused to have third person before court

- (1) An accused charged with an offence under this Part who alleges that the act or omission constituting that offence was due to the act or default of another person (in this section called “**the alleged offender**”) may, on compliance with this section, have the alleged offender brought before the court by which the proceeding is to be heard and determined (in this section called “**the court**”).
- (2) An accused who desires to invoke this section shall —
 - (a) give to the prosecutor (in this section called “**the original prosecutor**”) and the court, at least 10 days before the trial date set for the charge concerned, notice in writing of his intention to do so; and
 - (b) forthwith commence a prosecution for the alleged offence against the alleged offender in the court.
- (3) If the accused complies with subsection (2), the court shall ensure that a court hearing notice is issued to the alleged offender together with such other documents as the court determines and that the charge against the accused and the charge against the alleged offender are listed for trial on the same date.

[(4) repealed]

- (5) On the hearing of the charges —
 - (a) the original prosecutor or his counsel or solicitor as well as the alleged offender may —
 - (i) cross-examine the accused, if he gives evidence, and any witness called by him; and
 - (ii) call evidence in rebuttal;and
 - (b) the court —
 - (i) may convict the alleged offender if the contravention of this Part is proved and the accused satisfies the court that the contravention

- was due to the act or omission of the alleged offender;
- (ii) shall find the accused not guilty of the charge and discharge him, if in addition he satisfies the court that he has exercised due diligence to ensure compliance with the relevant provisions of this Part; and
 - (iii) may make such orders as to the costs of the proceeding concerned or any step therein as it thinks fit.
- (6) Notwithstanding anything else in this section, if it appears to the Executive Director, Public Health, or a local government that an offence under this Part has been committed in respect of which a person (in this section called “**the initial accused**”) may be charged and the Executive Director, Public Health, or the local government is reasonably satisfied that the offence was due to the act or omission of another person (in this section called “**the later accused**”) the Executive Director, Public Health, or the local government may cause to be instituted proceedings against the later accused for that offence without proceedings first being instituted against the initial accused.
- (7) In a proceeding instituted in accordance with subsection (6), the later accused may be charged with the offence with which the initial accused might have been charged and, on proof that that offence was due to the act or omission of the later accused, the later accused may be convicted of that offence.

[Section 246ZX inserted by No. 26 of 1985 s. 7; amended by No. 14 of 1996 s. 4; No. 28 of 1996 s. 16; No. 84 of 2004 s. 80 and 82.]

246ZY. Mode of service of documents

Any notice, requisition, order or other writing under this Part required or authorised to be given to or served on a person shall be duly given or served if —

- (a) it is given or served personally to or on the person to whom it is directed;
- (b) it is left at the place of residence or business of the person to whom it is directed last known to the person who gives or served it;
- (c) it is sent by post to the place of residence or business of the person to whom it is directed last known to the person who gives or serves it;
- (d) when it is addressed to the owner or occupier of premises, it is left with some adult person on the premises or, if there is no such person on the premises, it or a true copy of it is fixed on some conspicuous part of the premises; or
- (e) when it is addressed to the Executive Director, Public Health, or a local government, it is left with some person at the office of the Executive Director, Public Health, or the local government, as the case requires, or forwarded by post to the Executive Director, Public Health, or the local government.

[Section 246ZY inserted by No. 26 of 1985 s. 7; amended by No. 14 of 1996 s. 4.]

246ZZ. Evidentiary provisions

- (1) In a proceeding for the purposes of this Part —
 - (a) it shall not be necessary to prove the appointment of the Executive Director, Public Health, or of an environmental health officer or other officer or analyst or his authority to do an act, take a proceeding or give any direction or order;
 - (b) a signature purporting to be that of the Executive Director, Public Health, or of an environmental health officer or other officer or analyst shall be taken to be the signature it purports to be, until the contrary is proved;
 - (c) a document purporting to be a copy of any licence, registration, permit, approval, certificate, order, notice or

authority under this Part shall, on its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of that licence, registration, permit, approval, certificate, order, notice or authority;

- (d) a document purporting to be signed by the Executive Director, Public Health, or the chief executive officer of a local government, as the case requires, stating that at a specified time or during a specified period there was or was not in force any licence, registration, permit, approval, certificate, order, notice or authority under this Part as described in that document granted or given to a specified person or in respect of a specified thing and that that licence, registration, permit, approval, certificate, order, notice or authority was or was not subject to the terms, conditions or restrictions set out in that document shall, on its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that document;
- (e) a certificate purporting to be signed by a person authorised to grant it shall, on its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that certificate;
- (f) a certificate purporting to be signed by the Executive Director, Public Health, or the chief executive officer of a local government, as the case requires, certifying the receipt or otherwise of any notice, application or payment or that any amount of fees or other moneys specified in that certificate is payable under this Part by a specified person and has not been paid shall, on its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that certificate;

- (g) without limiting or otherwise affecting the operation of section 98(2) and (2b) of the *Road Traffic Act 1974*, a certificate or document relating to a motor vehicle purporting to be issued under that Act shall, on its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that certificate or document and that the person named therein as the person in whose name the motor vehicle is registered was the person using the motor vehicle at the material time or during the material period;
- (h) an allegation or averment in a prosecution notice —
- (i) that a place is, or that any act, matter or thing was done or omitted, within a specified district;
 - (ii) that any person, premises or other place, vehicle or appliance was or was not or were or were not at any material time licensed, registered, permitted, authorised or approved under this Part;
 - (iii) that food was prepared or packed by a specified person;
 - (iv) that a specified substance is or is not food within the meaning of this Part;
 - (v) that any licence, registration, permit, approval, certificate or authority required under this Part to be obtained was not duly obtained by the person required to obtain it; or
 - (vi) of the date on which the commission of an offence under this Part came to the knowledge of the prosecutor,
- shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of that allegation or averment;
- (i) a sale of food shall be evidence, until the contrary is proved, that the food was sold for consumption by man;

- (j) the finding of food in any premises or other place or vehicle used for selling or packing, storing, handling, serving, supplying or conveying for sale food shall be evidence, until the contrary is proved, that the food so found was intended for sale for consumption by man;
 - (k) the finding of food in any premises or other place or vehicle used for the preparation for sale of food shall be evidence, until the contrary is proved, that the food so found was intended to be used in the preparation for sale of food;
 - (l) the obtaining of a sample of food under this Part with the intention that it be submitted for analysis shall be evidence, until the contrary is proved, that the food of which a sample was so obtained was food for consumption by man;
 - (m) the onus of proof that food was not sold, prepared for sale, conveyed or intended for sale for consumption by man is on the person charged with the offence concerned; and
 - (n) in respect of food comprising a sample taken or otherwise obtained for submission for analysis, each of the parts into which that food is divided shall be taken to be of uniform composition with the other such parts, until the contrary is proved.
- (2) This section does not prejudice or in any way affect other means of proving the elements of an alleged offence.

[Section 246ZZ inserted by No. 26 of 1985 s. 7; amended by No. 59 of 1991 s. 5; No. 14 of 1996 s. 4; No. 28 of 1996 s. 21; No. 84 of 2004 s. 80.]

247. Regulations as to Part VIII

- (1) The Governor may on the advice of the Food Advisory Committee make regulations under section 341 prescribing all matters that are required or permitted by this Part to be

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prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Part.

- (2) The power to regulate includes the power to prohibit.
- (3) The regulations may —
 - [(a) deleted]*
 - (b) confer powers or authorities or impose functions or duties in connection with the regulations on a government department, public authority or local government, owners or occupiers of premises or other places or appliances, or owners or operators of vehicles or other persons.
- (4) Without limiting the generality of the power conferred upon the Governor by subsection (1), regulations may be made with respect to the specific matters and things set forth in Schedule 3.

[Section 247 inserted by No. 26 of 1985 s. 7; amended by No. 80 of 1987 s. 111; No. 14 of 1996 s. 4; No. 28 of 1996 s. 17.]

Part VIII A — Analytical services

[Heading inserted by No. 24 of 1970 s. 5.]

247A. Local Health Authorities Analytical Committee

- (1) For the purpose of providing analytical services for use by local governments, a body to be known as the Local Health Authorities Analytical Committee is hereby established.
- (2) The Analytical Committee —
 - (a) is a body corporate with perpetual succession and shall have a common seal;
 - (b) is capable, in its corporate name, of acquiring, holding and disposing of real and personal property and of suing and being sued in that name; and
 - (c) is capable of doing all such acts and things as bodies corporate may do and suffer.
- (3) The Committee shall consist of 10 members appointed by the Minister of whom —
 - (a) 5 shall be persons, one each of whom shall be nominated by each of the following local governments —
 - (i) the City of Perth;
 - (ii) the City of Fremantle;
 - (iii) the City of South Perth;
 - (iv) the City of Melville;
 - (v) the City of Stirling;
 - (b) 3 shall be persons selected by the Minister to represent local governments, other than the local governments referred to in paragraph (a), the districts of which are wholly or partly situated within 40 kilometres of the General Post Office at Perth; and
 - (c) 2 shall be persons selected by the Minister to represent all local governments other than those referred to in paragraphs (a) and (b).

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- (4) A member of the Committee referred to in subsection (3)(a) ceases to hold office if —
- (a) he resigns in writing addressed to the Minister;
 - (b) he dies; or
 - (c) his nomination as a member is withdrawn by notice given to the Minister by the local government by which he was first nominated a member.
- (5) Subject to subsection (7) a member of the Committee referred to in subsection (3)(b) holds office for a term of 3 years, but of the 3 members so referred to who are first appointed under this Part, one shall be appointed for a term of one year, one for a term of 2 years and one for a term of 3 years.
- (6) Subject to subsection (7) a member of the Committee referred to in subsection (3)(c) holds office for a term of 3 years, but of the 2 members so referred to who are first appointed under this Part, one shall be appointed for a term of 2 years and the other for a term of 3 years.
- (7) A member of the Committee referred to in subsection (3)(b) or (c) ceases to hold office —
- (a) at the expiration of the term for which he is appointed;
 - (b) if he resigns in writing addressed to the Minister; or
 - (c) if he dies,

and where an office of member becomes vacant under paragraph (b) or paragraph (c), the Minister may appoint another person to hold office in place of the member whose office has so become vacant for the balance of the term of office of that last-mentioned member.

[Section 247A inserted by No. 24 of 1970 s. 5; amended by No. 30 of 1982 s. 11; No. 14 of 1996 s. 4.]

247B. Meetings and procedure of Analytical Committee

- (1) The Analytical Committee shall hold such meetings as are necessary for the performance of its functions.
- (2) At any meeting of the Analytical Committee —
 - (a) 6 members constitute a quorum;
 - (b) the members present shall elect one of their number to preside at the meeting;
 - (c) a question arising at the meeting shall be decided by a majority of the votes of the members present.
- (3) Subject to this Part and the regulations made thereunder, the Analytical Committee may regulate its own procedure in such manner as it thinks fit.

[Section 247B inserted by No. 24 of 1970 s. 6.]

247C. Powers and functions of Analytical Committee

- (1) The functions of the Analytical Committee are —
 - (a) to formulate and operate a scheme for the provision of analytical services for use by local governments, by employing such analysts and other persons as are necessary for the purpose or by entering into contracts with persons for the provision of those services, or by both so employing analysts and other persons and so entering into contracts;
 - (b) to fix fees to be paid by local governments for participation in any scheme referred to in this section and fees to be paid for analytical services rendered under the scheme; and
 - (c) to do such other acts and things as are necessary or convenient for the purposes of this Part.
- (2) The Analytical Committee may from time to time vary or terminate any scheme formulated under this section and may formulate and operate a new scheme in place of any scheme so terminated.

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- (3) The Analytical Committee may do all such things as are necessary or convenient to be done for or in connection with the performance of its functions.

[Section 247C inserted by No. 24 of 1970 s. 7; amended by No. 14 of 1996 s. 4.]

247D. Participation in scheme by local governments

- (1) Any local government may, by notice in writing addressed to the Analytical Committee, advise the Analytical Committee that it desires to participate in the scheme for the time being operated by the Analytical Committee under this Part, and thereupon the local government shall, for the purpose, of this Part, become a participant in the scheme.
- (2) Where —
- (a) a local government is not a participant in the scheme for the time being operated by the Analytical Committee under this Part; and
 - (b) the Executive Director, Public Health is of opinion that the local government ought to be such a participant,
- he may, by notice served on the local government, direct it to participate in the scheme and thereupon the local government shall, for the purposes of this Part and in particular for the purposes of subsection (4), be a participant in the scheme.
- (3) A local government which is a participant in the scheme may, if it has first obtained the consent in writing of the Executive Director, Public Health, withdraw from the scheme by serving notice in writing to that effect upon the Analytical Committee.
- (4) Any local government which is, or has been, a participant in a scheme operated by the Analytical Committee under this Part shall pay to the Analytical Committee, on demand —
- (a) the fees fixed by the Analytical Committee under section 247C for participation in the scheme; and
 - (b) the fees so fixed for any services rendered to the local government under the scheme,

and any fees due but not paid may be recovered by the Analytical Committee, as a debt due to it, in any court of competent jurisdiction.

[Section 247D inserted by No. 24 of 1970 s. 8; amended by 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

247E. Application of *Financial Administration and Audit Act 1985*

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Analytical Committee and its operations.

[Section 247E inserted by No. 98 of 1985 s. 3.]

247F. Regulations as to Part VIIIA

The Governor may make regulations, not inconsistent with this Part, prescribing all matters that are necessary or convenient to be prescribed for carrying out or giving effect to this Part.

[Section 247F inserted by No. 24 of 1970 s. 10.]

[Part VIIIB repealed by No. 103 of 1994 s. 18.]

Part IX — Infectious diseases

Division 1 — General provisions

248. Infectious diseases may be declared dangerous

The Governor may from time to time, by notice in the *Government Gazette*, declare any infectious disease to be a dangerous infectious disease within the meaning of this Act, and in such case, and so long as such notice remains unrevoked, the disease specified therein shall be deemed a dangerous infectious disease accordingly.

Provided that venereal disease shall not be an infectious disease within the meaning of this Division.

249. Local laws to prevent the spread of infectious disease

Local laws may be made in accordance with Part XIV in relation to all or any of the following matters for the purpose of preventing or controlling the spread of an infectious disease —

- (1) for house-to-house visitation, and inspection of the houses, the occupants thereof, and the things therein, as also of the out-buildings, yards, drains, and sewers connected with any house;
- (2) for the cleansing and disinfecting of houses, buildings, yards, drains, sewers, and things;
- (3) for the ventilating of houses and buildings, or of rooms therein;
- (4) for the isolating, disinfecting and disinfecting of persons, houses, buildings, places and things;
- (5) for the providing of medical and nursing aid and accommodation for the sick;
- (6) for the removal and curative treatment of the sick;
- (7) for the speedy disposal of the dead;
- (8) for the destruction or amendment of insanitary houses, buildings, and things;

- (9) for the destruction of infected animals, or of animals or insects suspected or liable to be infected, or to convey infection;
- (10) generally for promoting and enforcing all such cleansing, ventilating, disinfecting, and other measures as are deemed necessary in order to prevent or check the spread of infectious disease.

[Section 249 amended by No. 3 of 1912 s. 3; No. 71 of 1948 s. 10; No. 28 of 1984 s. 45; No. 80 of 1987 s. 112; No. 14 of 1996 s. 4.]

250. Power of local government to check infectious disease

In order to check or prevent the spread of any infectious disease, the local government may from time to time, of its own motion, and shall, when the Executive Director, Public Health so requires —

- (1) exercise any function or power conferred by this Act or the *Local Government Act 1995*;
- (2) remedy any sanitary defect or execute any sanitary work within the powers possessed by the local government under this Act or the *Local Government Act 1995*.

[Section 250 amended by No. 3 of 1912 s. 4; No. 28 of 1984 s. 45; No. 80 of 1987 s. 113; No. 14 of 1996 s. 4.]

251. Special powers when authorised by Minister

The Executive Director, Public Health may, if authorised by the Minister, from time to time and for such time as the Minister thinks fit, exercise and delegate to any public health official the following special powers within or with respect to any district, or any part thereof, for the purpose of more effectually checking or preventing the spread of any dangerous infectious disease:

- (1) He may declare any land, building, or thing to be insanitary, and may forbid any insanitary building to be used or occupied for any purpose.

- (2) He may cause any insanitary building to be pulled down, and the timber and other materials thereof to be destroyed or otherwise disposed of as he thinks fit.
- (3) He may cause insanitary or infected things to be destroyed or otherwise disposed of as he thinks fit.
- (4) He may cause animals infected, or suspected or liable to be infected, or to convey infection, to be destroyed in such manner as he thinks fit.
- (5) He may in writing order any person whom he has reasonable grounds for believing or whom he suspects to be suffering from or harbouring the organisms of a dangerous infectious disease —
 - (a) to submit himself to medical examination by such medical officer at such time and at such place as is specified in the order; and
 - (b) to provide or permit the medical practitioner to take such samples and specimens from that person as may be required by the medical practitioner for the purpose of determining if that person is suffering from that disease or harbouring those organisms,but if the person is under 18 years of age the order shall be served on the parents or guardian of that person who shall authorise the medical officer to do anything necessary to give effect to the order and do all things necessary to ensure that the order is obeyed by that person.
- (6) He may order persons, places, houses, premises, buildings, ships, animals, and things to be isolated, quarantined or disinfected as he thinks fit.
- (7) He may forbid persons, ships, animals, or things to come or be brought to any port or place in a district from any port or place which is, or is supposed to be, infected with any dangerous infectious disease.

- (8) He may forbid persons to leave the district or the place in which they are isolated or quarantined until they have been medically examined and found to be free from dangerous infectious disease, and may enforce the return of any person who unlawfully leaves such district or place.
- (9) He may regulate the control and direction of ships from infected ports or places, and the discharge and the treatment of the cargo.
- (10) He may cause vessels and ships to be fumigated, and may require or undertake the destruction of rats in vessels and ships, and may recover from the owner of or agent for any vessel or ship all reasonable expenses incurred in the exercise of such powers.
- (11) He may forbid the removal of animals or things from any district, or part thereof to another, or from the place where they are isolated or quarantined.
- (12) He may cause places, houses, buildings, animals, and things to be inspected and examined.
- (13) He may order owners and occupiers to destroy all rodents on their premises.
- (14) He may require watercourses and the sources of water supply to be purified.
- (15) He may forbid the discharge of sewage, drainage, or insanitary matter of any description into any watercourse, stream, lake, or source of water supply.
- (16) He may require the effectual cleansing of streets and public ways and places by those entrusted by law with the care and management thereof.
- (17) He may, with the approval of the Minister, use as a temporary site for a special hospital or place of isolation or quarantine ground any reserve or endowment suitable for the purpose, notwithstanding that such use may

conflict with any trust, enactment, or condition affecting the reserve or endowment.

- (17a) He may direct and cause to be held a post mortem examination of the body of any person who has died or is supposed to have died of a dangerous infectious disease, and may give such direction as he may think fit for the disposal of such body.
- (18) He may exercise any other power conferred upon him by the Governor.

[Section 251 amended by No. 5 of 1922 s. 3; No. 33 of 1962 s. 4; No. 46 of 1972 s. 6; No. 28 of 1984 s. 45.]

252. Assistance and co-operation

In the exercise of his functions and powers under the last preceding section, the Executive Director, Public Health may employ environmental health officers and workmen, and shall be entitled to the co-operation and assistance of officers of local governments and members of the police force, and such members and officers are hereby enjoined to co-operate and assist accordingly.

[Section 252 amended by No. 24 of 1970 s. 12; No. 28 of 1984 s. 45; No. 59 of 1991 s. 5; No. 14 of 1996 s. 4.]

253. Power to specifically enforce orders made under section 251 and to apprehend persons ordered into quarantine or isolation

The Executive Director, Public Health and any public health official may do and cause to be done all such acts, matters, and things as may be necessary or reasonably deemed to be necessary to specifically enforce and carry into effect any order lawfully made by him under section 251, and in particular (without limiting the generality of the foregoing provisions) may by warrant under his hand require any officer of police or any environmental health officer to apprehend any person whom he has ordered to be quarantined or isolated, and who has not

gone into the place of quarantine or isolation as directed in the order or has escaped therefrom, and to convey such person to such place of quarantine or isolation, and to deliver him into the custody of the person in charge thereof, and may further by such warrant require the person in charge of the place of quarantine or isolation to receive the person delivered into his custody, and him safely to keep so that he may perform quarantine or undergo isolation as directed in the aforesaid order, and such warrant shall have legal validity and effect according to its tenor.

[Section 253 inserted by No. 17 of 1918 s. 33; amended by No. 24 of 1970 s. 12; No. 28 of 1984 s. 45; No. 59 of 1991 s. 5.]

254. Executive Director, Public Health may delegate certain powers

The local government shall, if requested by the Executive Director, Public Health, exercise all or any of the functions and powers which the Executive Director, Public Health is authorised to exercise under section 251.

[Section 254 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

255. Penalty for obstructing or refusing to comply with directions

Every person who in any way, directly or indirectly, by act or default —

- (a) obstructs or hinders the Executive Director, Public Health or the local government in the execution of his or its functions and powers under the provisions of this Part; or
- (b) does anything which the Executive Director, Public Health or the local government in the exercise of the aforesaid functions and powers forbids to be done; or
- (c) refuses, delays, or neglects to promptly and satisfactorily comply with any direction or requirement of the

Executive Director, Public Health or the local government in the exercise of the aforesaid functions and powers,

commits an offence.

[Section 255 amended by No. 113 of 1965 s. 8(1); No. 28 of 1984 s. 45; No. 80 of 1987 s. 114; No. 14 of 1996 s. 4.]

256. On default, work may be done at expense of offender

- (1) If the offence consists of not doing any sanitary work or remedying any sanitary defect, then, irrespective of the penalty to which the offender is liable, the Executive Director, Public Health or the local government may itself cause the work to be done, or the defect to be remedied, at the expense in all things of the offender.
- (2) All such expenses shall be recoverable in a court of competent jurisdiction by the Executive Director, Public Health or the local government.
- (3) All such expenses shall also, by force of this Act, be deemed to be a charge on the land in respect of which they have been incurred.

[Section 256 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4; No. 59 of 2004 s. 141.]

257. Power to enter on lands and do works

For the purposes of the foregoing provisions of this Act any medical officer of health or environmental health officer may at any time, with or without assistants —

- (1) enter any land, house, or building, and inspect and examine the same and all things thereon or therein;
- (2) do on or in any land, house, or building any sanitary or other work which the medical officer of health authorises or directs;

- (3) generally do with respect to persons, places, land, houses, buildings, animals, or things whatever is necessary or expedient in order to carry out the foregoing provisions of this Part or any direction or requirement of the medical officer of health thereunder.

[Section 257 amended by No. 24 of 1970 s. 12; No. 59 of 1991 s. 5(1).]

258. No personal liability

In no case shall the Executive Director, Public Health or any medical officer of health, or any environmental health officer or assistant, incur any personal liability by reason of anything done by him under the powers conferred by this Act.

[Section 258 amended by No. 24 of 1970 s. 12; No. 28 of 1984 s. 45; No. 59 of 1991 s. 5.]

259. Compensation for building, animal, or thing destroyed

In every case where, under the foregoing provisions or powers of this Part, any building, animal, or thing is destroyed by direction of the Executive Director, Public Health or the local government, the owner shall be entitled to compensation to the extent and subject to the conditions following, that is to say:

- (1) The compensation shall not exceed the actual market-value of the building, animal, or thing destroyed.
- (2) If the destruction has been rendered necessary by reason of any breach or neglect of duty, or of the ordinary rules of sanitary carefulness or cleanliness on the part of the owner or of any person for whose acts or defaults the owner is responsible, then no compensation shall be payable.
- (3) If, in the case of buildings, the destruction thereof has been rendered necessary by reason of any such breach or neglect as aforesaid on the part of the occupier of the building, or of any person for whose acts or defaults the

occupier is responsible, then the compensation shall be payable by the occupier.

- (4) If the destruction has been rendered necessary by reason of any such breach or neglect aforesaid on the part of the local government, then the compensation shall be payable by such authority.
- (5) If the destruction has been rendered necessary, in the interests of the public health, and without any such breach or neglect as aforesaid, then the compensation shall be payable out of moneys to be appropriated by Parliament for the purpose.
- (6) All questions and disputes relating to claims for compensation shall, in the prescribed manner, be heard and determined by the Magistrates Court.

[Section 259 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4; No. 59 of 2004 s. 141.]

260. Power to require cleansing and disinfecting of building, etc.

Whenever the local government is of opinion that the cleansing or disinfecting of any house or building, or of any articles therein, or of any outbuilding, yard, drain, sewer, sanitary convenience, or other appurtenance belonging to or connected therewith, would tend to prevent or check infectious disease, the following provisions shall apply:

- (1) It may, by requisition to the owner and occupier of the house or building, require them to do whatever works are necessary in order that the house, building, articles, or appurtenances may be effectually cleansed and disinfected in the manner and within the time specified in the requisition.
- (2) The owner and occupier are hereby jointly and severally empowered and required to do whatever works are necessary in order to duly comply with the requisition.

- (3) If default is made in duly complying with the requisition within the time specified therein, then the owner and occupier each commits an offence.
- (4) If such default occurs or the abatement of the nuisance is, in the opinion of the local government of immediate necessity, the local government may cause the requisite works to be done at the expense in all things of the owner and occupier, who shall be jointly and severally liable therefor.
- (5) All such expenses shall be recoverable by the local government from the owner and occupier in a summary way, and until paid shall, by force of this Act, be deemed to be a charge on the house and building and also on the land on which the same is built or to which it appertains.
- (6) When the owner or occupier of any such house or part thereof is from poverty or otherwise unable, in the opinion of the local government, effectually to carry out the requirements of this section, the local government may cleanse or disinfect such house or part thereof or articles, and itself defray the expenses of so doing.
- (7) The local government shall enforce the provisions of this section in every case in which the death from the disease known as tuberculosis occurs.

[Section 260 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 115; No. 14 of 1996 s. 4.]

261. Local government may provide for destroying or disinfecting infected things and provide vehicles

The local government may, and when the Executive Director, Public Health so requires shall —

- (1) cause disinfection or destruction of any bedding, clothing, or other articles or things which have been exposed to infection from any infectious disease, and pay compensation for the things damaged or destroyed not to exceed their reasonable market value;

- (2) provide a proper place, with all necessary apparatus and attendance, for the disinfection or destruction of bedding, clothing, or other things which have been exposed to infection from any infectious disease;
- (3) provide and maintain vehicles suitable for the conveyance of infected things to the place of disinfection or destruction;
- (4) provide and maintain vehicles suitable for the conveyance of persons affected with infectious disease to a hospital or other place of reception.

[Section 261 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

262. Restrictions on use of such vehicles

For the purpose of the last preceding section, the following provisions shall apply:

- (1) Vehicles for the conveyance of infected things shall not be used for the conveyance of infected persons.
- (2) Forthwith after being used for the conveyance of infected persons or things the vehicles shall be effectually disinfected.
- (3) A vehicle which has been used for the conveyance of infected persons or things shall not be used for any other purpose until the medical officer of health or an environmental health officer certifies in writing that it has been effectively disinfected.
- (4) If any vehicle is used in breach of this section every person who so uses it, or permits it to be used, commits an offence.
- (5) The work of providing and maintaining vehicles, and of disinfecting and destroying infected things, and of conveying infected persons and things, shall be done by the local government at its own cost in all things:

Provided that the local government shall be entitled to recover from the owner the reasonable cost of disinfecting infected things.

[Section 262 amended by No. 113 of 1965 s. 8(1); No. 24 of 1970 s. 12; No. 80 of 1987 s. 116; No. 59 of 1991 s. 5; No. 14 of 1996 s. 4; No. 28 of 1996 s. 21.]

263. Removal of persons suffering from infectious disease to hospital

On the order of a medical officer of health, any person who is suffering from any infectious disease may be removed to any hospital available for the reception and treatment of persons suffering from such disease; and with respect to such order the following provisions shall apply:

- (1) The order may be made by the medical officer of health in any case where, in the interests of public health, he thinks it expedient so to do.
- (2) The order shall be made in every case where the medical officer of health is satisfied that the patient is without proper lodging or accommodation, or is living in a house in which he cannot be effectually isolated so as to prevent the risk of the infection spreading to other persons living in the house.
- (3) The order need not be addressed to any specified person, but shall be obeyed by every officer of the local government upon whom it is served or to whose knowledge it comes.
- (4) Every person who wilfully disobeys the order, or in any way obstructs or delays the prompt execution thereof, commits an offence.

[Section 263 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 117; No. 14 of 1996 s. 4.]

264. Exposure of infected persons and things

- (1) Any person who —
- (a) while affected with any infectious disease, wilfully exposes himself in any public house, or in any public place, or public vehicle without proper precautions against spreading the infection; or
 - (b) while affected as aforesaid, enters any public vehicle, without previously notifying to the owner, conductor, or driver thereof that he is so affected; or
 - (c) being in charge of any person so affected, so exposes such person or allows him to do anything in breach of this section,

commits an offence.

- (2) Any person who, while affected with any infectious disease, enters any public vehicle without previously notifying to the owner or driver that he is so affected, shall, in addition, be ordered by the court of summary jurisdiction to pay such owner and driver the amount of any expense and loss they may respectively incur in carrying into effect the provisions of this Act with respect to disinfection of the conveyance:

Provided that no proceedings shall be taken against persons transmitting with proper precautions any bedding, clothing, or other things for the purpose of having the same disinfected.

[Section 264 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 118; No. 59 of 2004 s. 141.]

265. Precautions when infected person enters public vehicle

Every owner, driver, or conductor of a public vehicle —

- (1) shall immediately cause the disinfection, to the satisfaction of an environmental health officer, of such vehicle after it has to his knowledge conveyed any person affected with any infectious disease;

- (2) may also require such person to pay or deposit a sum sufficient to defray the expenses of effectually disinfecting the vehicle.

[Section 265 amended by No. 24 of 1970 s. 12; No. 59 of 1991 s. 5; No. 28 of 1996 s. 21.]

266. Penalty for non-compliance

If the owner, driver, or conductor of a public vehicle fails or neglects to comply with section 265(1), he commits an offence.

[Section 266 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 119.]

267. Penalty for selling infected things or letting house where infected person is lodging

- (1) Every person commits an offence who —
- (a) sells, gives, lends, transmits, or exposes any things which have been exposed to infection from any infectious disease, unless they have first been effectively disinfected, or proper precautions have been taken against spreading the infection; or
 - (b) lets for hire any house, room, or part of a house or room, to be shared or occupied in common by or with any person suffering from any infectious disease; or
 - (c) lets for hire any house, room, or part of a house or room, in which there then is, or has been, any person suffering from any infectious disease, unless, before the person hiring goes into occupation, the house, room, or part let, and all things therein liable to infection, have been effectually disinfected to the satisfaction of a medical officer of health or an environmental health officer as certified by certificate under his hand; or
 - (d) when letting or negotiating to let to any person for hire any house, room, or part of a house or room, conceals the fact that any person suffering from any dangerous

infectious disease then is, or within the previous 6 weeks has been, living in the house or in any part thereof.

- (2) For the purposes of this section the keeper of a public house or common lodging-house shall be deemed to let for hire part of a house to any person admitted as a guest or lodger into such house.

[Section 267 amended by No. 18 of 1964 s. 19; No. 113 of 1965 s. 8(1); No. 24 of 1970 s. 12; No. 80 of 1987 s. 120; No. 59 of 1991 s. 5; No. 28 of 1996 s. 21.]

268. Ceasing to occupy houses without previous disinfection, or giving notice to owner making false answers

Every person who ceases to occupy any house or part of a house in which, within 6 weeks previously, any person affected with any infectious disease has resided —

- (a) without having such house, or part thereof, and all articles therein liable to retain infection, disinfected to the satisfaction of a medical officer, as testified by a certificate signed by him, or without first giving to the owner of such house, room, or part of a house, and to the local government, notice of the previous existence of such disease; or
- (b) being questioned by the owner thereof, or by any person negotiating for the hire of such house, room, or part of a house, as to the fact of there having within 6 weeks previously, been therein any person suffering from any infectious disease, knowingly makes a false answer to such question,

commits an offence.

[Section 268 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 121; No. 14 of 1996 s. 4.]

269. Infected matter thrown into ashpits, etc., to be disinfected

Any person who knowingly casts, or causes or permits to be cast, into any ash-pit, ash-tub, or other receptacle for the deposit of refuse matter any infected matter or thing without previous disinfection commits an offence.

[Section 269 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 122.]

270. Temporary shelter, etc.

The local government shall from time to time provide, free of charge, temporary shelter or house accommodation for the members of any family in which any infectious disease has appeared who have been compelled to leave their dwelling for the purpose of enabling such dwelling to be disinfected by the local government.

[Section 270 amended by No. 14 of 1996 s. 4.]

271. Special sanitary service in typhoid cases

Whenever typhoid fever exists in a district the local government shall provide and maintain a separate sanitary service for the removal and efficient disinfection of the excreta of persons suffering or suspected to be suffering from such disease, and may make a charge for such service in addition to the rate or charge for the ordinary service.

[Section 271 amended by No. 14 of 1996 s. 4.]

272. Work to be done to satisfaction of Executive Director, Public Health

In carrying out any work under the provisions of this Part, the local government shall do so to the satisfaction of the Executive Director, Public Health, and in conformity with any directions he may think fit to give; and if the local government fails or

neglects so to do, the Executive Director, Public Health may cause the work to be done at the cost of the local government.

[Section 272 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

273. Treatment and custody of lepers

- (1) The Governor may from time to time, by order published in the *Government Gazette*, set apart any suitable place for the reception and medical treatment of lepers.
- (2) The Executive Director, Public Health may, on the certificate of a medical officer or any 2 legally qualified medical practitioners that any person is suffering from leprosy, direct that such person be removed to and detained in such place until released by order of the Minister.
- (3) Any person who wilfully refuses or neglects to obey any such order of the Executive Director, Public Health, or escapes, or attempts to escape, from such place, may, with such necessary force as the case may require, be removed or brought back to such place.
- (4) An order of the Executive Director, Public Health under this section may be addressed to such member of the police force or other person as the Executive Director, Public Health may consider expedient; and any person who wilfully disobeys or obstructs the execution of such order commits an offence.
- (5) The Governor may make regulations for the safe custody of persons detained in any such place, for regulating or prohibiting the supply of alcohol and other deleterious substances to any such person, for the control of the interchange of articles which are potentially infective, for the purpose of preventing or checking the spread of leprosy, for the surveillance of such persons granted leave or conditional discharge, and in relation to the persons with whom and the circumstances under which any such person may consort with persons not suffering from leprosy.

- (6) A person who trespasses on such place, or unlawfully communicates or consorts, or improperly interferes, with any person detained therein, or who assists or harbours any such person who escapes or attempts to escape, commits an offence.

[Section 273 amended by No. 102 of 1973 s. 19; No. 28 of 1984 s. 45; No. 80 of 1987 s. 123.]

274. Regulations as to spread of tuberculosis

The Governor may make regulations for the purpose of preventing or checking the spread of tuberculosis.

275. Conscientious objection to vaccination

- (1) No parent or other person shall be liable to conviction or to any penalty for neglecting or refusing to have any child vaccinated or to take any child or to cause any child to be taken to be vaccinated as a protection against any infectious disease, if, within 4 months from the birth of the child, he makes a statutory declaration that he conscientiously believes that vaccination would be prejudicial to the health of the child, and within 7 days thereafter delivers the declaration to the Registrar of Births, Deaths and Marriages.
- (2) A statutory declaration made for the purposes of this section shall be exempt from stamp duty.
- (3) A statutory declaration for the purposes of this section shall be made in the form set out in Schedule 4 or in a form to the like effect.

[Section 275 amended by No. 26 of 1985 s. 8; No. 40 of 1998 s. 14(2).]

Division 2 — Notification of disease

276. Notification of infectious disease

- (1) If a medical practitioner or nurse practitioner forms the opinion that a patient of the practitioner has an infectious disease, the practitioner must notify the Executive Director, Public Health.
- (2) If analysis of a sample undertaken at a pathology laboratory indicates that the patient from whom the sample was taken has or had an infectious disease, the responsible pathologist of that pathology laboratory must ensure that the Executive Director, Public Health is notified.
- (3) The notification must be given as soon as practicable and in a form and manner approved by the Executive Director, Public Health.
- (4) Subject to section 276A, the notification must include the following information, to the extent to which the medical practitioner, nurse practitioner or responsible pathologist has that information —
 - (a) the name of the disease;
 - (b) the name, address, telephone number, date of birth and gender of the patient;
 - (c) the name, address and telephone number of the patient's medical practitioner or nurse practitioner;
 - (d) any other relevant information required by the approved form.
- (5) A medical practitioner, nurse practitioner or responsible pathologist who fails to comply with this section commits an offence.

[Section 276 inserted by No. 23 of 2006 s. 5.]

276A. Notification of HIV infections or AIDS — additional requirements

- (1) Unless subsection (2) applies, a notification of HIV infection or AIDS under section 276 must not include the name, address and telephone number of the patient but must instead include only the first 2 letters of the patient's given and family names and the postcode of the area in which the patient lives.
- (2) The medical practitioner or nurse practitioner may include in a notification of HIV infection or AIDS the patient's name, address and telephone number if —
 - (a) the patient consents; or
 - (b) the practitioner has reasonable grounds to believe that the patient may engage in behaviour that is likely to put other persons at risk of infection.
- (3) A notification of HIV infection or AIDS in relation to a patient must be separate from any other notification relating to the patient.
- (4) If, in relation to a patient, the Executive Director, Public Health has reasonable grounds to believe that the patient may engage in behaviour that is likely to put other persons at risk of infection, the Executive Director, Public Health may require the medical practitioner, nurse practitioner or responsible pathologist to give the Executive Director, Public Health the name, address and telephone number of the patient.
- (5) A medical practitioner, nurse practitioner or responsible pathologist who fails to comply with a requirement under subsection (4), other than because the practitioner or pathologist does not have the information, commits an offence.

[Section 276A inserted by No. 23 of 2006 s. 5.]

277. List of out-workers to be kept in certain trades

In the case of persons employed in such classes of work as may from time to time be prescribed by the Governor, by Order in Council —

- (1) The occupier of every factory and workshop or any other place from which any work is given out, and every contractor employed by any such occupier in the business of the factory, workshop, or place shall —
 - (a) keep in the prescribed form and manner, and with the prescribed particulars, lists showing the names and addresses of all persons directly employed by him, either as workmen or as contractors, in the business of the factory or workshop outside the factory or workshop, and the places where they are employed; and
 - (b) send to an environmental health officer such copies of or extracts from those lists as the environmental health officer may from time to time require; and
 - (c) send on or before 1 February and 1 August in each year copies of those lists to the Executive Director, Public Health and the local government of the district in which the factory or workshop is situate.
- (2) Every local government shall cause the lists received in pursuance of this section to be examined, and shall furnish the name and place of employment of every out-worker included in any such list whose place of employment is outside its district to the local government of the district in which his place of employment is.
- (3) The lists kept by the occupier or contractor shall be open to inspection by any environmental health officer under this Act, and by any officer duly authorised by the local government or the Executive Director, Public Health,

and the copies sent to the local government and the Executive Director, Public Health, and the particulars furnished by one local government to another, shall be open to inspection by any environmental health officer under this Act.

- (4) This section shall apply to any place from which any work is given out, and to the occupier of that place and to every contractor employed by any such occupier in connection with the said work, as if that place were a workshop.
- (5) In the event of a contravention of this section by the occupier of a factory, workshop, or place, or by a contractor, the occupier or contractor commits an offence.

[Section 277 amended by No. 113 of 1965 s. 8(1); No. 24 of 1970 s. 12; No. 28 of 1984 s. 45; No. 80 of 1987 s. 125; No. 59 of 1991 s. 5; No. 14 of 1996 s. 4; No. 28 of 1996 s. 21.]

278. Employment of person in unwholesome premises

- (1) If the Executive Director, Public Health or local government within whose district is situate a place in which work is carried on for the purpose of or in connection with the business of a factory or workshop give notice in writing to the occupier of the factory or workshop, or to any contractor employed by any such occupier, that such place is injurious or dangerous to the health of the persons employed therein, then, if the occupier or contractor, after the expiration of one month from receipt of the notice, gives out work to be done in that place, and the place is found by the court having cognisance of the case to be so injurious or dangerous, he commits an offence.
- (2) This section shall apply in the case of the occupier of any place from which any work is given out as if that place were a workshop.

- (3) This section shall not apply except in the case of persons employed in such classes of work as the Governor may prescribe by Order in Council.

[Section 278 amended by No. 113 of 1965 s. 8(1); No. 28 of 1984 s. 45; No. 80 of 1987 s. 126; No. 14 of 1996 s. 4.]

279. Making of wearing apparel where there is any infectious disease

If the occupier of a factory or workshop or of any place from which any work is given out, or any contractor employed by any such occupier, causes or allows wearing apparel to be made, cleaned, or repaired in any dwelling-house or building occupied therewith whilst any inmate of the dwelling-house is suffering from any infectious disease, then, unless he proves he was not aware of the existence of the illness in the dwelling-house and could not reasonably have been expected to become aware of it, he commits an offence.

[Section 279 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 127.]

280. Prohibition of home work in places where there is infectious disease

- (1) If any inmate of a house is suffering from an infectious disease, the Executive Director, Public Health or the local government of the district in which the house is situate may make an order forbidding any work to which this section applies to be given out to any person living or working in that house or such part thereof as may be specified in the order, and any order so made may be served on the occupier of any factory or workshop or any other place from which work is given out or on the contractor employed by any such occupier.
- (2) The order may be made notwithstanding that the person suffering from an infectious disease may have been removed from the house, and the order shall be made either for a specified time or subject to the condition that the house or part

thereof liable to be infected shall be disinfected to the satisfaction of the medical officer of health, or that other reasonable precautions shall be adopted.

- (3) In any case of urgency the powers conferred on the local government by this section may be exercised by any 2 or more members of the local government acting on the advice of a medical officer of health.
- (4) If any occupier or contractor on whom an order under this section has been served contravenes the provisions of the order, he commits an offence.
- (5) The work to which this section applies is the making, cleaning, washing, altering, ornamenting, finishing, and repairing of wearing apparel, and any work incidental thereto and such other classes of work as may be prescribed by the Governor by Order in Council.

[Section 280 amended by No. 113 of 1965 s. 8(1); No. 28 of 1984 s. 45; No. 80 of 1987 s. 128; No. 14 of 1996 s. 4.]

[281. Repealed by No. 24 of 2000 s. 16(2).]

282. Local governments to give effect to order of Executive Director, Public Health

- (1) For the purposes of this Part the Executive Director, Public Health may, from time to time, issue orders, either generally or specifically, to such local governments as may be named in such orders; and the officers of such local governments shall observe and give effect to such orders.
- (2) Any officer of a local government who neglects to observe and give effect to any order of the Executive Director, Public Health under this section commits an offence.

[Section 282 amended by No. 28 of 1984 s. 45; No. 80 of 1987 s. 129; No. 14 of 1996 s. 4.]

283. Eruptive diseases to be reported

The master or any other person, except the pilot, being in charge of any vessel lying in Western Australian waters shall report to the local government of the district in which or nearest to the place where such ship is lying, or to the water police, any illness of a suspicious kind, or any infectious or contagious disease, or any complaint attended with eruption or eruptive symptoms, which may occur in the said ship, immediately on the existence of such illness, disease, or complaint coming to his knowledge, whether such ship has been previously inspected by an officer of health or not.

[Section 283 amended by No. 14 of 1996 s. 4.]

284. Medical practitioner to notify cases of tuberculosis

Every medical practitioner who, for the purposes of section 44 of the *Births, Deaths and Marriages Registration Act 1998*, certifies the cause of death in any case of tubercular disease shall forthwith notify the Executive Director, Public Health and the local government of the death.

[Section 284 amended by No. 17 of 1918 s. 34; No. 30 of 1932 s. 36; No. 28 of 1984 s. 45; No. 14 of 1996 s. 4; No. 40 of 1998 s. 14(3).]

285. Infection in schools

- (1) Any person who knowingly or negligently sends to any school a child who, within the space of 3 months, has been suffering from any dangerous infectious or contagious disease, or who has been resident in any house in which such disease has existed within the space of 6 weeks, without a certificate from some legally qualified medical practitioner that such child is free from disease and infection, and unless the clothes of such child have been properly disinfected, commits an offence.
- (2) In the case of diphtheria any medical officer shall have the power to examine any child, and if found to be infected such

child shall not be permitted to return to the school without a certificate from the medical officer that such child is free from infection.

[Section 285 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 130.]

286. Local government to report epidemic disease, etc., to Executive Director, Public Health

Upon the appearance of any epidemic, endemic or contagious disease, or of any indication thereof or of any peculiar circumstances or occurrences involving or affecting or likely to involve or affect the sanitary condition of any district, the local government of such district shall immediately report the same to the Executive Director, Public Health; and the report shall be accompanied by such remarks or information as such local government may possess in regard to the disease, locality, or other facts that may have come to its knowledge, and may tend or appear to tend towards the better and more full comprehension of the disease, indications, occurrences, or circumstances so reported.

[Section 286 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

287. Certain persons to report occurrence of infectious disease

- (1) Whenever, in the opinion of the Executive Director, Public Health, any place in Western Australia is affected by any dangerous infectious or contagious disease, the Executive Director, Public Health may require all medical practitioners, deputy registrars, school teachers, and members of the police force residing in such place, and the occupier or person in charge of any house in which any case of such disease may occur, to report such occurrence by telegraph, or in case there is no telegraphic communication, by letter to the Executive Director, Public Health and the local government.

- (2) Whenever it may be necessary to prove that any infectious or contagious disease exists in any place in Western Australia, a copy of a declaration by the Executive Director, Public Health that such disease exists in such place, purporting to be signed and certified to be a true copy by the clerk to the Executive Director, Public Health, shall be evidence, until the contrary be proved, of the existence of such disease.

[Section 287 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

288. Monthly reports of infectious diseases

Whenever any infectious or contagious disease exists in any district the local government shall, at least once in every month, and oftener if required, report thereon in the prescribed form to the Executive Director, Public Health.

[Section 288 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

289. No liability for notifying etc.

A medical practitioner, nurse practitioner or responsible pathologist who notifies the Executive Director, Public Health under sections 276 and 276A, or who gives additional information in accordance with section 276A(4), incurs no civil liability as a result, and is not to be regarded for any purpose as being in breach of any duty of confidentiality.

[Section 289 inserted by No. 23 of 2006 s. 6.]

**Part IXA — Prevention and alleviation of certain
non-infectious disease processes and physical or
functional abnormalities**

[Heading inserted by No. 21 of 1957 s. 11.]

289A. Objects of this Part

The objects of this Part are to promote the prevention and alleviation of such disease processes, and of such physical or functional abnormalities, as are not infectious and as are prescribed.

[Section 289A inserted by No. 21 of 1957 s. 11.]

289B. Interpretation

In this Part —

“**prescribed condition of health**” means such disease processes and physical or functional abnormalities as are prescribed as conditions of health to which this Part applies, but does not include any infectious disease.

[Section 289B inserted by No. 21 of 1957 s. 11]

289C. Regulation as to Part IXA

For the purpose of achieving the objects of this Part power is conferred on the Governor to prescribe by regulation such matters as appear to him to be necessary, desirable, or convenient, for achieving the objects of this Part, including without limiting or otherwise affecting the generality of the power hereby conferred, power to prescribe by regulation —

- (a) conditions of health to which this Part applies, excluding infectious diseases;
- (b) how, when, by whom, and to whom, cases of prescribed conditions of health must be notified;
- (c) fees payable to any person, or class of person, required to notify cases of prescribed conditions of health; and

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- (d) functions, powers, and duties of any person or class of person, whether the Minister, the Executive Director, Public Health, a medical officer, medical practitioner, person having any prescribed condition of health, or any other person or class of person, but so that a regulation made under this paragraph is limited to the necessities of achieving the objects of this Part and does not require any person to submit to treatment without his consent.

[Section 289C inserted by No. 21 of 1957 s. 11; amended by No. 28 of 1984 s. 45.]

289D. Powers conferred by this Part are cumulative

The powers conferred by, or pursuant to, section 289C, are in addition to, and not in derogation of, any other powers conferred by this Act.

[Section 289D inserted by No. 21 of 1957 s. 11.]

[Part IXB (s. 289E-289I) repealed by No. 5 of 2006 s. 126.]

Part X — Tuberculosis

290. Interpretation

In this Part, unless the context otherwise requires —

“**approved laboratory**” means a laboratory established and maintained with the approval of the Governor pursuant to the provisions of this Part;

“**approved medical officer**” means a medical officer, approved in writing by the Executive Director, Public Health or a person delegated by the Executive Director, Public Health to approve on his behalf;

“**communicable tuberculosis**” means all forms of pulmonary tuberculosis in which the mycobacterium tuberculosis (tubercle bacillus) has been found in the sputum as the result of tests made in an approved laboratory;

“**declared patient**” means a person who is adjudged as such and is the subject of an order made by the Magistrates Court pursuant to the provisions of this Part relating to entry and remaining in a hospital;

“**hospital**” means a public hospital under the *Hospitals and Health Services Act 1927*;

“**tuberculosis**” means all forms of tuberculosis;

“**voluntary patient**” means a person who is a patient in a hospital otherwise than as a declared patient.

[Section 290 inserted by No. 70 of 1948 s. 4; amended by No. 28 of 1984 s. 45; No. 53 of 1985 s. 5; No. 103 of 1994 s. 18; No. 59 of 2004 s. 141.]

[291. Repealed by No. 53 of 1985 s. 6.]

292. Notification by medical practitioner obligatory

A medical practitioner attending any person shall on the day on which he becomes aware that there is reasonable evidence that the person is suffering from tuberculosis, notify the Executive

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Director, Public Health and the local government for the district in which the person resides on the form prescribed.

For the purpose of this section the expression “**reasonable evidence**” means radiological and bacteriological evidence or either and, in addition to both or either, clinical history and findings.

[Section 292 inserted by No. 70 of 1948 s. 4; amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

293. X-ray examination for tuberculosis

When an approved medical officer appointed for a district suspects that any person resident in the district is suffering from tuberculosis, he may require the person to submit to such X-ray examination for tuberculosis as the Executive Director, Public Health shall direct.

[Section 293 inserted by No. 70 of 1948 s. 4; amended by No. 28 of 1984 s. 45.]

293A. Notice requiring persons to submit to X-ray examination

- (1) The Executive Director, Public Health may, by notice published in the *Gazette*, require all persons over the age of 14 years of any class or classes specified in the notice to undergo X-ray examinations for tuberculosis at such times and places as are specified in the notice and all persons to whom the notice applies shall, subject to subsection (3) undergo the examination accordingly.
- (2) The Executive Director, Public Health shall cause a copy of the notice promulgated pursuant to the provisions of the last preceding subsection to be published once at least in not less than 3 newspapers circulating in the State and may in addition cause the contents of the notice to be made known to the public in such other manner as he considers desirable.
- (3) The provisions of subsection (1) shall not apply to a person of a class in respect of which class a notice is promulgated pursuant

to those provisions, if that person is the holder of a certificate signed by a medical practitioner by whom he has been professionally attended or by an approved medical officer certifying that the person has within a period of 12 months immediately preceding the date of the publication of the notice in the *Gazette*, undergone an X-ray examination of his lungs; but the person shall if required in writing to do so by the Executive Director, Public Health produce the certificate and the report of the radiologist by whom the examination was carried out to the Executive Director, Public Health or to a person specified by the Executive Director, Public Health.

- (4) The provisions of this section are in addition to and not in derogation of those of the last preceding section.

[Section 293A inserted by No. 25 of 1950 s. 6; amended by No. 28 of 1984 s. 45.]

294. Proceedings on complaint

- (1)(a) When, in the opinion of the Executive Director, Public Health or an approved medical officer —
- (i) a person is suffering from communicable tuberculosis and does not conduct himself so as to preclude infection by him of other persons, whether members of his family or not with tuberculosis; or
 - (ii) a person is suffering from communicable tuberculosis and, having regard to his condition, consumes to excess, intoxicating liquor or intoxicating or narcotic drugs and does not conduct himself so as to preclude infection by him of other persons, whether members of his family or not with tuberculosis;

and in either case is not a voluntary patient, he shall be directed in writing by the Executive Director, Public Health or the approved medical officer to enter a hospital as a patient for treatment.

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- (b) When a voluntary patient to whom the provisions of either subparagraph (i) or (ii) of the last preceding paragraph apply —
- (i) conducts himself in such a manner as is detrimental to the condition of other patients in the hospital; or
 - (ii) prepares or attempts to leave the hospital,
- the medical superintendent may, by virtue of this enactment, restrain him in the hospital pending the completion of the proceedings hereinafter referred to.
- (2) When a person does not enter a hospital as directed under subsection (1)(a) or having entered a hospital pursuant to a direction given under that subsection or does not remain in the hospital or any other hospital to which he is transferred contrary to a direction given under that subsection an application for an order under subsection (5) may, with the approval of the Executive Director, Public Health, or an approved medical officer, be made in respect of that person.
- (3) The application shall be made to the Magistrates Court in accordance with that court's rules of court.
- (4) The Magistrates Court, constituted by a magistrate, shall hear and determine the application and may exclude all or any persons from the hearing and the publication of all or any part of the proceedings if, in the court's opinion, having regard to the purpose of this Part, the particular circumstances of the case justify doing so.
- (5) When the subject matter of the complaint is established to its satisfaction, the court shall adjudge the person a declared patient and order that he enter a hospital forthwith, or at such time as shall be specified in the order, and remain in a hospital for such period not exceeding 12 months as, having regard to the purposes of this Act, it considers fit, and shall specify in the order.

- (6) In any proceedings on an application under the provisions of this section, the production of a certificate signed or purporting to have been signed —
- (a) by the Executive Director, Public Health or an approved medical officer certifying —
 - (i) that he is of opinion that circumstances referred to in subsection (1)(a)(i) or (ii) apply to a person;
 - (ii) that he has directed a person to enter a hospital for treatment;
 - (iii) that the person has not complied with the direction;
 - (iv) that he approves of the making of the application in respect of the person;
 - (b) signed or purporting to have been signed by the director of a laboratory established and maintained with the approval of the Governor pursuant to the provisions of this Part certifying —
 - (i) that he is the director of such a laboratory;
 - (ii) that mycobacterium tuberculosis (tubercle bacillus) has been found in the sputum of a person as the result of tests made in the laboratory,

shall be *prima facie* evidence of the matters so certified and of the status of the person signing or purporting to have signed the certificate without further proof of his appointment or signature.

- (7) If contrary to the terms of an order made by the Magistrates Court pursuant to the provisions of this section —
- a declared patient does not enter a hospital
- or —
- having entered a hospital does not remain therein while the order is operative —
- (a) he commits an offence; and

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- (b) without prejudice to any liability to punishment in respect of the offence, the magistrate who made the order or some other magistrate or Justice of the Peace may issue a warrant directed to all officers and constables of the Police Force of the State to apprehend the declared patient and convey him to a hospital and to deliver him with the warrant to the medical superintendent of the hospital and directing the medical superintendent to receive him into his custody at the hospital and there to keep him during the operation of the order, and effect shall be given to the warrant.
- (8)
 - (a) While any order made by the Magistrates Court pursuant to the provisions of this Part, that a declared patient shall remain in a hospital for any period is operative, an application may be made in manner prescribed by the Executive Director, Public Health or by any person with the approval of the Executive Director, Public Health to the Magistrates Court for an extension of that period.
 - (b) The provisions of this section relating to the hearing and determination of an application, and any order made thereon shall, with the appropriate adaptations, apply in respect of the hearing and determination of an application made pursuant to the provisions of this subsection and enforcement of any order made thereon.
 - (c) The court may dismiss the application, or if, having regard to the purposes of this Part, the court decides it is necessary, it may order the period to be extended for such further term as it shall think fit and adjudge that the declared patient shall continue to be such during the further term.
 - (d) The provisions of this subsection shall apply and may be exercised in respect of that or any further term, from time to time.

[Section 294 inserted by No. 70 of 1948 s. 4; amended by No. 28 of 1984 s. 45; No. 53 of 1985 s. 7; No. 80 of 1987 s. 131; No. 59 of 2004 s. 141.]

295. Executive Director, Public Health may order discharge of a declared patient

If, having regard to the objects of this Part, the Executive Director, Public Health is of opinion that it is desirable, he may order that —

[(a) deleted]

- (b) the duration of any order made by the Magistrates Court pursuant to the provisions of this Part that a declared patient shall remain in a hospital, shall be terminated and that the patient shall be discharged from the operation of the order,

and effect shall be given to the order of the Executive Director, Public Health accordingly.

[Section 295 inserted by No. 70 of 1948 s. 4; amended by No. 28 of 1984 s. 45; No. 53 of 1985 s. 8; No. 80 of 1987 s. 132; No. 59 of 2004 s. 141.]

296. Regulations as to Part X

The Governor may make such regulations as may be necessary or convenient for carrying this Part into operation or for facilitating the operation of this Part.

[Section 296 inserted by No. 53 of 1985 s. 9; amended by No. 80 of 1987 s. 133.]

**Part XI — Venereal diseases and disorders affecting
the generative organs**

[Heading inserted by No. 55 of 1915 s. 3.]

[297-299. Repealed by No. 23 of 2006 s. 7.]

300. Notification of venereal disease

- (1) If a medical practitioner or nurse practitioner forms the opinion that a patient of the practitioner has a venereal disease, the practitioner must notify the Executive Director, Public Health.
- (2) If analysis of a sample undertaken at a pathology laboratory indicates that the patient from whom the sample was taken has or had a venereal disease, the responsible pathologist of that pathology laboratory must ensure that the Executive Director, Public Health is notified.
- (3) The notification must be given as soon as practicable and in a form and manner approved by the Executive Director, Public Health.
- (4) The notification must include the following information, to the extent to which the medical practitioner, nurse practitioner or responsible pathologist has that information —
 - (a) the name of the disease;
 - (b) the name, address, telephone number, date of birth and gender of the patient;
 - (c) the name, address and telephone number of the patient's medical practitioner or nurse practitioner;
 - (d) any other relevant information required by the approved form.
- (5) A medical practitioner, nurse practitioner or responsible pathologist who fails to comply with this section commits an offence.

[Section 300 inserted by No. 23 of 2006 s. 8.]

300A. Protection from suit in certain cases

- (1) Where any patient who has attended or been treated by a medical practitioner or nurse practitioner for a venereal disease in an infectious stage notifies in good faith and without malice the practitioner of the names of any persons from or to whom the patient considers the disease may have been contracted or transmitted, no action for libel or slander shall lie —
 - (a) against the patient for making the notification to the practitioner; and
 - (b) where the practitioner, with the consent of the patient, communicates the notification to the Executive Director, Public Health — against the Executive Director, Public Health or the patient for or in respect of the making of the communication to the Executive Director, Public Health.
- (2) A medical practitioner, nurse practitioner or responsible pathologist who notifies the Executive Director, Public Health under this Part incurs no civil liability as a result, and is not to be regarded for any purpose as being in breach of any duty of confidentiality.

[Section 300A inserted by No. 101 of 1976 s. 10; amended by No. 28 of 1984 s. 45; No. 23 of 2006 s. 9.]

[301-305. Repealed by No. 23 of 2006 s. 10.]

306. Responsibility of parents and guardians of diseased persons under 16

- (1) When any person under the age of 16 years is or becomes liable under this Part to do or submit to any act, matter, or thing, any parent or guardian of such person, who knows that such person is so liable and who does not exercise his authority and use his best endeavours to compel or induce such person to do or submit to such act, matter, or thing, commits an offence.

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- (2) Any parent or guardian of a person referred to in subsection (1) who knows that such person has failed to comply with any provision of this Act with which he ought to have complied and who does not report the fact to the Executive Director, Public Health, commits an offence.

[Section 306 inserted by No. 55 of 1915 s. 3; amended by No. 113 of 1965 s. 8(1); No. 28 of 1984 s. 45; No. 80 of 1987 s. 142.]

307. Compulsory examination and treatment

- (1) Whenever the Executive Director, Public Health has received a signed statement in which shall be set forth the full name and address of the informant, which gives the Executive Director, Public Health reason to believe that any person is suffering from venereal disease, or whenever, in any other circumstances, the Executive Director, Public Health has reasonable grounds to suspect that any person is suffering from venereal disease; he may give notice, in writing, to such person requiring him to consult a medical practitioner, and produce to the satisfaction of the Executive Director, Public Health within a time to be specified in the notice, a certificate of such medical practitioner that such person is or is not suffering from the disease, and if such certificate is not produced within the time stated in such notice, or if the Executive Director, Public Health be not satisfied with such certificate he may, by warrant under his hand, authorise any medical officer of health or any 2 medical practitioners to examine such person to ascertain whether such person is suffering from such disease, and the said officer or practitioners shall have power to examine the person accordingly, and shall report the result of his or their examination to the Executive Director, Public Health in writing.

Provided that where the person to be examined is a female, and the examination is to be by 2 medical practitioners, one of such practitioners shall, if so desired by the person to be examined, be a female medical practitioner, if able and willing to act, and

within 32 kilometres of the place where the examination is to be made.

- (2) If the report discloses that the person is suffering from any venereal disease in an infectious stage and is in the opinion of the Executive Director, Public Health likely unless detained to infect other persons, the Executive Director, Public Health may by warrant under his hand in the prescribed form, and directed to the prescribed persons, order the person to be apprehended, and to be detained for any period not exceeding 2 weeks in any hospital or other place, and the Executive Director, Public Health may by such warrant order any bacteriological and other examinations and investigations to be made of and in respect of such person.

For all the purposes of this and the succeeding subsections any gaol hospital shall be deemed to be a place of detention. The Executive Director, Public Health may by warrant order any person to whom any such subsection applies —

- (a) to be detained in a gaol hospital in the first instance;
 - (b) to be transferred from a hospital or other place to a gaol hospital.
- (3) If after such detention it shall appear to the Executive Director, Public Health that the person is suffering from any venereal disease in an infectious condition, and that further detention is necessary in the interests of the public, the Executive Director, Public Health may issue his warrant in such form, and directed to such persons as he shall think fit, authorising and requiring the apprehension if necessary of such person and the detention of such person in such place for such time as the Executive Director, Public Health may think fit, and the Executive Director, Public Health may by any such warrant direct that such person shall be subject to any treatment and examination which the Executive Director, Public Health may think necessary in the circumstances.
- (4) When any person is subject to detention under this section he may from time to time apply in writing to a judge of the

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Supreme Court, or to the Magistrates Court (to be constituted by a magistrate) at the place nearest to where he is detained, to be examined by 2 medical practitioners, and thereupon such judge or magistrate shall by order direct any 2 or more medical practitioners named in the order, one of whom shall be nominated by the patient or some person on his behalf, to examine such person accordingly and report the result of the examination to the judge or magistrate, and every officer or authority in whose custody the person is shall permit the examination. If it appears from such report that all the medical practitioners are unanimously of opinion that the person is cured or is free from venereal disease, or if such report discloses that the person is suffering from venereal disease in an infectious stage, but the Executive Director, Public Health fails to satisfy the judge or magistrate that the person would be likely to infect others unless detained, then the judge or magistrate shall order the release of such person, who shall be liberated from detention accordingly; provided that no application shall be made by a person so detained within 6 calendar months of a prior application having been made by such person.

- (5) When any person is subject to examination or detention under the provisions of this section, and is found not to be suffering from venereal disease, or to be suffering from venereal disease but not in an infectious stage, or to be suffering from venereal disease in an infectious stage, but not likely to infect others, he shall be entitled as of right to inspect any written statement made to the Executive Director, Public Health under subsection (1), and to have a verified copy of every such statement.
- (6) This section shall apply to any person undergoing imprisonment, but except in so far as is necessary in order to carry into effect the provisions of this section, the sentence of imprisonment shall not be interfered with; provided that the period of any detention suffered hereunder shall be reckoned as part of the term of imprisonment. If the person still remains liable to serve any portion of the term of imprisonment at the termination of the detention hereunder, the Minister may issue

his order to any police officer, directing him to convey the person to the gaol or prison where such person is liable to complete the sentence.

- (7) Every warrant issued hereunder may authorise the use of such force as may be necessary to carry it into complete effect, and shall have effect according to its tenor, and all police officers shall on sight of the warrant aid and assist in its execution in so far as they may be requested so to do by any person to whom the warrant is directed.
- (8) Any person who contravenes any provision of this section by act or omission or obstructs the carrying into effect of any warrant or order issued thereunder or refuses to do or submit to anything which such person is by this section, or any such warrant or order, required to do or submit to commits an offence.

[Section 307 inserted by No. 55 of 1915 s. 3; amended by No. 17 of 1918 s. 41; No. 15 of 1919 s. 2; No. 12 of 1920 s. 2; No. 5 of 1922 s. 5; No. 34 of 1942 s. 3; No. 113 of 1965 s. 8(1); No. 94 of 1972 s. 4(1) (as amended by No. 83 of 1973 s. 4); No. 28 of 1984 s. 45; No. 80 of 1987 s. 143; No. 59 of 2004 s. 141.]

[308. Repealed by No. 34 of 2004 s. 251.]

309. Provision for examination of prisoners and persons in industrial schools

- (1) In the construction and application of this section, the following definition shall apply —
“**prisoner**” shall include any person in gaol, whether male or female.
- (2) It shall be the duty of every medical officer attached to any gaol to examine any prisoner (except a prisoner under remand) whom he may suspect of suffering from venereal disease, and if, as a result of such examination, the medical officer is of opinion that the prisoner is so suffering, he shall forthwith notify the

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Executive Director, Public Health in writing, giving the name of the prisoner and particulars of his diagnosis.

- (3) It shall be the further duty of such medical officer to re-examine every such prisoner at least 14 days before he is due to be discharged, and if he is then found to be suffering from venereal disease, such medical officer shall, at least 7 days before the date of his discharge, notify the Executive Director, Public Health of the fact, giving his name and prospective address (if any), and the due date of his discharge.

The Executive Director, Public Health may thereupon either issue an order directing such prisoner to be transferred to such hospital (including any gaol hospital) or other place specified or give notice to such prisoner that he shall, within 3 days, place himself under such treatment as the Executive Director, Public Health may direct, and he may be proceeded against and dealt with, as provided in subsections (2) to (8), inclusive, of section 307.

- (4) For the due carrying out of the provisions of this section alone, the Executive Director, Public Health may appoint any medical officer as his deputy.

[Section 309 inserted by No. 17 of 1918 s. 42; amended by No. 34 of 1942 s. 4; No. 28 of 1984 s. 45; No. 34 of 2004 s. 251.]

310. Penalty for conveying infection of venereal disease

- (1) A person who knowingly infects any other person with a venereal disease or knowingly does or suffers any act likely to lead to the infection of any other person with a venereal disease commits an offence.
- (2) Where a woman who is a prostitute, and while residing in a brothel or in premises reputed to be a brothel has received notice under section 307(1), and after the receipt of such notice continues to reside in a brothel or in premises reputed to be a brothel, such woman shall by reason of such continued residence be deemed knowingly to be doing an act likely to lead

to the infection of any other person with venereal disease within the meaning and for the purposes of this section.

[Section 310 inserted by No. 55 of 1915 s. 3; amended by No. 21 of 1944 s. 12; No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 144.]

311. State employed medical practitioners to treat venereal disease free of charge

[(1) repealed]

- (2) Every medical practitioner in receipt of any salary from the State who does not examine and treat free of charge to such person any person suffering from venereal disease who shall apply to him for examination and treatment commits an offence.

And the Executive Director, Public Health shall pay a reasonable remuneration for such examination and treatment, and shall be liable to be sued for such remuneration in any court of competent jurisdiction.

Any medical practitioner who neglects or refuses to examine or treat any person, as provided by this subsection, shall be liable to a penalty not exceeding \$10.

[Section 311 inserted by No. 55 of 1915 s. 3; amended by No. 8 of 1925 s. 2; No. 113 of 1965 s. 8(1); No. 28 of 1984 s. 45; No. 53 of 1985 s. 10; No. 80 of 1987 s. 145.]

312. Proceedings to be *in camera*

All proceedings under sections 300, 306, 307 and 310, in any court shall be heard *in camera*, and a person who publishes in any newspaper a report of any such proceedings commits an offence, but this offence does not extend to the publication of any reports of proceedings which may be inserted in any newspaper by the authority of the court before which the case was heard.

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[Section 312 inserted by No. 55 of 1915 s. 3; amended by No. 17 of 1918 s. 43; No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 146; No. 34 of 2004 s. 251; No. 23 of 2006 s. 11.]

313. Prohibition of advertisements of cures of certain diseases

- (1) A person who publishes any statement which is intended by such person or any other person to promote the sale of any article as a medicine, instrument, or appliance, for the alleviation or cure of any venereal disease or disease affecting the generative organs or functions, or of sexual impotence, or of any complaint or infirmity arising from or relating to sexual intercourse or of female or menstrual irregularities, commits an offence.
- (2) Any person who —
- (a) so affixes or inscribes any statement on anything whatsoever that it is visible to persons being in or passing along any street, road, highway, railway or public place; or
 - (b) delivers or offers or exhibits any statement to any person being in or passing along any street, road, highway, pathway, public place or public conveyance; or
 - (c) throws any statement down the area or into the yard, garden or enclosure of any house; or
 - (d) exhibits any statement to public view in any house, shop or place; or
 - (e) prints or publishes any statement in any newspaper; or
 - (f) sells, offers, or shows or sends by post any statement to any person,

shall for the purposes of subsection (1) be deemed to have published that statement.

- (3) The word “**statement**” includes any document, book or paper containing any statement.

- (4) Books, documents and papers published in good faith for the advancement of medical or surgical science are exempt from the provisions of this section.

[(5) repealed]

- (6) Before any proceedings are taken under this section against any newspaper proprietor, printer, or publisher for printing or publishing any statement in a newspaper, the Executive Director, Public Health shall notify the proprietor, printer, and publisher of such newspaper that the publication of the matter complained of is an infringement of this Part; and such proprietor, printer, and publisher shall not be liable to prosecution for an offence under subsection (1) except in respect of an offence of the same or a similar nature after such notification.

[Section 313 inserted by No. 55 of 1915 s. 3; amended by No. 28 of 1984 s. 45; No. 80 of 1987 s. 147.]

314. Secrecy to be preserved

- (1) Subject to subsection (2), every person employed in the administration of this Part who does not preserve secrecy with regard to all matters that may come to his knowledge in the course of such employment, and communicates any such matter to any other person except in the performance of his duties under this Act commits an offence.
- (2) Where the Executive Director, Public Health suspects or knows that a person of or under the age of 16 years is suffering from venereal disease he may, if he thinks fit, communicate the suspicion or knowledge to the parents or persons standing in the place of parents of the person and the communication shall be regarded as being made in the performance of his duties under this Act.

[Section 314 inserted by No. 55 of 1915 s. 3; amended by No. 25 of 1950 s. 7; No. 113 of 1965 s. 8(1); No. 28 of 1984 s. 45; No. 80 of 1987 s. 148.]

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[315. Repealed by No. 23 of 2006 s. 12.]

316. Service of notices

So far as personal service of any notice is required under the provisions of this Part such service shall be effected by an officer of public health.

[Section 316 inserted by No. 55 of 1915 s. 3.]

Part XII — Hospitals

Division 1 — Public hospital

[316A, 317-323, 323A, 323B. Repealed by No. 47 of 1978 s. 31.]

324. Local governments may establish or subsidise hospitals

- (1) Every local government may subsidise any district nursing system or infant health centre and may contribute money for the establishment and carrying out of a scheme for providing, for any period, nursing aid and or domestic help in the home of any person who is sick, diseased, convalescent or physically incapacitated.
- (2) Every local government —
 - (a) may provide, establish and maintain; and
 - (b) may grant financial aid towards the establishment and maintenance of;

any scheme or any institution or centre, whether residential or otherwise, for the care, recreation, comfort and convenience of the aged.

[Section 324 inserted by No. 17 of 1956 s. 2; amended by No. 33 of 1962 s. 5; No. 53 of 1985 s. 11; No. 14 of 1996 s. 4.]

324A. Power for CEO to enter into agreement for establishment of maternal and health centres and provide nursing staff, etc.

The CEO may enter into an agreement with a local government in respect to all or any of the following matters:

- (a) The erection, purchase, and maintenance of premises for the establishment of maternal and infant health centres and sub-centres and living accommodation for staff employed therein.
- (b) The provision of nursing and other staff.

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Division 1 Public hospital

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- (c) The area to be served by a maternal and infant health centre and sub-centre.
- (d) The provision of furnishings, fittings, appliances, vehicles and equipment necessary for the conduct of a maternal and infant health centre and sub-centre.
- (e) The provisions of moneys for any purpose necessary for the establishment or carrying on of a maternal and infant health centre and sub-centre.

[Section 324A inserted by No. 45 of 1954 s. 11; amended by No. 14 of 1996 s. 4; No. 28 of 2006 s. 251.]

[Division 2 (s. 325) and Division 3 (s. 326-330) repealed by No. 53 of 1985 s. 12.]

Part XIIA — Community health centres, etc.

[Heading inserted by No. 101 of 1976 s. 11.]

330A. Land may be acquired or leased for community health centres

- (1) The Minister may, with the consent of the Governor, in the manner provided by Part 9 of the *Land Administration Act 1997*, acquire land for the purposes of establishing community health centres, child health centres, clinics for the treatment of venereal and other diseases, immunisation clinics, community health services clinics, and children's assessment centres and for purposes associated therewith.
- (2) Where any land is owned by or vested in the Minister for any of the purposes set out in subsection (1), the land may, with the consent of the Governor, be leased to a person or persons to enable it to be used for a purpose or purposes associated with any of the purposes set out in subsection (1).

[Section 330A inserted by No. 101 of 1976 s. 11; amended by No. 31 of 1997 s. 142.]

330B. Local governments may subsidise certain medical centres

- (1) For the purpose of providing for the needs of the inhabitants of the district a local government may provide and maintain or grant financial or other assistance towards the provision and maintenance of —
 - (a) land, buildings or facilities associated therewith acquired or to be acquired by the Minister pursuant to section 330A;
 - (b) land or buildings to provide practice or living accommodation required for the use of any medical practitioner or dental practitioner in practice on his own account.

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- (2) For the purposes of this section a local government may enter into an agreement with another local government, the CEO, a medical or dental practitioner in practice on his own account, or any other person necessary to make provision for the erection, purchase, taking on lease, letting out, use or maintenance of the facilities provided or to be provided.
- (3) The facilities to be provided or assistance to be given under this section may be so provided or assisted jointly with another local government, and may relate to a centre or services established or provided elsewhere than in the district.

[Section 330B inserted by No. 47 of 1978 s. 32; amended by No. 14 of 1996 s. 4; No. 28 of 2006 s. 251.]

Part XIII — Child health and preventive medicine

[Heading inserted by No. 102 of 1973 s. 21.]

[331. *Repealed by No. 64 of 1996 s. 18.*]

[332. *Repealed by No. 27 of 1992 s. 84.*]

333. Regulations

The Governor may make regulations for any purpose tending to protect the lives of mothers and infants.

[Section 333 inserted by No. 27 of 1992 s. 84.]

334. Performance of abortions

- (1) A reference in this section to performing an abortion includes a reference to —
 - (a) attempting to perform an abortion; and
 - (b) doing any act with intent to procure an abortion,whether or not the woman concerned is pregnant.
- (2) No person, hospital, health institution, other institution or service is under a duty, whether by contract or by statutory or other legal requirement, to participate in the performance of any abortion.
- (3) Subject to subsections (4) and (7), the performance of an abortion is justified for the purposes of section 199(1) of *The Criminal Code* if, and only if —
 - (a) the woman concerned has given informed consent; or
 - (b) the woman concerned will suffer serious personal, family or social consequences if the abortion is not performed; or
 - (c) serious danger to the physical or mental health of the woman concerned will result if the abortion is not performed; or

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- (d) the pregnancy of the woman concerned is causing serious danger to her physical or mental health.
- (4) Subsection (3)(b), (c) or (d) do not apply unless the woman has given informed consent or in the case of paragraphs (c) or (d) it is impracticable for her to do so.
- (5) In this section —
“informed consent” means consent freely given by the woman where —
 - (a) a medical practitioner has properly, appropriately and adequately provided her with counselling about the medical risk of termination of pregnancy and of carrying a pregnancy to term;
 - (b) a medical practitioner has offered her the opportunity of referral to appropriate and adequate counselling about matters relating to termination of pregnancy and carrying a pregnancy to term; and
 - (c) a medical practitioner has informed her that appropriate and adequate counselling will be available to her should she wish it upon termination of pregnancy or after carrying the pregnancy to term.
- (6) A reference in subsection (5) to a medical practitioner does not include a reference to —
 - (a) the medical practitioner who performs the abortion; nor
 - (b) any medical practitioner who assists in the performance of the abortion.
- (7) If at least 20 weeks of the woman’s pregnancy have been completed when the abortion is performed, the performance of the abortion is not justified unless —
 - (a) 2 medical practitioners who are members of a panel of at least 6 medical practitioners appointed by the Minister for the purposes of this section have agreed that the mother, or the unborn child, has a severe medical

- condition that, in the clinical judgment of those 2 medical practitioners, justifies the procedure; and
- (b) the abortion is performed in a facility approved by the Minister for the purposes of this section.
- (8) For the purposes of this section —
- (a) subject to subsection (11), a woman who is a dependant minor shall not be regarded as having given informed consent unless a custodial parent of the woman has been informed that the performance of an abortion is being considered and has been given the opportunity to participate in a counselling process and in consultations between the woman and her medical practitioner as to whether the abortion is to be performed;
- (b) a woman is a dependant minor if she has not reached the age of 16 years and is being supported by a custodial parent or parents; and
- (c) a reference to a parent includes a reference to a legal guardian.
- (9) A woman who is a dependant minor may apply to the Children's Court for an order that a person specified in the application, being a custodial parent of the woman, should not be given the information and opportunity referred to in subsection (8)(a) and the court may, on being satisfied that the application should be granted, make an order in those terms.
- (10) An order made under subsection (9) has effect according to its terms and is not liable to be challenged, appealed against, reviewed, quashed or called in question in or by any court.
- (11) If the effect of an order under subsection (9) is that no custodial parent of the woman can be given the information and opportunity referred to in subsection (8)(a), subsection (8) does not apply in relation to the woman.

[Section 334 inserted by No. 15 of 1998 s. 7(1).]

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335. Reports to be furnished

- (1) It shall be the duty of every midwife to furnish to the Executive Director, Public Health and to the medical officer of health of the district in which she practises a report in writing in the manner and at the time and in the form prescribed of every case attended by her, whether of living, premature or full term birth, or stillbirth, or abortion.
- (2) A report furnished under subsection (1) shall state the name and address of the mother, and shall be furnished to the Executive Director, Public Health and to the medical officer of health within 48 hours of the event.
- (3) A midwife who contravenes subsection (1) as read with subsection (2) commits an offence.
- (4) The occupier of any house at which a female not usually resident in any such house, is attended, whether for gain or not, during childbirth or abortion or miscarriage, shall forthwith notify to the medical officer of health that such female is being so attended.
- (5)(a) When a medical practitioner attends on the happening of any premature birth, stillbirth or abortion (other than an abortion to which paragraph (d), he shall send to the Executive Director, Public Health within 48 hours of the happening a report in the prescribed form.
- (b) A medical practitioner, or where a medical practitioner is not in attendance, a midwife, who attends a woman at the delivery of a foetus at any time after the 20th week of pregnancy shall notify the Executive Director, Public Health of the attendance in the prescribed form.
- (c) A medical practitioner who, for the purposes of section 44 of the *Births, Deaths and Marriages Registration Act 1998*, certifies the cause of a neonatal death shall notify the Executive Director, Public Health of the fact in the prescribed form within 48 hours of the certification.

- (d) When a medical practitioner performs an abortion, the medical practitioner shall notify the Executive Director, Public Health of the fact in the prescribed form within 14 days of the abortion being performed.
 - (e) A notification under paragraph (d) must not contain any particulars from which it may be possible to ascertain the identity of the patient.
- (6)(a) The Governor may from time to time proclaim that the provisions of this subsection shall apply in respect of any district or part of a district and may from time to time proclaim that those provisions shall cease to apply in respect of, or having ceased to apply shall again apply in respect of any district or part of a district.
- (b) The provisions of this subsection shall apply in respect of a district and part of a district so long as those provisions remain the subject of a proclamation to that effect under the provisions of the last preceding paragraph.
 - (c) The Executive Director, Public Health shall appoint medical practitioners upon such terms and conditions as he considers fit to conduct a post mortem examination upon the body of every stillborn child where the still birth happens in any district or part of a district to which the provisions of this subsection apply.
 - (d) The Executive Director, Public Health shall notify in the prescribed manner all medical practitioners and midwives of the name and address of every medical practitioner appointed under the provisions of the last preceding paragraph and acting under the appointment.
 - (e) When a stillbirth happens in any district or part of a district to which the provisions of this subsection apply, the medical practitioner attending or, if there is no medical practitioner attending, the midwife attending, shall, so soon as reasonably possible after the happening, report it in the manner and form prescribed, to a medical practitioner appointed under paragraph (c) and acting under the appointment, who shall,

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unless otherwise authorised or directed by the Executive Director, Public Health, thereupon conduct a post mortem examination on the body of the stillborn child.

[Section 335 amended by No. 17 of 1918 s. 48; No. 30 of 1932 s. 40; No. 14 of 1944 s. 12; No. 71 of 1948 s. 12; No. 45 of 1954 s. 12; No. 113 of 1965 s. 8(1); No. 102 of 1973 s. 25; No. 28 of 1984 s. 45; No. 80 of 1987 s. 151; No. 27 of 1992 s. 84; No. 15 of 1998 s. 7(2); No. 40 of 1998 s. 14(4).]

336. Death of a woman as the result of pregnancy or childbirth to be reported to the Executive Director, Public Health

- (1) Whenever any woman shall die as the result of pregnancy or of childbirth, or as the result of any complications arising from or following upon pregnancy or childbirth, the fact of such death shall be reported forthwith to the Executive Director, Public Health by the medical practitioner and any nurse who were at the time of the death attending such woman.
- (2) Upon receipt of the report the Executive Director, Public Health shall by notice in writing signed by him direct the investigator appointed under the provisions of Part XIII A to inquire into the circumstances of the death and by such notice require him to present to the Chairman of the Maternal Mortality Committee appointed under that Part, within a time to be specified in the notice, a full report of the investigation made by him.
- (3) The report of the investigator presented to the Chairman shall be in the form of a connected medical case history relating to the deceased woman but shall not contain any particulars from which it may be possible to ascertain the identity of that woman.
- (4) For the purposes of this section all information, records of interviews, reports, statements, memoranda or other particulars obtained by the investigator during an investigation made by him pursuant to the provisions of this section shall be confidential and shall not be communicated or divulged, either in whole or in part, by the investigator to any person other than the Chairman of the Maternal Mortality Committee, or by the

Chairman or any other member of the Committee, except for the purposes and in accordance with the provisions of Part XIII A.

- (5) Information, records of interviews, reports, statements, memoranda and other particulars referred to in subsection (4) are not admissible in any court or before any tribunal, board or person in any action, cause or inquiry of any kind whatsoever.
- (5a) A person employed by or acting with or under the instructions or under the authority of the Maternal Mortality Committee who exhibits, communicates or divulges in whole or in part any information, record of interview, report, statement, memorandum or other particular referred to in subsection (4) except for the purposes of, and in accordance with, Part XIII A commits an offence.
- (6) No person, corporate body, association, or institution shall be liable in any action for damages or other relief by reason of the furnishing to the investigator, or to the Maternal Mortality Committee, of any information, record, report, statement, memorandum or particulars referred to in subsection (4).
- (7) Nothing in this section shall prejudice or otherwise affect any of the provisions of the *Coroners Act 1996*, or of any other Act so far as the same relates to prosecutions for indictable and other offences and the obtaining and adducing of evidence relative thereto, but this section shall be read and construed as separate and distinct from the provisions of those Acts.

[Section 336 inserted by No. 32 of 1937 s. 9; amended by No. 23 of 1960 s. 3; No. 28 of 1984 s. 45; No. 80 of 1987 s. 152; No. 2 of 1996 s. 61.]

336A. Certain deaths of children to be reported to the Executive Director, Public Health

- (1) Whenever any child of more than 20 weeks gestation is stillborn or any child under the age of one year shall die from any cause whatsoever, the fact shall be reported forthwith to the Executive Director, Public Health by the medical practitioner who, for the

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purposes of section 44 of the *Births, Deaths and Marriages Registration Act 1998*, certified the cause of the child's death.

- (2) Except where the circumstances are such that the Executive Director, Public Health is satisfied that the cause of death arose from a specific injury, or from an illness that the Committee has directed does not require further investigation, upon receipt of the report the Executive Director, Public Health shall by notice in writing signed by him direct an investigator appointed under the provisions of Part XIII B to enquire into the circumstances of that stillbirth or death and by such notice require him to present to the Chairman of the Perinatal and Infant Mortality Committee appointed under that Part, within a time to be specified in the notice, a full report of the investigation made by him.
- (3) The report of the investigator presented to the Chairman shall be in the form of connected medical case history relating to the deceased child but shall not contain any particulars from which it may be possible to ascertain the identity of that child.
- (4) For the purposes of this section all information, records of interviews, reports, statements, memoranda or other particulars obtained by the investigator during an investigation made by him pursuant to the provisions of this section shall be confidential and shall not be communicated or divulged, either in whole or in part, to any person other than the Chairman of the Perinatal and Infant Mortality Committee, or by the Chairman or any other member of the Committee, except for the purposes and in accordance with the provisions of Part XIII B.
- (5) Information, records of interviews, reports, statements, memoranda and other particulars referred to in subsection (4) are not admissible in any court or before any tribunal, board or person in any action, cause or inquiry of any kind whatsoever.
- (5a) A person employed by or acting with or under the instructions or under the authority of the Perinatal and Infant Mortality Committee who exhibits, communicates or divulges in whole or in part any information, record of interview, report, statement,

memorandum or other particular referred to in subsection (4) except for the purposes of, and in accordance with, Part XIIIIB commits an offence.

- (6) No person, corporate body, association, or institution shall be liable in any action for damages or other relief by reason of the furnishing to the investigator, or to the Perinatal and Infant Mortality Committee, of any information, record, report, statement, memorandum or particulars referred to in subsection (4).
- (7) Nothing in this section shall prejudice or otherwise affect any of the provisions of the *Coroners Act 1996*, or of any other Act so far as the same relates to prosecutions for indictable and other offences and the obtaining and adducing of evidence relative thereto, but this section shall be read and construed as separate and distinct from the provisions of those Acts.

[Section 336A inserted by No. 47 of 1978 s. 33; amended by No. 28 of 1984 s. 45; No. 80 of 1987 s. 153; No. 2 of 1996 s. 61; No. 40 of 1998 s. 14(5).]

336B. Death of persons under anaesthetic to be reported to the Executive Director, Public Health

- (1) Whenever any person shall die within the period of 48 hours following the administration of an anaesthetic agent or as the result of any complications arising from the administration of an anaesthetic, the fact of such death shall be reported forthwith to the Executive Director, Public Health by the person who administered the anaesthetic to the deceased.
- (2) Where a medical practitioner who attended a person prior to the death of that person is of the opinion that anaesthesia or the administration of an anaesthetic may reasonably be suspected as the cause of death or as contributing to the cause of death of that person, that medical practitioner shall forthwith report to the Executive Director, Public Health that he has formed such an opinion.

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- (3) Upon receipt of a report made pursuant to subsection (1) or subsection (2) the Executive Director, Public Health shall, subject to subsection (4), by notice in writing signed by him direct an investigator appointed under the provisions of Part XIIC to enquire into the circumstances of the death and if in the opinion of that investigator the death is likely to have been due to anaesthesia then he shall pursue the investigation and shall be required to present to the Chairman of the Anaesthetic Mortality Committee appointed under that Part, within a time to be specified in the notice, a full report of the investigation made by him, but if in the opinion of the investigator the death was not likely to have been due to anaesthesia he shall report his finding to the Executive Director, Public Health.
- (4) Where the circumstances are such that an investigation is being or will be undertaken by the Maternal Mortality Committee in accordance with Part XIII A then notwithstanding the provisions of subsection (3) the Executive Director, Public Health shall not be required to direct an investigation pursuant to this section.
- (5) The report of the investigator presented to the Chairman shall be in the form of connected medical case history relating to the deceased person but shall not contain any particulars from which it may be possible to ascertain the identity of that person.
- (6) For the purposes of this section all information, records of interviews, reports, statements, memoranda or other particulars obtained by the investigator during an investigation made by him pursuant to the provisions of this section shall be confidential and shall not be communicated or divulged, either in whole or in part, to any person other than the Chairman of the Anaesthetic Mortality Committee, or by the Chairman or any other member of the Committee, except for the purposes and in accordance with the provisions of Part XIIC.
- (7) Information, records of interviews, reports, statements, memoranda and other particulars referred to in subsection (6)

are not admissible in any court or before any tribunal, board or person in any action, cause or inquiry of any kind whatsoever.

- (7a) A person employed by or acting with or under the instructions or under the authority of the Anaesthetic Mortality Committee who exhibits, communicates or divulges in whole or in part any information, record of interview, report, statement, memorandum or other particular referred to in subsection (6) except for the purposes of, and in accordance with, Part XIIC commits an offence.
- (8) No person, corporate body, association, or institution shall be liable in any action for damages or other relief by reason of the furnishing to the investigator, or to the Anaesthetic Mortality Committee, of any information, record, report, statement, memorandum or particulars referred to in subsection (6).
- (9) Nothing in this section shall prejudice or otherwise affect any of the provisions of the *Coroners Act 1996*, or of any other Act so far as the same relates to prosecutions for indictable and other offences and the obtaining and adducing of evidence relative thereto, but this section shall be read and construed as separate and distinct from the provisions of those Acts.

[Section 336B inserted by No. 47 of 1978 s. 35; amended by No. 28 of 1984 s. 45; No. 80 of 1987 s. 154; No. 2 of 1996 s. 61.]

337. Examination of school children

- (1) Any medical officer or any nurse duly authorised in this behalf by the Executive Director, Personal Health may examine medically and physically any child attending any school or child care centre, and such child shall submit to, and the parents or guardians of such child shall permit such examination as the medical officer or nurse deems necessary.
- (2) Any school dental therapist employed in a school dental service, or any duly registered dentist authorised to do so by the Executive Director, Personal Health or by the local government,

s. 337A

may examine the teeth of any such child, and the child shall submit to, and the parents or guardians of such child shall permit, the examination.

- (3) Any medical officer or any nurse duly authorised in this behalf by the Executive Director, Personal Health who finds that any such child is in an unclean or verminous condition may, by writing under the hand of such medical officer or nurse, notify any parent or guardian of the child of the fact, and require such parent or guardian to remedy such condition forthwith, and to keep such child clean or free from vermin.
- (4) In addition to making the requisition mentioned in subsection (3), the medical officer or nurse may, by writing under the hand of such officer or nurse, require the parent or guardian to keep the child's hair cut short to the satisfaction of the officer or nurse or of the medical officer of health of the local government.
- (5) Every such requisition as is mentioned in subsection (3) or subsection (4) shall, in so far as it is of a continuing character, remain in force for 12 months.
- (6) A parent or guardian who does not comply with a requisition made under subsection (3) or (4) commits an offence.

[Section 337 amended by No. 5 of 1922 s. 8; No. 30 of 1932 s. 41; No. 113 of 1965 s. 8(1); No. 102 of 1973 s. 26; No. 30 of 1982 s. 12; No. 28 of 1984 s. 45; No. 80 of 1987 s. 155; No. 14 of 1996 s. 4; No. 64 of 1996 s. 18.]

337A. Schools dental service

- (1) There shall be established in accordance with this section a school dental service to provide dental care and treatment for pre-school and school children.
- (2) With the approval of the Minister, the CEO may establish and maintain teaching schools and facilities for the training of persons as school dental therapists.

- (3) There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994*, such dentists, school dental therapists and other officers and staff as may be required for the purposes of this section.
- (4) The Governor may make regulations prescribing the manner in which acts of dentistry are to be undertaken by a school dental therapist.
- (5) In this section —
“dentist”, “school dental therapist” and “school dental service” have the same meanings as in the *Dental Act 1939*.

[Section 337A inserted by No. 102 of 1973 s. 27; amended by No. 30 of 1982 s. 13; No. 32 of 1994 s. 3(2); No. 64 of 1996 s. 18; No. 10 of 1998 s. 39(4); No. 28 of 2006 s. 251.]

338. Parent or guardian to provide medical or surgical treatment for child in certain cases

- (1) Any parent or guardian who, after being notified by a medical officer of some physical defect in a child, which defect requires medical or surgical attention, fails or neglects to secure or provide such attention, if such failure or neglect endangers or is likely to endanger the life or the health of such child, commits an offence:

Provided that no prosecution shall be instituted for a breach of this section without the approval of the Executive Director, Personal Health and until the child has been examined by a medical officer, acting in consultation with a private medical practitioner.
- (2) It shall be the duty of any such child to submit to, and of the parents or guardians of such child to permit any examination necessary for the purposes of this section.

[Section 338 inserted by No. 30 of 1932 s. 42; amended by No. 28 of 1984 s. 45; No. 80 of 1987 s. 156.]

[338A. Repealed by No. 116 of 1982 s. 36.]

s. 338B

338B. Prohibition of sale, etc., of unsafe appliances

Where any appliance, apparatus, equipment, contrivance, article or other thing, the use of which is purported to protect, safeguard, maintain or aid the health of any person, is found to be, or in the opinion of the Executive Director, Public Health is likely to be, ineffectual, unsafe or useless to an extent that it might, if used, constitute a danger to the health or life of any person, the Executive Director, Public Health may in relation to that appliance, apparatus, equipment, contrivance, article or other thing exercise either or both of the following powers —

- (a) prohibit the publication of any information, notice or advertisement relating to its purported use;
- (b) prohibit its sale, distribution or use.

[Section 338B inserted by No. 18 of 1964 s. 22; amended by No. 28 of 1984 s. 45.]

338C. Prohibition of sale, etc., of unsafe toys

Where any article or thing is offered for sale as a child's toy and is found to be, or in the opinion of the Executive Director, Public Health is likely to be, unsafe or a danger to the health or life of any person, the Executive Director, Public Health may prohibit its sale, distribution or possession.

[Section 338C inserted by No. 102 of 1973 s. 28; amended by No. 28 of 1984 s. 45.]

[339. Repealed by No. 102 of 1973 s. 29.]

340. Local government may provide for immunisation

- (1) Any local government may provide for immunisation of any person who consents to treatment against diphtheria, whooping cough, poliomyelitis, tetanus, and such other diseases as the Governor prescribes and is hereby authorised to prescribe by regulation as diseases to which this section applies wholly free of cost to the person treated and the cost involved shall be paid by the local government, which is hereby authorised to meet the

cost from the annual health rate made, levied and collected by it under and for the purposes of this Act.

- (2) The Executive Director, Personal Health may provide for immunisation of any person who consents to treatment against any disease which is mentioned in subsection (1) or which is prescribed as a disease to which this section applies, wholly free of cost to the person treated and the cost involved shall be paid from money appropriated by Parliament for the purposes of this Act.

[Section 340 inserted by No. 71 of 1948 s. 13; amended by No. 21 of 1957 s. 12; No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

Part XIII A — Maternal Mortality Committee

[Heading inserted by No. 23 of 1960 s. 4.]

340A. Interpretation

In this Part unless the context requires otherwise —

“**Committee**” means the Maternal Mortality Committee constituted under this Part;

“**investigator**” means the obstetrician from time to time appointed under this Part;

“**member**” means a person appointed to be a member of the Committee, and includes the Chairman of the Committee;

“**metropolitan area**” means that portion of the State within a radius of 80 kilometres from the General Post Office at Perth.

[Section 340A inserted by No. 23 of 1960 s. 4; amended by No. 94 of 1972 s. 4(1) (as amended by No. 83 of 1973 s. 4).]

340B. Constitution and offices of Committee

- (1) For the purposes of this Part a body to be called the “Maternal Mortality Committee” and having the functions prescribed by this Part shall be constituted as provided in this section.
- (2) The Minister shall appoint 3 persons to be permanent members, and 6 persons to be provisional members, of the Committee, and 5 of those persons appointed, namely, the 3 permanent members and 2 of the provisional members selected in accordance with the provisions of section 340K(1) shall constitute the Committee.
- (3) Of the 3 persons appointed as permanent members of the Committee —
 - (a) one shall be the Professor of Obstetrics of the University of Western Australia, who shall be Chairman of the Committee;

- (b) one shall be a medical practitioner specialising in obstetrics, nominated by the Australian College of Obstetricians and Gynaecologists (W.A. Branch); and
 - (c) one shall be a medical practitioner nominated by the CEO.
- (4) Of the 6 persons appointed as provisional members of the Committee —
- (a) 2 shall be general medical practitioners practising in the metropolitan area, nominated by the Western Australian Branch of the Australian Medical Association Inc;
 - (b) 2 shall be general medical practitioners having not less than 5 years' practice outside the metropolitan area, nominated by the Western Australian Branch of the Australian Medical Association Inc; and
 - (c) 2 shall be midwives nominated by the Western Australian Branch of the Australian Nursing Federation.

[Section 340B inserted by No. 23 of 1960 s. 4; amended by No. 63 of 1981 s. 4; No. 30 of 1982 s. 14; No. 27 of 1992 s. 84; No. 10 of 1998 s. 39(5); No. 24 of 2000 s. 16(3); No. 28 of 2006 s. 251.]

340C. Appointment of deputies

- (1) The Minister may appoint persons as deputies to act in the respective places of the Chairman and other members of the Committee when not able or available to act, and persons so appointed may while acting exercise the same powers and are entitled to the same rights and subject to the same liabilities as the members for whom they act as deputies.
- (2) A person is not eligible for appointment as a deputy of a member of the Committee (other than as the deputy of the Chairman) unless he is nominated as deputy by the body by which the member is required under section 340B to be nominated or unless he is appointed by the Minister under the provisions of section 340D(3).

s. 340D

[Section 340C inserted by No. 23 of 1960 s. 4.]

340D. Nominations to be made to Minister

- (1) The bodies mentioned in section 340B(3) and (4) shall nominate to the Minister when he so requests, or when a vacancy occurs in accordance with section 340F, a member or members of the respective body to become a permanent member, or as the case may be, one or more provisional members of the Committee.
- (2) Without affecting the generality of the power conferred by subsection (1), the Minister may from time to time as occasion requires request a body referred to in section 340B(3) or (4) to nominate, within a specified period, for appointment as a permanent or provisional member of the Committee, or as a deputy member, any number of persons not exceeding 3, and may appoint such one, or as the case may be, more of them as he thinks fit.
- (3) If no nomination is made within the period specified by the Minister, he may appoint such person or persons as he thinks fit to fill the office or offices or deputy, as the case may be.

[Section 340D inserted by No. 23 of 1960 s. 4.]

340E. Tenure of office

- (1) The term of tenure of office of a person appointed as a permanent or provisional member of the Committee (other than the Chairman) expires on effluxion of time on the expiration of a period of 3 years commencing on the day specified in the notice of the appointment published in the *Government Gazette* as the commencing day of that term.
- (2) Notwithstanding the provisions of subsection (1), in the case of the initial appointments of provisional members of the Committee the Minister shall appoint one of the provisional members referred to in each of paragraphs (a), (b) and (c) of section 340B(4) for a period of 3 years and the other for a

period of 2 years, but in all subsequent appointments the provisions of subsection (1) shall apply.

- (3) The term of tenure of office of the permanent member referred to in section 340B(3)(a) continues until terminated by the Minister.

[Section 340E inserted by No. 23 of 1960 s. 4.]

340F. When office of member becomes vacant

The office of a member of the Committee becomes vacant if —

- (a) he dies;
- (b) he resigns by written resignation delivered to the Minister;
- (c) his term of tenure of office expires by effluxion of time;
- (d) through mental or physical infirmity or sickness he is, and is likely to continue to be, unable satisfactorily to carry out the duties and perform the functions of his office;
- (e) in the case of the permanent member referred to in section 340B(3)(a), the Minister terminates the term of tenure of his office;
- (f) he absents himself from 3 consecutive meetings of the Committee of which he is a member without leave of absence.

[Section 340F inserted by No. 23 of 1960 s. 4.]

340G. Vacancies in offices of members to be filled

- (1) When a vacancy occurs in the office of a member of the Committee, the Minister shall appoint a person to fill the vacancy, and except where the vacancy is in the office of the permanent member referred to in section 340B(3)(a), the Minister shall not so appoint a person unless he is nominated by the appropriate body mentioned in that section, or unless section 340D(3) applies to the office.

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- (2) Where a vacancy in office of a member occurs during his term of office, the person appointed to fill the vacancy is entitled to occupy the office only for the remainder of that term.
- (3) A person is not rendered ineligible for appointment to office of member or deputy because he has previously occupied office as such.

[Section 340G inserted by No. 23 of 1960 s. 4.]

340H. Quorum

- (1) Five members of the Committee or their respective deputies, including the Chairman or his deputy, constitute a quorum of the Committee.
- (2) Anything done by the Committee is not invalid or defective on the ground that when done, there was a vacancy in, or defect in appointment to, office on the Committee.

[Section 340H inserted by No. 23 of 1960 s. 4.]

340I. Reimbursement of expenses of members of Committee

The Chairman and other members of the Committee and their respective deputies are entitled to such reimbursements of expenditure as the Minister from time to time determines, and is hereby authorised to determine.

[Section 340I inserted by No. 23 of 1960 s. 4.]

340J. Appointment of investigator

- (1) The Minister may in order to give effect to and carry out the purposes of section 336 appoint an investigator for such term, at such remuneration and subject to such conditions of service as the Minister determines, and is hereby authorised to determine.
- (2) The person appointed to be investigator pursuant to the provisions of subsection (1) shall be a medical practitioner who is a specialist in obstetrics.

- (3) The Minister may at any time appoint a person having the necessary qualifications to act, and who shall act, as investigator during the absence of the investigator appointed under subsection (1), or during any vacancy in that office.

[Section 340J inserted by No. 23 of 1960 s. 4.]

340K. Functions of Committee

- (1) Whenever the investigator shall present to the Chairman of the Committee a report pursuant to the provisions of section 336, the Chairman shall consider the report, and having regard to the circumstances disclosed by the report and the nature of the medical case history of the deceased woman, shall select 2 of the provisional members of the Committee as he deems necessary or advisable and shall notify the Executive Director, Public Health of such selection and the identity of the members so selected.
- (2) Upon receipt of the notification referred to in subsection (1), the Executive Director, Public Health shall convene a meeting of the Committee constituted by the permanent members and the 2 provisional members so selected under that subsection, to be held within 10 days of the receipt by him of the notification.
- (3) The Committee shall consider the report of the investigator and for the purposes of assisting it in such consideration may co-opt such medical practitioners or nurses as the Committee thinks necessary.
- (4) Upon its consideration of the report the Committee shall determine whether in the opinion of the Committee the death the subject of the report might have been avoided, and may add to such determination such constructive comments as the Committee deems advisable for the future assistance and guidance of medical practitioners and nurses.
- (5) The determination of the Committee, including the comments referred to in subsection (4), shall be notified in writing by the Chairman to the medical practitioner who was attending the

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woman at the time of the occurrence of the death so investigated.

- (6) As soon as practicable after the Committee has made a determination, the Chairman shall forward to the Executive Director, Public Health all records, reports, statements, memoranda and other documents submitted to and considered by the Committee in making that determination, and the Executive Director, Public Health shall have the care and control of those records, reports, statements, memoranda and other documents, and keep or cause to be kept the same in safe custody, and except as provided by this Part and with his sanction in writing, shall not permit any of those records, reports, statements, memoranda or other documents to be inspected.
- (7) A summary of the cases investigated by the investigator and considered by the Committee during each year shall be forwarded by the Chairman to the Executive Director, Public Health.

[Section 340K inserted by No. 23 of 1960 s. 4; amended by No. 28 of 1984 s. 45.]

340L. When report of investigator may be published

- (1) The Committee may publish, or cause to be published, in any medical journal, or may make available to the Medical School of the University of Western Australia for use in the teaching of medical students or for purposes of medical research, any investigator's report considered by the Committee and its determination relating thereto and any comments made by it, but all reasonable steps shall be taken to preclude disclosure or identification of the person or persons concerning whom the investigation and resultant report was made.
- (2) The Committee may impart, or cause to be imparted to medical practitioners, medical students, nurses and trainee nurses such education and instruction in medical theory and practice as it may deem necessary or advisable from time to time so to do for

their assistance and guidance in avoiding and preventing maternal morbidity or mortality.

[Section 340L inserted by No. 23 of 1960 s. 4.]

340M. Information given for research not to be disclosed

- (1) A person engaged in research relating to any matter necessitating the use of or reference to any information, record, report, statement, memorandum or particulars referred to in section 336(4) who in any way, directly or indirectly, discloses or divulges any information obtained by him therefrom, except as may be strictly essential in or for carrying out the research, commits an offence.
- (2) A member of the Committee, or any person employed by or acting with the instructions or under the authority of the Committee, except an investigator appointed under section 340J in the course of his duties, who interviews or in any way communicates with any person referred to in any report of the investigator or any relative of that person, commits an offence, unless the consent in writing of the medical practitioner attending that person is first obtained.

[Section 340M inserted by No. 23 of 1960 s. 4; amended by No. 80 of 1987 s. 157.]

340N. Regulations as to Maternal Mortality Committee

- (1) The Committee may, with the approval of the Governor, make such regulations as the Committee considers necessary, convenient or desirable to assist it to carry out its functions or for better carrying out the objects and purposes of section 336 and this Part.
- (2) Without prejudice to the generality of subsection (1), regulations may be so made prescribing or relating to —
 - (a) the conduct of meetings and proceedings of the Committee;

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- (b) the appointment, supervision, control, suspension and dismissal of officers for the purposes of this Part;
- (c) the duties to be performed by officers employed or engaged by the Committee and the manner of their performance.

[Section 340N inserted by No. 23 of 1960 s. 4.]

Part XIIIIB — Perinatal and Infant Mortality Committee

[Heading inserted by No. 47 of 1978 s. 34.]

340AA. Interpretation

In this Part unless the context requires otherwise —

“**Committee**” means the Perinatal and Infant Mortality Committee constituted under this Part;

“**investigator**” means the medical practitioner from time to time appointed under this Part;

“**member**” means a person appointed to be a member of the Committee, and includes the Chairman of the Committee;

“**metropolitan area**” means that portion of the State within a radius of 80 kilometres from the General Post Office at Perth.

[Section 340AA inserted by No. 47 of 1978 s. 34.]

340AB. Constitution and offices of Committee

- (1) For the purposes of this Part a body to be called the “Perinatal and Infant Mortality Committee” and having the functions prescribed by this Part shall be constituted as provided in this section.
- (2) The Minister shall appoint 6 persons to be permanent members and 4 persons to be provisional members of the Committee, and 8 of those persons appointed, namely, the 6 permanent members and 2 of the provisional members selected in accordance with section 340AK(1), shall constitute the Committee.
- (3) Of the 6 persons appointed as permanent members of the Committee —
 - (a) one shall be the Professor of Obstetrics of the University of Western Australia;

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- (b) one shall be a medical practitioner nominated by the CEO;
 - (c) one shall be a medical practitioner specialising in neonatal paediatrics at King Edward Memorial Hospital nominated by the Hospital Board of that hospital;
 - (d) one shall be a medical practitioner specialising in neonatal paediatrics at Princess Margaret Hospital for Children nominated by the Hospital Board of that hospital;
 - (e) one shall be a general medical practitioner having not less than 5 years practice outside the metropolitan area, nominated by the State Branch of the Australian Medical Association; and
 - (f) one shall be a medical practitioner specialising in Clinical Epidemiology nominated by the CEO.
- (4) Of the 4 persons appointed as provisional members of the Committee —
- (a) one shall be a medical practitioner specialising in obstetrics and perinatal care, nominated by the Australian College of Obstetricians and Gynaecologists (W.A. Branch);
 - (b) one shall be a general medical practitioner with special interest in perinatal care, nominated by the State Branch of the Royal Australian College of General Practitioners;
 - (c) one shall be a general medical practitioner, nominated by the CEO; and
 - (d) one shall be a midwife in clinical practice nominated by the State Branch of the Australian Nursing Federation.

- (5) The Chairman of the Committee shall be appointed by the Minister from amongst the persons who are permanent members of the Committee.

[Section 340AB inserted by No. 47 of 1978 s. 34; amended by No. 30 of 1982 s. 15; No. 28 of 1984 s. 31; No. 27 of 1992 s. 84; No. 10 of 1998 s. 39(6); No. 24 of 2000 s. 16(3); No. 28 of 2006 s. 251.]

340AC. Appointment of deputies

- (1) The Minister may appoint persons as deputies to act in the respective places of the Chairman and other members of the Committee when not able or available to act, and persons so appointed may while acting exercise the same powers and are entitled to the same rights and subject to the same liabilities as the members for whom they act as deputies.
- (2) Where a member is required under section 340AB to be nominated by a specified body, a person is not eligible for appointment as a deputy of that member of the Committee unless he is nominated as deputy by that body or unless he is appointed by the Minister under the provisions of section 340AD(3).

[Section 340AC inserted by No. 47 of 1978 s. 34.]

340AD. Nominations to be made to Minister

- (1) The bodies mentioned in section 340AB(3) and (4) shall nominate to the Minister when he so requests, or when a vacancy occurs in accordance with section 340AF, a member or members of the respective body to become a permanent member, or as the case may be, a provisional member of the Committee.
- (2) Without affecting the generality of the power conferred by subsection (1) the Minister may from time to time as occasion requires request a body referred to in section 340AB(3) or (4) to nominate, within a specified period, for appointment as a

s. 340AE

permanent or provisional member of the Committee, or as a deputy member, any number of persons not exceeding 3, and may appoint such one as he thinks fit.

- (3) If no nomination is made within the period specified by the Minister, he may appoint such a person or persons as he thinks fit to fill the office or to be a deputy as the case may be.

[Section 340AD inserted by No. 47 of 1978 s. 34.]

340AE. Tenure of office

- (1) The term of tenure of office of a person appointed as a permanent or provisional member of the Committee expires by effluxion of time on the expiration of a period of 3 years commencing on the day specified in the notice of the appointment published in the *Government Gazette* as the commencing day of that term.
- (2) Notwithstanding the provisions of subsection (1), in the case of the initial appointments of provisional members of the Committee the Minister shall appoint the provisional members referred to in section 340AB(4)(a) and (d) for a period of 2 years, but in all subsequent appointments the provisions of subsection (1) shall apply.

[Section 340AE inserted by No. 47 of 1978 s. 34.]

340AF. When office of member becomes vacant

- (1) The office of a member of the Committee becomes vacant if —
- (a) he dies;
 - (b) he resigns by written resignation delivered to the Minister;
 - (c) his term of tenure of office expires by effluxion of time;
 - (d) through mental or physical infirmity or sickness he is, and is likely to continue to be, unable satisfactorily to carry out the duties and perform the functions of his office; or

- (e) he absents himself from 3 consecutive meetings of the Committee of which he is a member without leave of absence.
- (2) The Chairman shall hold office as such at the pleasure of the Minister.

[Section 340AF inserted by No. 47 of 1978 s. 34.]

340AG. Vacancies in offices of members to be filled

- (1) When a vacancy occurs in the office of a member of the Committee, the Minister shall appoint a person to fill the vacancy, and where pursuant to section 340AB a specified body has the right to nominate that member the Minister shall not so appoint a person unless he is nominated by the appropriate body mentioned in that section, or unless section 340AD(3) applies to the office.
- (2) Where a vacancy in the office of a member occurs during his term of office, the person appointed to fill the vacancy is entitled to occupy the office only for the remainder of that term.
- (3) A person is not rendered ineligible for appointment to the office of member or as a deputy because he has previously occupied office as such.

[Section 340AG inserted by No. 47 of 1978 s. 34.]

340AH. Quorum

- (1) Four members of the Committee or their respective deputies, of whom one shall be the Chairman or his deputy, constitute a quorum of the Committee so long as at least one permanent member other than the Chairman and one provisional member, or their respective deputies, are amongst those present.
- (2) Anything done by the Committee is not invalid or defective on the ground that, when done, there was a vacancy in, or defect in appointment to, office on the Committee.

[Section 340AH inserted by No. 47 of 1978 s. 34.]

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340AI. Reimbursement of expenses of members

The Chairman and other members of the Committee and their respective deputies are entitled to such reimbursements of expenditure as the Minister from time to time determines, and is hereby authorised to determine.

[Section 340AI inserted by No. 47 of 1978 s. 34.]

340AJ. Appointment of investigator

(1) The Minister may, in order to give effect to the purposes of section 336A, appoint not more than 4 medical practitioners to be investigators for such term, at such remuneration and subject to such conditions of service as the Minister determines, and is hereby authorised to determine, in the case of each investigator.

(2) If under subsection (1) —

- (a) 1 investigator is appointed, he shall be;
- (b) 2 investigators are appointed, each of them shall be; or
- (c) 3 or 4 investigators are appointed, 2 of them shall each be,

a specialist in obstetrics or neonatal paediatrics.

(3) The Minister may at any time appoint a person having the necessary qualifications to act, and who shall act, as investigator during the absence of an investigator appointed under subsection (1), or where through any cause such an investigator is unable to perform the functions of his office, or during a vacancy in the office of such an investigator.

[Section 340AJ inserted by No. 47 of 1978 s. 34; amended by No. 80 of 1987 s. 158.]

340AK. Functions of Committee

(1) Whenever an investigator shall present to the Chairman of the Committee a report pursuant to the provisions of section 336A, the Chairman shall consider the report, and having regard to the

circumstances disclosed by the report and the nature of the medical case history of that stillborn or deceased child, may select 2 of the provisional members of the Committee as he deems necessary or advisable and shall notify the Executive Director, Public Health of such selection and the identity of the members so selected.

- (2) Upon receipt of the notification referred to in subsection (1), the Executive Director, Public Health shall convene a meeting of the permanent members of the Committee and the 2 provisional members so selected under that subsection, to be held within 10 days of the receipt by him of the notification.
- (3) The Committee shall consider the report of the investigator and for the purpose of assisting it in such consideration may co-opt such medical practitioners, nurses, or other persons with specialised knowledge as the Committee thinks necessary.
- (4) Upon its consideration of the report the Committee shall determine whether in the opinion of the Committee the stillbirth or death the subject of the report might have been avoided, and may add to such determination such constructive comments as the Committee deems advisable for the future assistance and guidance of medical practitioners and nurses.
- (5) The Chairman of the Committee —
 - (a) shall notify in writing the determination made, and any comments added, by the Committee under subsection (4) to the medical practitioner who was attending the child concerned at the time of the occurrence of the stillbirth or death investigated under section 336A; and
 - (b) may notify in writing the determination and comments referred to in paragraph (a) to any medical practitioner (not being the medical practitioner referred to in that paragraph) who attended the child concerned or his mother or both prior to the occurrence of the stillbirth or death referred to in that paragraph if the Committee

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considers that that medical practitioner should be informed of that determination and those comments.

- (5a) The contents of a notification made under subsection (5) are not admissible in any court or before any tribunal, board or person in any action, cause or inquiry of any kind whatsoever.
- (5b) A person who exhibits, communicates or divulges in whole or in part the contents of a notification made under subsection (5) to any person except for the purposes of, and in accordance with, this Part commits an offence.
- (6) As soon as practicable after the Committee has made a determination, the Chairman shall forward to the Executive Director, Public Health all records, reports, statements, memoranda and other documents submitted to and considered by the Committee in making that determination, and the Executive Director, Public Health shall have the care and control of those records, reports, statements, memoranda and other documents, and keep or cause to be kept the same in safe custody, and except as provided by this Part and with his sanction in writing, shall not permit any of those records, reports, statements, memoranda or other documents to be inspected.
- (7) A summary of the cases investigated by the investigators and considered by the Committee during each year shall be forwarded by the Chairman to the Executive Director, Public Health.

[Section 340AK inserted by No. 47 of 1978 s. 34; amended by No. 28 of 1984 s. 45; No. 80 of 1987 s. 159.]

340AL. When report may be published

- (1) The Committee may publish, or cause to be published, in any medical journal, or may make available to the Medical School of the University of Western Australia for use in the teaching of medical students or for purposes of medical research, any investigator's report considered by the Committee and its

determination relating thereto and any comments made by it, but all reasonable steps shall, subject to this section, be taken to preclude disclosure or identification of the person or persons, child or children concerning whom the investigation and resultant report was made.

- (1a) The Committee may, if it considers that it is essential for the purposes of medical research that the identity of a person or child to whom the report of an investigator relates be divulged by the investigator to a person carrying out or about to carry out medical research (in this section called “**the researcher**”), recommend to the Executive Director, Public Health, that the identity of that child be so divulged.
- (1b) The Executive Director, Public Health, may, if he agrees with a recommendation made to him under subsection (1a), authorise the investigator concerned to divulge the identity of the person or child to whom his report relates to the researcher and that investigator shall thereupon divulge that identity to the researcher.
- (1c) The researcher who divulges to any other person the identity of a person or child divulged to him under subsection (1b) commits an offence.
- (2) The Committee may impart, or cause to be imparted, to medical practitioners, medical students, nurses and trainee nurses such education and instruction in medical theory and practice as it may deem necessary or advisable from time to time so to do for their assistance and guidance in avoiding and preventing perinatal or infant morbidity or mortality.

[Section 340AL inserted by No. 47 of 1978 s. 34; amended by No. 80 of 1987 s. 160.]

340AM. Information for research not to be disclosed

- (1) A person engaged in research relating to any matter necessitating the use of or reference to any information, record, report, statement, memorandum or particulars referred to in

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section 336A(4) who in any way, directly or indirectly, discloses or divulges any information obtained by him therefrom, except as may be strictly essential in or for carrying out the research, commits an offence.

- (2) A member of the Committee, or any person employed by or acting with the instructions or under the authority of the Committee, except an investigator appointed under section 340AJ acting in the course of his duties, who interviews or in any way communicates with any person referred to in any report of the investigator or any relative of that person commits an offence, unless the consent in writing of the medical practitioner who was attending the child at the time of the occurrence of the stillbirth or death being investigated is first obtained.

[Section 340AM inserted by No. 47 of 1978 s. 34; amended by No. 80 of 1987 s. 161.]

340AN. Regulations as to Perinatal and Infant Mortality Committee

- (1) The Committee may, with the approval of the Governor, make such regulations as the Committee considers necessary, convenient or desirable to assist it to carry out its functions or for better carrying out the objects and purposes of section 336A.
- (2) Without prejudice to the generality of subsection (1), regulations may be so made prescribing or relating to —
- (a) the conduct of meetings and proceedings of the Committee;
 - (b) the appointment, supervision, control, suspension and dismissal of officers for the purposes of this Part;
 - (c) the duties to be performed by officers employed or engaged by the Committee and the manner of their performance.

[Section 340AN inserted by No. 47 of 1978 s. 34.]

Part XIIIIC — Anaesthetic Mortality Committee

[Heading inserted by No. 47 of 1978 s. 36.]

340BA. Interpretation

In this Part unless the context requires otherwise —

“**Committee**” means the Anaesthetic Mortality Committee constituted under this Part;

“**investigator**” means the specialist anaesthetist from time to time appointed under this Part;

“**member**” means a person appointed to be a member of the Committee, and includes the Chairman of the Committee;

“**metropolitan area**” means that portion of the State within a radius of 80 kilometres from the General Post Office at Perth.

[Section 340BA inserted by No. 47 of 1978 s. 36.]

340BB. Constitution and offices of Committee

- (1) For the purposes of this Part a body to be called the “Anaesthetic Mortality Committee” and having the functions prescribed by this Part shall be constituted as provided in this section.
- (2) The Minister shall appoint 5 persons to be permanent members and 7 persons to be provisional members of the Committee, and 7 of those persons appointed, namely, the 5 permanent members and 2 of the provisional members selected in accordance with section 340BK(1), shall constitute the Committee.
- (3) Of the 5 persons appointed as permanent members of the Committee —
 - (a) one shall be nominated by the Western Australian Regional Committee of the Australian and New Zealand College of Anaesthetists, and he shall be Chairman of the Committee;

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- (b) one shall be a medical practitioner nominated by the CEO;
 - (c) one shall be a medical practitioner specialising in anaesthetics nominated by the Senate of the University of Western Australia on the advice of the Faculty of Medicine until such time as a Chair of Anaesthesia is created at that University, but thereafter shall be the person for the time being appointed as Professor of Anaesthesia at the University or a person nominated by him;
 - (d) one shall be a medical practitioner specialising in anaesthetics nominated by the State Branch of the Australian Society of Anaesthetists; and
 - (e) one shall be a medical practitioner specialising in anaesthetics, nominated by the State Branch of the Australian Medical Association.
- (4) Of the 7 persons appointed as provisional members of the Committee —
- (a) one shall be a medical practitioner specialising in obstetrics and gynaecology, nominated by the Australian College of Obstetricians and Gynaecologists (W.A. Branch);
 - (b) 2 shall be general medical practitioners with at least 5 years experience and special interest in anaesthesia, nominated by the State Branch of the Royal Australian College of General Practitioners, of whom one shall practice within the metropolitan area and one outside that area;
 - (c) one shall be a medical practitioner specialising in surgery nominated by the State Branch of the Royal Australasian College of Surgeons;
 - (d) one shall be a midwife having not less than 5 years experience in, and currently practising, midwifery,

nominated by the State Branch of the Australian Nursing Federation;

- (e) one shall be a dental practitioner, nominated by the State Branch of the Australian Dental Association; and
- (f) one shall be the person who is for the time being the Professor of Clinical Pharmacology of the University of Western Australia.

[Section 340BB inserted by No. 47 of 1978 s. 36; amended by No. 30 of 1982 s. 16; No. 27 of 1992 s. 84; No. 10 of 1998 s. 39(7) and (9); No. 24 of 2000 s. 16(3); No. 28 of 2006 s. 251.]

340BC. Appointment of deputies

- (1) The Minister may appoint persons as deputies to act in the respective places of the Chairman and other members of the Committee when not able or available to act, and persons so appointed may while acting exercise the same powers and are entitled to the same rights and subject to the same liabilities as the members for whom they act as deputies.
- (2) Where a member is required under section 340BB to be nominated by a specified body, a person is not eligible for appointment as a deputy of that member of the Committee unless he is nominated as deputy by that body or unless he is appointed by the Minister under the provisions of section 340BD(3).

[Section 340BC inserted by No. 47 of 1978 s. 36.]

340BD. Nominations to be made to Minister

- (1) The bodies mentioned in section 340BB(3) and (4) shall nominate to the Minister when he so requests, or when a vacancy occurs in accordance with section 340BF, a member or members of the respective body to become a permanent member, or as the case may be, a provisional member of the Committee.

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- (2) Without affecting the generality of the power conferred by subsection (1) the Minister may from time to time as occasion requires request a body referred to in section 340BB(3) or (4) to nominate, within a specified period, for appointment as a permanent or provisional member of the Committee, or as a deputy member, any number of persons not exceeding 3, and may appoint such one as he thinks fit.
- (3) If no nomination is made within the period specified by the Minister, he may appoint such a person or persons as he thinks fit to fill the office or to be a deputy as the case may be.

[Section 340BD inserted by No. 47 of 1978 s. 36.]

340BE. Tenure of office

- (1) The term of tenure of office of a person appointed as a permanent or provisional member of the Committee (other than the Chairman) expires by effluxion of time on the expiration of a period of 3 years commencing on the day specified in the notice of the appointment published in the *Government Gazette* as the commencing day of that term, and in the case of the Chairman the period shall be 4 years.
- (2) Notwithstanding the provisions of subsection (1), in the case of the initial appointments of provisional members of the Committee the Minister shall appoint 4 of the provisional members referred to in section 340BB(4) for a period of 2 years, but in all subsequent appointments the provisions of subsection (1) shall apply.

[Section 340BE inserted by No. 47 of 1978 s. 36.]

340BF. When office of member becomes vacant

The office of a member of the Committee becomes vacant if —

- (a) he dies;
- (b) he resigns by written resignation delivered to the Minister;

- (c) his term of tenure of office expires by effluxion of time;
- (d) through mental or physical infirmity or sickness he is, and is likely to continue to be, unable satisfactorily to carry out the duties and perform the functions of his office;
- (e) in the case of the permanent member referred to in section 340BB(3)(a), the Minister terminates the term of tenure of his office; or
- (f) he absents himself from 3 consecutive meetings of the Committee of which he is a member without leave of absence.

[Section 340BF inserted by No. 47 of 1978 s. 36.]

340BG. Vacancies in offices of members to be filled

- (1) When a vacancy occurs in the office of a member of the Committee, the Minister shall appoint a person to fill the vacancy, and where pursuant to section 340BB a specified body or person has the right to nominate that member the Minister shall not so appoint a person unless he is nominated by the appropriate body or person mentioned in that section or unless section 340BD(3) applies to the office.
- (2) Where a vacancy in the office of a member occurs during his term of office, the person appointed to fill the vacancy is entitled to occupy the office only for the remainder of that term.
- (3) A person is not rendered ineligible for appointment to the office of member or as a deputy because he has previously occupied office as such.

[Section 340BG inserted by No. 47 of 1978 s. 36.]

340BH. Quorum

- (1) Five members of the Committee or their respective deputies, of whom one shall be the Chairman or his deputy, constitute a quorum of the Committee so long as at least one permanent

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member other than the Chairman and one provisional member, or their respective deputies, are amongst those present.

- (2) Anything done by the Committee is not invalid or defective on the ground that, when done, there was a vacancy in, or defect in appointment to, office on the Committee.

[Section 340BH inserted by No. 47 of 1978 s. 36.]

340BI. Reimbursement of expenses of members

The Chairman and other members of the Committee and their respective deputies are entitled to such reimbursements of expenditure as the Minister from time to time determines, and is hereby authorised to determine.

[Section 340BI inserted by No. 47 of 1978 s. 36.]

340BJ. Appointment of investigator

- (1) The Minister may, in order to give effect to the purposes of section 336B, appoint an investigator for such term, at such remuneration and subject to such conditions of service as the Minister determines, and is hereby authorised to determine.
- (2) A person appointed to be an investigator pursuant to the provisions of subsection (1) shall be selected from medical practitioners who specialise in anaesthetics.
- (3) The Minister may at any time appoint a person having the necessary qualifications to act, and who shall act, as investigator during the absence of the investigator appointed under subsection (1), or where through any cause such investigator is unable to perform the functions of his office, or during any vacancy in that office.

[Section 340BJ inserted by No. 47 of 1978 s. 36.]

340BK. Functions of Committee

- (1) Whenever an investigator shall present to the Chairman of the Committee a report pursuant to the provisions of section 336B,

the Chairman shall consider the report, and having regard to the circumstances disclosed by the report and the nature of the medical case history of the deceased shall select 2 of the provisional members of the Committee as he deems necessary or advisable and shall notify the Executive Director, Public Health of such selection and the identity of the members so selected.

- (2) Upon receipt of the notification referred to in subsection (1), the Executive Director, Public Health shall convene a meeting constituted from amongst the permanent members of the Committee and the 2 provisional members so selected under that subsection, to be held within 10 days of the receipt by him of the notification.
- (3) The Committee shall consider the report of the investigator and for the purpose of assisting it in such consideration may co-opt such medical practitioners or nurses, or other persons with specialised knowledge, as the Committee thinks necessary.
- (4) Upon its consideration of the report the Committee shall determine whether in the opinion of the Committee the death the subject of the report might have been avoided, and may add to such determination such constructive comments as the Committee deems advisable for the future assistance and guidance of medical practitioners, dental practitioners, and nurses.
- (5) The determination of the Committee, including the comments referred to in subsection (4), shall be notified in writing by the Chairman to the medical practitioner or dental practitioner, or to each such practitioner, attending the deceased at the time of the occurrence of the death so investigated.
- (6) As soon as practicable after the Committee has made a determination, the Chairman shall forward to the Executive Director, Public Health all records, reports, statements, memoranda and other documents submitted to and considered by the Committee in making that determination, and the Executive Director, Public Health shall have the care and control of those

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records, reports, statements, memoranda and other documents, and keep or cause to be kept the same in safe custody, and except as provided by this Part and with his sanction in writing, shall not permit any of those records, reports, statements, memoranda or other documents to be inspected.

- (7) A summary of the cases investigated by the investigator and considered by the Committee during each year shall be forwarded by the Chairman to the Executive Director, Public Health.

[Section 340BK inserted by No. 47 of 1978 s. 36; amended by No. 28 of 1984 s. 45.]

340BL. When report may be published

- (1) The Committee may publish, or cause to be published, in any reputable health journal, or may make available to the Medical School or the School of Dental Science of the University of Western Australia for use in the teaching of medical or dental students or for purposes of medical or dental research, any investigator's report considered by the Committee and its determination relating thereto and any comments made by it, but all reasonable steps shall be taken to preclude disclosure or identification of the person or persons concerning whom the investigation and resultant report was made.
- (2) The Committee may impart, or cause to be imparted to medical practitioners, medical students, dental practitioners, dental students, nurses, trainee nurses and others such education and instruction in anaesthetic theory and practice as it may deem necessary or advisable from time to time so to do for their assistance and guidance in avoiding and preventing anaesthetic morbidity or mortality.

[Section 340BL inserted by No. 47 of 1978 s. 36.]

340BM. Information for research not to be disclosed

- (1) A person engaged in research relating to any matter necessitating the use of or reference to any information, record, report, statement, memorandum or particulars referred to in

section 336B(6) who in any way, directly or indirectly, discloses or divulges any information obtained by him therefrom, except as may be strictly essential in or for carrying out the research, commits an offence.

- (2) A member of the Committee, or any person employed by or acting with the instructions or under the authority of the Committee, except an investigator appointed under section 340BJ in the course of his duties, who interviews or in any way communicates with any person referred to in any report of the investigator or any relative of that person commits an offence, unless the consent in writing of the medical practitioner or dental practitioner, or both, attending that person at the time of the occurrence of the death being investigated is first obtained.

[Section 340BM inserted by No. 47 of 1978 s. 36; amended by No. 30 of 1982 s. 17; No. 80 of 1987 s. 162.]

340BN. Regulations as to Anaesthetic Mortality Committee

- (1) The Committee may, with the approval of the Governor, make such regulations as the Committee considers necessary, convenient or desirable to assist it to carry out its functions or for better carrying out the objects and purposes of section 336B.
- (2) Without prejudice to the generality of subsection (1), regulations may be so made prescribing or relating to —
- (a) the conduct of meetings and proceedings of the Committee;
 - (b) the appointment, supervision, control, suspension and dismissal of officers for the purposes of this Part;
 - (c) the duties to be performed by officers employed or engaged by the Committee and the manner of their performance.

[Section 340BN inserted by No. 47 of 1978 s. 36.]

Part XIV — Regulations and local laws

[Heading amended by No. 14 of 1996 s. 4.]

341. Regulations

- (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 giving effect to the purposes of this Act.
- (2) The CEO may, from time to time, and shall, when the Minister so requires, make regulations as hereinbefore provided, and generally for carrying into effect the provisions of this Act, and the exercise of any powers conferred on the CEO.

[Section 341 amended by No. 80 of 1987 s. 163; No. 28 of 2006 s. 251.]

342. Local laws

- (1) Every local government —
 - (a) may, if the Executive Director, Public Health consents; and
 - (b) shall, if the CEO or the Executive Director, Public Health so directs,

make local laws in accordance with subdivision 2 of Division 2 of Part 3 of the *Local Government Act 1995* for the purposes specified in this Act or generally for carrying into effect the provisions of this Act.

- (2) A local government shall repeal, amend or suspend the operation of a local law if directed to do so by the CEO or the Executive Director, Public Health.
- (3) Sections 3.14 and 3.17 of the *Local Government Act 1995* do not apply in relation to local laws made under this Act.
- (4) Sections 3.12(3) and (4) and 3.13 of the *Local Government Act 1995* do not apply if a local government is acting on the

direction of the CEO or the Executive Director, Public Health under subsection (1)(b) or (2).

- (5) A local law made under this section is inoperative to the extent that it is inconsistent with this Act or a regulation (including a regulation made under section 343A) made under this Act.

[Section 342 inserted by No. 14 of 1996 s. 4; amended by No. 28 of 2006 s. 251.]

343. Model local laws

- (1) The Governor may cause to be prepared and published in the *Gazette* model local laws the provisions of which a local law made under this Act may adopt by reference, with or without modification.
- (2) Model local laws have no effect except to the extent that they are adopted.
- (3) The Governor may, by notice published in the *Gazette*, amend a model local law published under this section.
- (4) An amendment to a model local law does not affect any local law that adopted the model local law before the amendment but the amendment may be adopted by a further local law.

[Section 343 inserted by No. 14 of 1996 s. 4.]

343A. Regulations to operate as local laws

- (1) The Governor may make regulations that are to operate as if they were local laws for each district to which they apply.
- (2) Regulations made under this section may deal with any matter in respect of which local laws may be made under this Act.
- (3) Regulations under this section, other than those that only repeal or amend other regulations, are to contain a statement to the effect that they apply as if they were local laws.

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- (4) A local government is to administer any regulation made under this section to the extent that it relates to any place where the local government may perform functions, as if the regulation was a local law.
- (5) Unless a contrary intention appears, a reference to an offence against a local law includes a reference to an offence against a regulation made under this section.
- (6) A regulation made under this section is inoperative to the extent that it is inconsistent with this Act or a regulation made under this Act (other than this section).

[Section 343A inserted by No. 14 of 1996 s. 4.]

343B. Governor may amend or repeal local laws

- (1) The Governor may make a local law to amend the text of, or repeal, a local law.
- (2) Subsection (1) does not include the power to amend a local law to include in it a provision that bears no reasonable relationship to the local law as in force before the amendment.
- (3) The Minister is to give a local government notice in writing of any local law that the Governor makes to amend the text of, or repeal, any of the local government's local laws.
- (4) A local law made under this section is to be taken, for all purposes, to be a local law made by the local government which made the local law that is amended or repealed.

[Section 343B inserted by No. 14 of 1996 s. 4.]

344. Penalties, fees, etc.

- (1) In all cases not otherwise provided for, any regulation or local law —
 - (a) may impose reasonable fees or charges for or in respect of licences granted or registrations made thereunder;

- (b) may provide that, in addition to a penalty, any expense incurred by the CEO, the Executive Director, Public Health or the local government in consequence of any breach or non-observance of such regulation or local law, or in the execution of work directed to be executed by any person and not executed by him, shall be paid by the person committing the breach or failing to execute the work; and
 - (c) may provide for the suspension or cancellation by the local government of any licence or registration upon breach or successive breaches by the licensee or person registered under the provisions thereof.
- (2) Any regulation or local law under this Act may be so made as to require a matter affected by it to be in accordance with a specified standard or specified requirement; or as approved by, or to the satisfaction of, a specified person or body or class of person or body, and so as to delegate to or confer upon a specified person or body, or class of person or body, a discretionary authority.

[Section 344 amended by No. 113 of 1965 s. 8(1); No. 35 of 1966 s. 7; No. 52 of 1968 s. 9; No. 28 of 1984 s. 33; No. 80 of 1987 s. 164; No. 14 of 1996 s. 4; No. 28 of 2006 s. 251.]

344A. Incorporation by reference

- (1) Any regulations or local laws made under this Act may adopt wholly or partly (or varied as specified in the regulation or local law) a code published under subsection (2) or any of the standards, rules, codes or other provisions of Standards Australia, or other Australian and international bodies of well established high repute, as in force at the time of adoption or as amended from time to time.
- (2) The Executive Director, Public Health, the Executive Director, Personal Health or the CEO may cause to be published, and amended from time to time, a code of practice in respect of any

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matter or thing relating to the public health of the people of Western Australia.

- (3) The CEO is to ensure that any standard, rule, code or other provision adopted under subsection (1) is available (as amended, if applicable) for public inspection, without charge, during normal office hours at a place prescribed by regulation.

[Section 344A inserted by No. 28 of 1996 s. 18; amended by No. 74 of 2003 s. 64(2); No. 28 of 2006 s. 251.]

344B. Evidence of contents of standard etc. adopted

In any proceedings under this Act, production of a copy of a standard, rule, code or other provision adopted under section 344A(1) purporting to be certified by the CEO of Health to be a true copy as at any date or during any period is, without proof of the signature of the CEO of Health, sufficient evidence of the contents of the standard, rule, code or other provision as at that date or during that period.

[Section 344B inserted by No. 28 of 1996 s. 18; amended by No. 28 of 2006 s. 251.]

344C. Fees and charges may be fixed by resolution

- (1) Where a local government is empowered to make a local law setting fees or charges under a provision set out in the Table to this section, it may fix that fee or charge by resolution in accordance with this section.
- (2) Fees or charges fixed under this section shall be fixed by resolution of a local government and notice of the resolution shall be published at least 14 days before the day on which the resolution is to take effect —
 - (a) in the *Gazette*; and
 - (b) in a newspaper circulating generally throughout the district of the local government.
- (3) Notice of a resolution under subsection (2) shall specify —

- (a) the day on which the resolution is to take effect; and
 - (b) the amounts of the fees or charges.
- (4) Notwithstanding anything else in this Act, where a local government fixes a fee or charge by resolution under this section, that fee or charge applies in respect of the district of the local government and the fee or charge prescribed by local law which otherwise would have applied does not apply in respect of that district.
- (5) A resolution made by a local government under this section may revoke a resolution previously made by that local government under this section.
- (6) Sections 41(2), 42, 43, 45 and 46 of the *Interpretation Act 1984* apply to a resolution made under this section as if the resolution were a regulation.
- (7) A fee or charge fixed under this section may be enforced and recovered as if it were prescribed by local law made under this Act.
- (8) Where a resolution made under this section is inconsistent with a regulation made under this Act —
- (a) the regulation prevails to the extent of the inconsistency; and
 - (b) the Minister may, by order published in the *Gazette*, revoke or amend the resolution, whether or not the resolution has taken effect.

Table

Sections 112A(1)(b) and (3)(b), 133(1), 134(6), (11), (12), (29), (30), (44), (45) and (46), 146(3), 158(3), 172(3), 199(10), 220(1)(l) and 344(1)(a).

[Section 344C inserted by No. 28 of 1996 s. 18.]

345. Regulations to be confirmed

- (1) All regulations —

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- (a) shall be subject to the approval of the Governor; and
- (b) when so approved shall be published in the *Government Gazette*, and shall take effect from the date of such publication, or from a later date specified in such regulations.

[(2) repealed]

[Section 345 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

[346-347. Repealed by No. 14 of 1996 s. 4.]

348. Evidence of local laws

The *Government Gazette* containing any regulation or local law, or the resolution of the local government to adopt any model local laws, shall be conclusive evidence of the due making and approval or the adoption thereof, and of due compliance with all conditions necessary to bring the same into effect as hereinbefore provided.

[Section 348 amended by No. 14 of 1996 s. 4.]

348A. Proclamations, etc., may be revoked or varied

- (1) Power given by this Act to make proclamations, orders in council or declarations includes power from time to time —
 - (a) to revoke or cancel those proclamations, orders in council or declarations, wholly or in part, either absolutely or for the purpose of substituting other proclamations, orders in council or declarations for those revoked or cancelled; and
 - (b) to otherwise vary those proclamations, orders in council or declarations,

unless the terms used in conferring that power, or the nature of the subject matter or the objects of the power, indicate that it is intended to be exercised either finally in the first instance, or only subject to certain restrictions.

- (2) The provisions of this section apply to proclamations, orders in council and declarations made under this Act whether made before or after the coming into operation of the *Health Act Amendment Act (No. 2) 1960*¹.

[Section 348A inserted by No. 38 of 1960 s. 7.]

Part XV — Miscellaneous provisions

349. Entry

- (1) The CEO, the Executive Director, Personal Health, the Executive Director, Public Health and all public health officials, and the local government and its officers, shall have power to enter from time to time into and upon any house or premises, for the purpose of examining as to the existence of any nuisance or whether any of the provisions of this Act are being contravened, or of executing any work or making any inspection authorised to be executed or made under the provisions of this Act or any regulation, order, or local law, and generally for the purpose of enforcing the provisions of this Act or any regulation, order, or local law, at any time between the hours of 7.00 a.m. and 6.00 p.m. of any day, or in the case of a nuisance or contravention arising in respect of any business, then at any hour when such business is in progress or is usually carried on.
- (2) Any person who wilfully and unreasonably refuses to admit any such officer to any house or premises commits an offence.
- (3) For the purpose of making any entry or doing anything authorised under this section, it shall be lawful to employ all such assistance as may be deemed necessary, and (whenever deemed necessary) to use force whether by breaking open doors or otherwise, and to search all parts of any house or premises entered, using such assistance and force as may be deemed necessary for the purpose.

[Section 349 amended by No. 17 of 1918 s. 50; No. 113 of 1965 s. 8(1); No. 28 of 1984 s. 34; No. 80 of 1987 s. 165; No. 14 of 1996 s. 4; No. 28 of 2006 s. 251.]

350. Vessels

- (1) Any vessel lying within any river, harbour, or other water, not within the district of a local government, shall be deemed to be within the district of such local government, as the Governor, by notification in the *Government Gazette*, declares, and where no

such notification has been given, then of the local government whose district is nearest to the place where such vessel is lying.

- (2) This section shall not apply to any vessel which is under the command or charge of any officer bearing Her Majesty's Commission, or to any vessel which belongs to the Government of any Foreign State.

[Section 350 amended by No. 14 of 1996 s. 4.]

351. Obstructing execution of Act

- (1) Any person who obstructs, hinders, resists, or in anywise opposes the CEO, the Executive Director, Personal Health, the Executive Director, Public Health or any member of any local government, or any officer or other person appointed, employed, or authorised under this Act or any regulation or local law in the performance of any thing which he is empowered or required to do by this Act or any regulation, order, or local law commits an offence.
- (2) Any person who wilfully destroys, pulls down, injures, or defaces any exhibited regulation, local law, notice, order, or other matter commits an offence, if the same was put up by authority of the CEO, the Executive Director, Personal Health, the Executive Director, Public Health or the local government.
- (3) If the occupier of any premises prevents the owner thereof from obeying or carrying into effect any of the provisions of this Act or of any regulation, order, or local law, any justice to whom application is made in that behalf shall, by order in writing, require such occupier to permit the execution of any works required to be executed, provided that the same appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act or such regulation, order, or local law; and any such occupier who does not, within 48 hours after the making of the order, comply with such a requirement commits an offence.

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- (4) Every such owner, during the continuance of such refusal, shall be discharged from any penalties to which he might otherwise have become liable by reason of his default in carrying into effect any of the provisions of this Act or of such regulation, order, or local law.
- (5) Any occupier of premises who, when requested by or on behalf of the CEO, the Executive Director, Personal Health, the Executive Director, Public Health or the local government to state the name of the owner of such premises, refuses or wilfully omits to disclose, or wilfully misstates the name of such owner, commits an offence.

[Section 351 amended by No. 113 of 1965 s. 8(1); No. 28 of 1984 s. 35; No. 80 of 1987 s. 166; No. 14 of 1996 s. 4; No. 28 of 2006 s. 251.]

352. Duty of police officers

- (1) It shall be the duty of every member of the police force and environmental health officer who shall produce his authority who finds any person committing a breach of any of the provisions of this Act, or of any regulation or local law, to demand from such person his name and place of abode, and to report the fact of such breach and the name and place of abode of such person, as soon as conveniently may be, to the proper authority.
- (2) Any such person who refuses to state his name and place of abode when required by a member of the police force or environmental health officer who produces his authority so to do, may, without any other warrant than this Act, be apprehended by such officer to be dealt with according to law.
- (3) Any person who refuses to state his name and place of abode, or states a false name or place of abode, commits an offence.

[Section 352 amended by No. 71 of 1948 s. 14; No. 113 of 1965 s. 8(1); No. 24 of 1970 s. 12; No. 80 of 1987 s. 167; No. 59 of 1991 s. 5; No. 14 of 1996 s. 4; No. 59 of 2004 s. 141.]

353. Power to take possession of and lease land or premises on which expenses are due

Where any land or premises are unoccupied and any expenses incurred by the local government in respect of such land or premises under the provisions of this Act have been unpaid for 3 years, the local government may take possession of such land or premises and may hold the same as against any person interested therein; and all the provisions of the *Local Government Act 1995* enforceable by the local government for the recovery of rates by the letting or sale of the land shall apply and be deemed to be incorporated with this Act, and the powers and duties thereby conferred and imposed may be exercised and shall be observed by the local government accordingly.

[Section 353 amended by No. 14 of 1996 s. 4.]

354. Service of notice

- (1) Except where otherwise provided, any notice, order, process, or other document, under the provisions of this Act or any regulation or local law, required or authorised to be given or served to or upon any person may be served —
 - (a) by delivering the same to such person; or
 - (b) by leaving the same at his usual or last known place of abode; or
 - (c) by forwarding the same by post in a pre-paid letter addressed to such person at his usual or last known place of abode.
- (2) Any such document, if addressed to the owner or occupier of premises, may be served by delivering the same, or a true copy thereof, to some person on the premises, or, if there is no person on the premises who can be so served, by fixing the same on some conspicuous part of the premises.
- (3) Where a notice is required to be given to a person whose name and address are unknown, the notice may be served by publishing it in the *Government Gazette* and some newspaper

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circulating within the district 3 times, at intervals of not less than one week between any 2 publications.

- (4) Any notice by this Act required to be given to the owner or occupier of any premises may, if the name of the owner or occupier is not known, be addressed to him by the description of the “owner” or “occupier” of the premises (naming them) in respect of which the notice is given, without further name or description.
- (5) Any document forwarded by post shall be deemed to have been given at the last moment of the day on which the same ought to be delivered at its destination in the ordinary course of post, and in proving service it shall be sufficient to prove that the document was properly stamped and addressed and put into the post.
- (6) If there are more owners or occupiers than one, it shall be sufficient if the requisition is served on any one of them and the name of any one of them is specified, with the addition of the words “and others”.
- (7) Non-service on the owner shall not affect the validity of service on the occupier, and non-service on the occupier shall not affect the validity of service on the owner.
- (8) In all proceedings in which the notice, order, or other document has to be proved, the accused shall be deemed to have received notice to produce it; and, until the contrary is shown, the same and its due service may be sufficiently proved by or on behalf of the prosecutor by the production of what purports to be a copy, bearing what purports to be a certificate under the hand of the officer authorised to issue the original or of the secretary to the local government or the CEO, as the case may be, that the copy is a true copy of the original, and that the original was served on the date specified in the certificate.
- (9) The validity of any notice, order, or other document or of the service thereof shall not be affected by any error,

misdescription, or irregularity which is not calculated to mislead, or which in fact does not mislead.

[Section 354 amended by No. 17 of 1918 s. 52; No. 28 of 1984 s. 36; No. 14 of 1996 s. 4; No. 84 of 2004 s. 80 and 82; No. 28 of 2006 s. 251.]

355. Continued operation of notices and orders

All notices or orders required under this Act to be served on any owner or occupier shall, if due service thereof has been once made on any owner or occupier, be binding on all persons claiming by, from, or under such owner or occupier, and all subsequent owners or occupiers, to the same extent as if such order or notice had been served on such last-mentioned persons respectively.

356. Proof of ownership

- (1) In any prosecution or other legal proceedings under the provisions of this Act —
 - (a) evidence that the person proceeded against is rated in respect of any land or premises to any general rate for the district within which such land or premises are situated; and
 - (b) evidence by the certificate of the registrar of deeds and transfers or his substitute, or any assistant registrar of deeds and transfers, that any person appears from any memorial of registration of any deed, conveyance, or other instrument to be the owner or proprietor of any land, and evidence by a certificate signed by the registrar of titles or any assistant registrar that any person's name appears in the Register under the *Transfer of Land Act 1893*, as owner or proprietor of any land —

shall, until the contrary is proved, be evidence that such person is owner, proprietor, or occupier (as the case may be) of such land or premises.

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- (2) All courts and all persons having by law or by consent of parties authority to hear, receive, and examine evidence shall, for the purposes of this Act, take judicial notice of the signatures of such registrar and assistant registrar whenever such signature is attached to such certificate.
- (3) If the person appearing to be the owner of any land is absent from Western Australia, or cannot, after reasonable inquiries, be found, any agent or other person advertising or notifying himself by placard or otherwise as authorised to deal with such land in any way shall, for the purposes of any legal proceedings under this Act, be deemed to be such owner:

Provided that such agent or person, who has on conviction paid any penalty, or has been compelled to bear any expenses, or to pay any costs in respect of such lands whether under compulsion of legal process or not, may recover from such owner such penalty, expenses, and costs:

Provided also, that nothing in this section shall exclude or take away existing methods of proof.

[Section 356 amended by No. 28 of 1912 s. 9; No. 81 of 1996 s. 153(1).]

357. Power to suspend or cancel licences

On the conviction of any person for any offence under this Act, the CEO, the Executive Director, Personal Health, the Executive Director, Public Health or the local government, as the case requires, may suspend or cancel any licence issued to or the registration of any such person under the provisions of this Act, and may refuse any subsequent application from such person for a similar licence or registration.

[Section 357 amended by No. 30 of 1932 s. 44; No. 28 of 1984 s. 37; No. 80 of 1987 s. 168; No. 14 of 1996 s. 4; No. 28 of 2006 s. 251.]

358. Prosecution of offences

- (1) The local government may from time to time order proceedings to be taken for the recovery of any penalties, and for the punishment of any person committing an offence under this Act or any local law which it is the duty of the local government to enforce, and may order the expenses of such prosecution or other proceedings to be paid out of the municipal fund.
- (2) An environmental health officer of a local government may, by virtue of his office, and without receiving express authority from such local government, institute and carry on proceedings against any person for an alleged offence under this Act, or any local law or regulation made thereunder, and he shall be reimbursed out of the funds of the local government all costs and expenses which he may incur or be put to in or about such proceedings.

[Section 358 amended by No. 24 of 1970 s. 12; No. 80 of 1987 s. 169; No. 59 of 1991 s. 5(1); No. 14 of 1996 s. 4; No. 28 of 1996 s. 21.]

359. No abatement

Proceedings against several persons included in one prosecution shall not abate by reason of the death of any of the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally so included.

[Section 359 amended by No. 84 of 2004 s. 80.]

360. Penalties

- (1) A person who is convicted of an offence under a provision of this Act specified in —
 - (a) Part I of Schedule 5 is liable to —
 - (i) a penalty which is not more than \$500 and not less than —
 - (A) in the case of a first such offence, \$50;

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- (B) in the case of a second such offence, \$100; and
 - (C) in the case of a third or subsequent such offence, \$250;
 - and
 - (ii) if that offence is a continuing offence, a daily penalty which is not more than \$50 and not less than \$25;
- (b) Part II of Schedule 5 is liable to —
- (i) a penalty which is not more than \$1 000 and not less than —
 - (A) in the case of a first such offence, \$100;
 - (B) in the case of a second such offence, \$200; and
 - (C) in the case of a third or subsequent such offence, \$500;
 - and
 - (ii) if that offence is a continuing offence, a daily penalty which is not more than \$100 and not less than \$50;
- (c) Part III of Schedule 5 is liable to —
- (i) a penalty which is not more than \$2 000 and less than —
 - (A) in the case of a first offence, \$200;
 - (B) in the case of a second offence, \$400; and
 - (C) in the case of a third or subsequent such offence, \$1 000;
 - and
 - (ii) if that offence is a continuing offence, a daily penalty which is not more than \$200 and not less than \$100;

- (d) Part IV of Schedule 5 is liable to —
- (i) a penalty which is not more than \$2 500 and not less than —
 - (A) in the case of a first such offence, \$250;
 - (B) in the case of a second such offence, \$500; and
 - (C) in the case of a third or subsequent such offence, \$1 250;

and

 - (ii) if that offence is a continuing offence, a daily penalty which is not more than \$250 and not less than \$125;
- (e) Part V of Schedule 5 is liable to —
- (i) a penalty which is not more than \$3 000 and not less than —
 - (A) in the case of a first such offence, \$300;
 - (B) in the case of a second such offence, \$600; and
 - (C) in the case of a third or subsequent offence, \$1 500;

and

 - (ii) if that offence is a continuing offence, a daily penalty which is not more than \$300 and not less than \$150;
- (f) Part VI of Schedule 5 is liable to —
- (i) a penalty which is not more than \$5 000 and not less than —
 - (A) in the case of a first such offence, \$500;
 - (B) in the case of a second such offence, \$1 000; and
 - (C) in the case of a third or subsequent offence, \$2 500;

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and

- (ii) if that offence is a continuing offence, a daily penalty which is not more than \$500 and not less than \$250;

or

- (g) Part VII of Schedule 5 is liable to —

- (i) a penalty which is not more than \$10 000 or imprisonment for a period of 12 months and not less than —

- (A) in the case of a first such offence, \$1 000;
- (B) in the case of a second such offence, \$2 000; and
- (C) in the case of a third or subsequent such offence, \$5 000;

and

- (ii) if that offence is a continuing offence, a daily penalty which is not more than \$1 000 and not less than \$500;

- (h) Part VIII of Schedule 5 is liable to —

- (i) a penalty which is not more than \$15 000; and
- (ii) if that offence is a continuing offence, a daily penalty which is not more than \$1 000.

- (2) Local laws and regulations made under this Act may create offences and provide in respect of any such offence —

- (a) a penalty which is not more than \$1 000 and not less than —

- (i) in the case of a first such offence, \$100;
- (ii) in the case of a second such offence, \$200; and
- (iii) in the case of a third or subsequent such offence, \$500;

and

- (b) if that offence is a continuing offence, a daily penalty which is not more than \$100 and not less than \$50.
- (3) Notwithstanding anything in subsection (2), local laws and regulations to which this subsection applies may create offences and provide in respect of any such offence —
 - (a) a penalty which is not more than \$2 500 and not less than —
 - (i) in the case of a first such offence, \$250;
 - (ii) in the case of a second such offence, \$500; and
 - (iii) in the case of a third or subsequent such offence, \$1 250;
 - and
 - (b) if that offence is a continuing offence, a daily penalty which is not more than \$250 and not less than \$125.
- (4) Subsection (3) applies to —
 - (a) local laws made under section 342 as read with section 172, 207(1) or (3) or 220(1); and
 - (b) regulations made under section 341 as read with section 207D, 212B, 220(2), 246C, 246D(1) or (2) or 247.
- (5) Notwithstanding anything in subsection (2), regulations made under section 341 as read with section 289F may create offences and provide in respect of any such offence —
 - (a) if the offender is an individual —
 - (i) a penalty that is not more than \$500; and
 - (ii) if the offence is a continuing offence, a daily penalty that is not more than \$50;
 - and
 - (b) if the offender is a body corporate —
 - (i) a penalty that is not more than \$5 000; and

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- (ii) if the offence is a continuing offence, a daily penalty that is not more than \$500.

[Section 360 inserted by No. 80 of 1987 s. 170; amended by No. 59 of 1991 s. 18 and 26; No. 78 of 1995 s. 147; No. 14 of 1996 s. 4; No. 57 of 1997 s. 68(2); No. 62 of 1998 s. 6; No. 50 of 2003 s. 71(2).]

361. General penalty

A person who contravenes or fails to comply with this Act or any regulation, local law, notice or order under this Act is guilty of an offence and is liable, if no other penalty is prescribed to a penalty not exceeding \$10 000 and if the offence is a continuing offence to a penalty not exceeding \$1 000 and not less than \$25 for each day that the offence continues.

[Section 361 inserted by No. 59 of 1991 s. 27; amended by No. 14 of 1996 s. 4.]

[361A. Repealed by No. 35 of 1966 s. 10.]

362. Proceedings for an offence

[(1) repealed]

- (2) Proceedings for an offence under this Act or any regulation or local law shall not be taken by any person other than by a party aggrieved, or by the CEO, Executive Director, Personal Health, Executive Director, Public Health or the local government of the district in which the offence is committed, or a public health official or an officer of the local government, or a member of the police force, without the consent in writing of the Attorney General.

[Section 362 amended by No. 28 of 1984 s. 38; No. 80 of 1987 s. 171; No. 14 of 1996 s. 4; No. 59 of 2004 s. 141; No. 28 of 2006 s. 251.]

[363. Repealed by No. 59 of 2004 s. 141.]

[364. Repealed by No. 35 of 1935 s. 48A (as amended by No. 73 of 1954 s. 8).]

365. Protection against personal liability

- (1) No matter or thing done, and no contract entered into, by or on behalf of the CEO, the Executive Director, Personal Health, the Executive Director, Public Health or the local government, and no matter or thing done by any officer or other person acting under the direction of the CEO, the Executive Director, Personal Health, the Executive Director, Public Health or of the local government, shall, if the matter or thing was done or the contract was entered into *bona fide* for the purpose of executing this Act, subject the CEO, the Executive Director, Personal Health, the Executive Director, Public Health or local government or any member thereof respectively, or any such officer or person to any personal liability in respect thereof.
- (2) Any expense incurred by any member, officer, or other person acting as last aforesaid shall be deemed to be an expense authorised by this Act.

[Section 365 amended by No. 28 of 1984 s. 39; No. 14 of 1996 s. 4; No. 28 of 2006 s. 251.]

366. No officer to be concerned in contract

- (1) No CEO, Executive Director, Personal Health, Executive Director, Public Health or public health official, and no member of the council of a local government or person employed by a local government, shall be personally concerned or interested directly or indirectly in any bargain or contract entered into by or on behalf of the Government of the State or such local government respectively.

But this subsection shall not apply to any such bargain or contract entered into by a member of the council of a local government as he, while being such member, could lawfully enter into.

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- (2) If any such CEO, Executive Director, Personal Health, Executive Director, Public Health, official, member, or person, is so concerned or interested, or if any such CEO, Executive Director, Personal Health, Executive Director, Public Health, official, member, or person, under colour of his office or employment, exacts, takes, or accepts any fee or reward whatsoever, other than his proper salary, wages, remuneration, and allowances, he shall be incapable of afterwards holding or continuing in any office or employment under this Act, and commits an offence.

[Section 366 amended by No. 113 of 1965 s. 8(1); No. 28 of 1984 s. 40; No. 80 of 1987 s. 173; No. 14 of 1996 s. 4; No. 28 of 2006 s. 251.]

367. Recovery of expenses from local government

- (1) All expenses incurred by the Executive Director, Public Health on behalf of a local government, or for which a local government is liable under this Act, shall be recoverable as a debt due to the Crown.
- (2) Without affecting any other mode of recovering such expenses they may, on the warrant of the Minister, be deducted and retained out of any moneys at any time payable out of the public funds to the local government in respect of subsidy or otherwise.

[Section 367 amended by No. 28 of 1984 s. 45; No. 14 of 1996 s. 4.]

368. Contribution

Nothing in this Act shall prevent persons proceeded against from recovering contribution in any case in which they would otherwise be entitled to contribution by law.

369. Liability of owner and occupier under requisition or order

- (1) In every case where, under this Act, the owner and occupier of any house, building, land, or other premises —
- (a) are jointly and severally liable to do any cleansing, disinfecting, or other sanitary work of any description; or
 - (b) are severally liable to a penalty for any default in connection with any such work; or
 - (c) are jointly and severally liable for any expenses incurred by or on behalf of the CEO, the Executive Director, Public Health or a local government in connection with any such work;

then, for the purpose of regulating the rights and obligations of the owner and occupier as between one another, the following provisions of this section shall apply.

- (2) The owner who does or pays for the work, or pays the penalty or expenses, shall be entitled to recover from the occupier as a debt the cost of the work so done or the amount so paid if he satisfies the court in which he seeks to recover the debt that the work was rendered necessary through no fault of his own or of any person for whose acts or default he was responsible, but solely through the fault of the occupier or some person for whose acts or defaults the occupier was responsible.
- (3) The occupier who does or pays for the work, or pays the penalty or expenses, shall be entitled to recover from the owner as a debt the cost of the work so done or the amount so paid if he satisfies the court in which he seeks to recover the debt that the work was rendered necessary through no fault of his own or of any person for whose acts or defaults he was responsible, but solely through the fault of the owner or some person for whose acts or defaults the owner was responsible.

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- (4) The amount of the debt recoverable as aforesaid by the occupier may be set off against rent due or to accrue due by him to the owner.
- (5) In determining the rights and obligations of the owner and occupier under this section, regard shall be had to the conditions or covenants of any written instrument of lease of the premises.
- [Section 369 amended by No. 28 of 1984 s. 41; No. 14 of 1996 s. 4; No. 28 of 2006 s. 251.]*

370. Penalty if owner or occupier hinders the other

If in the performance of any duty imposed on him by this Act the owner of any premises is in any way obstructed or hindered by the occupier, or the occupier by the owner, the one who obstructs or hinders the other commits an offence.

[Section 370 amended by No. 113 of 1965 s. 8(1); No. 80 of 1987 s. 174.]

371. Money owing to local government to be a charge against land in certain cases

In every case where a local government carries out work on any land or premises, whether such work be done by agreement with the owner, or on account of default on the part of the owner of such land or premises, the amount due to the local government in respect of such work may be recovered from the owner in any court of competent jurisdiction, and until paid shall be and remain a charge upon the said land.

[Section 371 amended by No. 14 of 1996 s. 4.]

372. Provisions as to charge on land or premises

In every case where by this Act any expenses are declared to be a charge on land or premises, the following provisions shall apply:

- (1) If any question or dispute arises as to the fact or amount of the charge, or as to the land or premises subject

thereto, or as to the persons liable to pay the same, then the question shall be determined by the Magistrates Court, constituted by a magistrate, whose decision shall be final.

- (2) Subject to the court's decision a certificate under the hand of the CEO, or of the chief executive officer of the local government, shall be sufficient evidence of the amount of the charge, the land and premises subject to the charge, and the persons liable to pay the charge.
- (3) Such certificate, or, as the case may be, a certificate of the court's decision may be registered against the land affected thereby.
- (4) The charge shall be registered, enforced and be discharged in such manner as is prescribed by regulations under this Act.
- (5) Such charge shall rank, if the expenses are due to the Crown, *pari passu* with land tax, and in other cases it shall rank *pari passu* with rates due to the local government.

Provided that such regulations shall not authorise any land to be sold, except pursuant to an order of the Magistrates Court which shall not be made unless 3 months before the making thereof notice of intention to apply for such order has been published in the *Government Gazette* and given to every person who, upon search in the department within the meaning of the *Transfer of Land Act 1893* or Registry of Deeds, as the case may require, appears to be entitled to any estate or interest or mortgage or other security in or over the land.

[Section 372 amended by No. 17 of 1918 s. 52; No. 30 of 1932 s. 46; No. 28 of 1984 s. 42; No. 14 of 1996 s. 4; No. 81 of 1996 s. 153(2); No. 57 of 1997 s. 68(3); No. 59 of 2004 s. 141; No. 28 of 2006 s. 251.]

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373. Reference to “owner” and “occupier”

Whenever in any proceeding under the provisions of this Act, or any local law, or order, it becomes necessary to mention or refer to the owner or occupier of any premises, it shall be sufficient to designate him as the “owner” or “occupier” of such premises, without name or further description.

[Section 373 amended by No. 14 of 1996 s. 4.]

374. Appearance of local governments in legal proceedings

Any local government may appear before any court or in any legal proceeding by its secretary or by any officer or member authorised generally or in respect of any special proceeding by resolution of such local government, and the secretary or any officer or member so authorised shall be at liberty in the name of the local government to institute and carry on any proceeding which such local government is authorised to institute and carry on under this Act.

[Section 374 amended by No. 14 of 1996 s. 4.]

375. Power to inspect register of births and deaths

Any public health official or officer of the local government at all reasonable times —

- (a) may inspect any register of births and deaths and may obtain extracts therefrom free of charge, and the registrar of births and deaths shall permit such inspection and supply such extracts; and
- (b) may search in the Department within the meaning of the *Transfer of Land Act 1893* and Registry of Deeds, or any office of the Department of Lands and Surveys⁷, or of the Department of Mines⁸, and may inspect all plans, grants, transfers, certificates of title, and memorials free of charge.

[Section 375 amended by No. 14 of 1996 s. 4; No. 81 of 1996 s. 153(2).]

376. Authentication of documents

Every document required to be signed, made, or authenticated by the CEO, the Executive Officer, Personal Health or the Executive Officer, Public Health or by any local government shall (unless otherwise provided) be sufficiently authenticated if appearing to be signed by an officer of the Department authorised for that purpose by the CEO, or by any member or officer of the local government.

[Section 376 amended by No. 17 of 1918 s. 52; No. 28 of 1984 s. 43; No. 14 of 1996 s. 4; No. 28 of 2006 s. 251.]

377. Evidence

In any prosecution or other legal proceeding under this Act or any regulation or local law —

- (1) the signature of the CEO, the Executive Director, Personal Health, the Executive Director, Public Health, an officer of the Department authorised for that purpose by the CEO and of the chief executive officer of the local government shall be judicially noticed;
- (2) the production of a copy of the *Government Gazette* containing any regulation or local law, or any order purporting to be made by the Governor, the Minister, CEO, the Executive Director, Personal Health, the Executive Director, Public Health, or a local government, under the provisions of this Act, or the production of a document purporting to be a copy of any such regulation, local law, or order, and purporting to be printed by the Government Printer or by the authority of the Government, shall be for all purposes conclusive evidence of such regulation, local law, or order;
- (3) the production of a certificate purporting to be signed by a Government bacteriologist, an analyst, or other person authorised to grant the same shall be sufficient prima facie evidence of the facts therein stated;

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- (3a) the production of a certificate purporting to be signed by a medical practitioner and to certify for the purposes of Part XI that the person named therein is suffering from a venereal disease in an infectious stage, or has ceased treatment for a venereal disease, or has not attended for treatment as required by this Act shall be sufficient prima facie evidence of the facts stated therein;
- (4) no proof shall be required of the particular or general appointment or qualification of any public health official or any officer of a local government;
- (5) the burden of proof that any article of food was not exposed for sale, or deposited in any place for the purpose of sale or preparation for sale, or was not intended for the food of man, shall be upon the party charged;
- (6) the fact that infectious disease has existed upon any premises for a period of one week shall be taken as prima facie evidence that the owner or occupier of the premises knew of the existence of such disease upon the premises;
- (7) the burden of proof that any persons or premises have been licensed or registered under the provisions of this Act shall be upon the party charged;
- (8) it shall not be necessary to prove the constitution or limits of the district of the local government, nor the appointment of the members thereof;
- (9) it shall not be necessary to prove the presence of a quorum of the local government making any order at the making thereof until evidence is given to the contrary;
- (10) the person purchasing any drug for analysis under section 227 need not use the exact words of such section, so long as it appears to the court of summary jurisdiction that the seller was substantially informed of such person's intention to have that drug analysed;

- (11) the averment in a prosecution notice that an accused is the parent or guardian of a child in any proceedings under sections 337 and 338 shall be deemed sufficient proof until the contrary is proved.

[Section 377 amended by No. 28 of 1912 s. 10; No. 17 of 1918 s. 51 and 52; No. 30 of 1932 s. 47; No. 21 of 1944 s. 14; No. 28 of 1984 s. 44; No. 80 of 1987 s. 175; No. 14 of 1996 s. 4; No. 57 of 1997 s. 68(3); No. 59 of 2004 s. 141; No. 84 of 2004 s. 80 and 82; No. 28 of 2006 s. 251.]

378. Regulations and local laws to be judicially noticed

All courts shall take judicial notice of all local laws and regulations under this Act.

[Section 378 inserted by No. 55 of 1915 s. 4; amended by No. 14 of 1996 s. 4; No. 59 of 2004 s. 141.]

[Schedule 1 omitted under the Reprints Act 1984 s. 7(4)(e).]

Schedule 2

[Section 186]

Offensive trades

Any of the trades, businesses, or occupations usually carried on, in, or connected with the undermentioned works or establishments, that is to say —

Abattoirs or slaughter houses;

Bone mills or bone manure depots;

Cleaning establishments, dye works;

Fat rendering establishments;

Fellmongeries, tanneries;

Fish-curing establishments;

Flock factories;

Laundries;

Manure works;

Piggeries —

- (a) carried on, in or upon premises situated in areas prescribed as those in which piggeries may be carried on, only if registered as required by section 191; or
- (b) the pigs in which, wherever the premises are situated, are fed wholly or partly on pig-swill;

Places for storing, drying, or preserving bones, hides, hoofs or skins;

Tripe-boiling establishments;

Works for boiling down meat, bones, blood, or offal.

[Schedule 2 amended by No. 25 of 1952 s. 10; No. 26 of 1985 s. 10; and Gazette 20 Sep 1918 p. 1453; 26 Nov 1993 p. 6321; 17 Nov 2000 p. 6289.]

Schedule 3

[Section 247(4)]

Specific matters and things with respect to which regulations may be made

1. The powers, authorities, functions and duties of persons engaged in the administration of Part VIII.
2. The licensing by the Executive Director, Public Health, or a local government of persons for specified purposes.
3. The registration by the Executive Director, Public Health, or a local government of premises or other places, vehicles or appliances for specified purposes and the inspection of premises or other places, vehicles or appliances in respect of which registration has been granted or is sought.
4. Applications for and the grant, issue, revocation, cancellation, suspension or surrender of licences, registrations, permits, approvals, certificates and authorities under Part VIII and transfers, renewals and duplicates thereof; the terms, conditions and restrictions on which those licences, registrations, permits, approvals, certificates and authorities may be granted, issued, revoked, cancelled, suspended, surrendered, transferred or renewed; and the records to be kept in relation thereto.
5. The prescription of standards for the nature, substance, composition, strength, mass, quantity, purity or quality of food generally or food of a specified class or description or of any ingredient or component part thereof or for the nature or proportion of any substance that may be mixed with or used in the preparation or preservation thereof, and the variations, if any, from standards.
6. The prohibition of the addition to, mixture with or use in the preparation of or presence in food generally or food of a specified class or description of a specified substance or a specified substance exceeding a prescribed quantity or proportion.
7. The prescription of the quantity or proportion of a specified substance that is to be the quantity or proportion or the maximum or minimum quantity or proportion that shall or may be added to, mixed with or used

in the preparation of or present in food generally or food of a specified class or description.

8. The prohibition in the sale or the preparation, packing, storing, handling, serving, supplying or conveying for sale of food generally or food of a specified class or description of the use of any appliances, articles or materials containing a specified substance or a specified substance exceeding a prescribed quantity or proportion.
9. The prescription or prohibition of specified modes of the preparation of food generally or food of a specified class or description.
10. The prescription of the temperature at which food generally or food of a specified class or description that is prepared, stored, displayed, exposed or conveyed for sale shall be kept.
11. The prohibition of the sale of food generally or food of a specified class or description containing any micro-organism or a micro-organism of a specified kind or a micro-organism or a micro-organism of a specified kind in excess of a specified number in a specified quantity.
12. The provision for and prescription of all matters and things for or with respect to securing the wholesomeness and purity of food and the conditions and practices in connection with the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food and, without limiting the generality of this clause, for or with respect to —
 - (a) the cleanliness of premises or other places, vehicles or appliances in, at, on or from which food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale and fittings, fixtures or appliances in, at or on those premises or other places, vehicles or appliances;
 - (b) the provision and proper use of satisfactory facilities for the protection of food in, at or on premises or other places, vehicles or appliances in, at, on or from which food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale;
 - (c) the design and construction of premises or other places, vehicles, appliances, fittings or fixtures used for or in connection with the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food;

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- (d) the prohibition or regulation of the use of specified materials or materials of a specified class in the manufacture of appliances, fittings or fixtures;
 - (e) the clothing to be worn by persons attending appliances or in, at or on premises or other places or vehicles in, at, on or from which food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale;
 - (f) the standards of cleanliness and hygiene to be maintained;
 - (g) preventing or minimising the spread of disease;
 - (h) the provision and use of appliances, fittings or fixtures;
 - (i) prescribing standards for appliances, fittings or fixtures and requiring appliances, fittings or fixtures of specified kinds to be approved by the Executive Director, Public Health, and specifying the procedure for obtaining that approval;
 - (j) the inspection and testing of appliances, fittings or fixtures and the inspection of premises or other places or vehicles in, at, on or from which food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale; and
 - (k) the provision and maintenance of an adequate water supply and drainage, sewerage, lighting and ventilation facilities in premises or other places, vehicles or appliances in, at, on or from which food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale.
13. The provision for and prescription of all matters and things for or with respect to food vending machines and, without limiting the generality of this clause, for or with respect to —
- (a) the location, surroundings and cleanliness thereof;
 - (b) the mode of construction thereof with particular reference to the provision of means for maintaining cleanliness and operating temperatures;
 - (c) maintenance and servicing thereof and the keeping of records in relation thereto;
 - (d) marking on or affixing thereto operating instructions, evidence of the currency of registration thereof and the name and address or other particulars of the person who receives or shares in the proceeds of the sale of food therefrom;

- (e) requiring labels or other writings containing specified words, statements, expressions or specified pictorial representations or designs to be affixed thereto or prohibiting the use in those labels or other writings of specified words, statements or expressions or words, statements or expressions having the same or a similar effect or representations or designs of a similar or other specified nature;
 - (f) regulation and control of the temperature of food contained therein;
 - (g) the prevention of the adulteration or contamination of food contained therein;
 - (h) the inspection thereof and of their contents;
 - (i) the prohibition of the operation thereof and rendering them inoperable whilst in a faulty condition;
 - (j) the prohibition or regulation of the sale or supply therefrom of goods other than food or food of any class or description with food of another class or description;
 - (k) the prohibition or regulation of the use thereof for dispensing food other than food that they are designed to dispense; and
 - (l) generally, the control and use thereof.
14. Regulation and control and, if necessary, prohibition and restriction of advertisements relating to food generally or food of a specified class or description; requiring advertisements to contain specified words, statements or expressions or specified pictorial representations or designs or prohibiting the use therein of specified words, statements or expressions or words, statements or expressions having the same or a similar effect or pictorial representations or designs of a similar or other specified nature or of statements, claims, designs, devices or abbreviations of a specified nature.
15. The prescription of the mode of labelling food generally or food of a specified class or description or packages of food generally or of food of a specified class or description; the forms or kinds of labels; the matter to be contained in labels including specified words, statements, expressions, pictorial representations or designs of a specified kind; the printing size, style or colour of any such matter or the nature or colour of the background on which it appears; requiring labels that are specified to be written on or attached to food or to packages of food;

prohibition generally as to the matter to be contained in labels and without limiting the generality of this provision of the use on labels of specified words, statements or expressions or of words, statements or expressions having the same or a similar effect or of pictorial representations or designs of a similar or other specified nature; requiring that when food generally or food of a specified class or description that is not in a package is displayed for sale it shall be displayed in conjunction with a label bearing such matter as is prescribed.

16. The provision for and requirements with respect to the seizure, recall, destruction, denaturation or disposal of food that has become damaged, deteriorated, impoverished, contaminated or perished to such degree as is specified or of food of a specified class or description; specifying the circumstances in which food shall be destroyed or denatured.
17. The prescription of modes of making containers, wrappers or other packages or packing materials for food so as to avoid contact with injurious substances; the substances or materials that shall not be used in making containers, wrappers or other packages or packing materials; the minimum size of and the packing required for an article not being food that will be enclosed in a container, wrapper or other package; provision for the requirement that specified food be packed in a specified manner; prohibition of specified modes of packing food.
18. The provision for and requirements as to writings containing specified words, statements or expressions or words, statements or expressions having the same or a similar effect or specified pictorial representations or designs to be affixed to premises or other places, vehicles or appliances used in selling or preparing, packing, storing, handling, serving, supplying or conveying for sale food or food of a specified class or description; prohibition of the use in such writings of specified words, statements or expressions or words, statements or expressions having the same or a similar effect or of pictorial representations or designs of a similar or other specified nature.
19. The prescription of methods of analysis to be observed in analyses under or for the purposes of Part VIII.
20. The prescription of methods for taking or otherwise obtaining samples for the purposes of Part VIII and dealing with samples so taken or otherwise obtained; the rates of the payments to be made for samples

- taken or otherwise obtained for the purposes of Part VIII; the number of samples to be so taken or otherwise obtained in specified cases.
21. The signing, giving, serving and enforcement of notices for or with respect to the rectification of acts or omissions that constitute a contravention of Part VIII.
 22. The books and records to be kept by the proprietor, manager or person in charge of any premises or other place, vehicle or appliance in, at, on or from which food is sold or prepared, packed, stored, handled, served, supplied or conveyed for sale.
 23. The conveyance, storage, distribution, inspection and sale of food of a specified class or description.
 24. Securing the purity of water used in the preparation of food or in any process in connection with that preparation.
 25. The provision for premises or other places, vehicles, appliances, methods, processes, packages, seals or closures and sources of water used in connection with the sale or preparation, packing, storing, handling, serving, supplying or conveying for sale of food to be approved by the Executive Director, Public Health, and requirements to that effect.
 26. The fees, charges, allowances, costs and expenses payable or to be paid under or for the purposes of Part VIII and the fixing thereof; the matters and things in respect of which they are payable or to be paid; the methods of collection thereof; the manner, time and place of payment thereof; the persons by whom and to whom they are payable, and all matters with respect to the recovery thereof.
 27. The forms to be used for the purposes of Part VIII and the particular purposes for which those forms shall respectively be used.
 28. The provisions for and requirements as to laboratory and testing facilities to be provided in, at or on premises or other places or vehicles where food is prepared for sale and prescription of procedures and facilities to be used for the examination of food and notification to persons prescribed of the results thereof.
 29. The manner in which any application, recommendation, report, order, notice, requisition or other document may be proved for any purpose.

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30. All matters required or permitted by or under Part VIII to be prescribed when the manner of prescription is not stated.
31. In this Schedule —
“**specified**” means specified in regulations made under section 247.
[Schedule 3 inserted by No. 26 of 1985 s. 11; amended by No. 14 of 1996 s. 4.]

Schedule 4

[Section 275]

Form of declaration

I,, of, in the State of Western Australia, being the parent (or person having the custody) of a child named, who was born on day of, 20....., do hereby solemnly and sincerely declare that I conscientiously believe that vaccination would be prejudicial to the health of the child, and I make this solemn declaration by virtue of section 106 of the *Evidence Act 1906*.

Declared at this day of, 20.....

Before me,

Justice of the Peace
(*or as the case may be*).

[Schedule 4, formerly Schedule 3, renumbered as Schedule 4 by No. 26 of 1985 s. 12.]

Schedule 5

[Section 360(1)]

Penalties

Part I

Sections 77, 78(1a), 86(2), 92(1), 101(3), 102, 112A(4), 114(1), 116(d), 120(2), 126(1a), 151, 153(2), 157(4), 181(2), 184(3), 189, 203(2), 217(1) and (2), 225(1), 238(3) and (5), 246X(1), 263(4), 285(1), 306(1) and (2), 311, 349(2), 351(2) and (5) and 352(3).

Part II

Sections 79(1), 91(2), 93, 94(1), 107(2) and (4), 107A, 132(2), 136, 140(1), 141(2), 144, 147, 154, 162(4), 196(2), 224(2), 227(13), 246ZK, 260(3), 262(4), 266, 268, 269, 273(4) and (6), 277(5), 280(4), 294(7)(a), 307(8), 332(2), 335(3), 337(6), 338(1), 351(1) and (3) and 370.

Part III

Sections 246O(2), 246P, 246Q(3) and (4), 246Z(5) and (6), 246ZH(2), 246ZM(1), 276(5), 276A(5) and 300(5).

Part IV

Sections 98, 99(4), 108(4), 109, 188, 207B(3), 207C, 209(1) and (2), 210, 211(1), (2), (3), (4) and (5), 223(1), 225(2), 227(2), 231(2), 234(1), 240(1), 246L, 246N(1), 246O(1), 246Q(2), 246T, 246X(2), 267(1), 278(1), 279, 282(2), 310(1), 313(1), 332(1), 336(5a), 336A(5a), 336B(7a), 340M(1) and (2), 340AK(5b), 340AM(1) and (2), 340BM(1) and (2) and 366(2).

Part V

Sections 82(3), 121(2), 133(2), 171(2), 246FO, 246FR(1), (2) and (3), 246FS(1), 246FT(4) and (5), 246FY(2), 246FZB, 246FZC(4), 246M(2), 246N(2), 246Q(1), 246R(1), 255 and 264(1).

Part VI

Sections 182, 193(2), 195, 205(6), 212, 214(1), 216(2), 221(1), 222, 236(1),
241(1), 246FD(1), 246FE(1), 246FF(1), 246FG(1), 246M(1), 246S,
246W(2), 246Y(10), 246ZD, 297(1), 314(1) and 340AL(1c).

Part VII

Sections 129, 131(2), 228(2), 237(2), 238(1), 246E and 312.

Part VIII

Sections 178(4) and 179(5).

[Schedule 5 inserted by No. 80 of 1987 s. 176; amended by No. 59 of 1991 s. 19 and 28; No. 28 of 1996 s. 19; No. 50 of 1996 s. 6; No. 57 of 1997 s. 68(4); No. 28 of 2003 s. 77(3); No. 74 of 2003 s. 64(3); No. 23 of 2006 s. 13.]

Notes

- ¹ This is a compilation of the *Health Act 1911* and includes the amendments made by the other written laws referred to in the following table ^{1a, 9, 10}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Health Act 1911</i>	34 of 1911	16 Feb 1911	1 Jun 1911 (see s. 1 and <i>Gazette</i> 3 Mar 1911 p. 961)
<i>Health Act Amendment Act 1911</i>	3 of 1912	9 Jan 1912	9 Jan 1912
<i>Health Act Amendment Act 1912</i>	28 of 1912	27 Sep 1912	27 Sep 1912
<i>Health Act Amendment Act 1915</i>	55 of 1915	8 Dec 1915	8 Dec 1915
<i>Health Act Amendment Act 1918</i>	17 of 1918	13 Jun 1918	13 Jun 1918
<i>Health Act Amendment Act 1919</i>	15 of 1919	30 Sep 1919	30 Sep 1919
Reprint of the <i>Health Act 1911</i> in Appendix to Session Volume 1919 (includes amendments listed above)			
<i>Health Act Continuation Act 1920</i>	12 of 1920	29 Nov 1920	29 Nov 1920
<i>Health Act Amendment Act 1921</i>	5 of 1922	31 Jan 1922	31 Jan 1922
<i>Health Act Amendment Act 1926</i>	50 of 1926	24 Dec 1926	24 Dec 1926
Reprint of the <i>Health Act 1911</i> in Appendix to Session Volume 1931 (includes amendments listed above)			
<i>Health Act Amendment Act 1932</i>	30 of 1932	30 Dec 1932	30 Dec 1932
<i>Health Act Amendment Act 1933</i>	5 of 1933	2 Oct 1933	2 Oct 1933
<i>Health Act Amendment Act 1933 (No. 2)</i>	38 of 1933 (as amended by No. 16 of 1935)	4 Jan 1934	4 Jan 1934

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Short title	Number and year	Assent	Commencement
<i>Health Act Amendment Act 1937</i>	32 of 1937	18 Jan 1938	18 Jan 1938
Reprint of the <i>Health Act 1911</i> in Volume 1 of Reprinted Acts (includes amendments listed above)			
<i>Health Act Amendment Act 1942</i>	34 of 1942	23 Dec 1942	23 Dec 1942
<i>Nurses Registration Act Amendment Act 1944</i> s. 12	14 of 1944	8 Dec 1944	8 Dec 1944
<i>Health Act Amendment Act 1944</i>	21 of 1944	23 Dec 1944	23 Dec 1944
Reprint of the <i>Health Act 1911</i> not in a Volume (includes amendments listed above)			
<i>Health Act Amendment Act 1948</i>	22 of 1948	18 Nov 1948	18 Nov 1948
<i>Health Act Amendment Act (No. 2) 1948</i>	70 of 1948	21 Jan 1949	21 Jan 1949
<i>Health Act Amendment Act (No. 3) 1948</i>	71 of 1948	21 Jan 1949	21 Jan 1949
Reprint of the <i>Health Act 1911</i> approved 17 Mar 1949 in Volume 3 of Reprinted Acts (includes amendments listed above)			
<i>Health Act Amendment Act 1950</i>	25 of 1950	5 Dec 1950	5 Dec 1950
<i>Health Act Amendment Act 1952</i>	11 of 1952	4 Nov 1952	4 Nov 1952
<i>Health Act Amendment Act (No. 2) 1952</i>	25 of 1952	28 Nov 1952	28 Nov 1952
<i>Health Act Amendment Act (No. 2) 1954</i>	34 of 1954	18 Nov 1954	12 Apr 1957 (see s. 2 and <i>Gazette</i> 12 Apr 1957 p. 1081)
<i>Health Act Amendment Act 1954</i>	45 of 1954	8 Dec 1954	8 Dec 1954
<i>Limitation Act 1935</i> s. 48A(1)	35 of 1935 (as amended by No. 73 of 1954 s. 8	14 Jan 1955	Relevant amendments (see s. 48A and Second Sch. ¹¹) took effect on 1 Mar 1955 (see s. 2 and <i>Gazette</i> 18 Feb 1955 p. 343)

Short title	Number and year	Assent	Commencement
<i>Health Act Amendment Act 1955</i>	29 of 1955	15 Nov 1955	15 Nov 1955
<i>Health Act Amendment Act 1956</i>	17 of 1956	26 Oct 1956	26 Oct 1956
Reprint of the <i>Health Act 1911</i> approved 5 Jun 1957 in Volume 11 of Reprinted Acts (includes amendments listed above)			
<i>Health Act Amendment Act 1957</i>	21 of 1957	9 Oct 1957	1 Dec 1957 (see s. 2 and <i>Gazette</i> 29 Nov 1957 p. 3445)
<i>Health Act Amendment Act 1959</i>	22 of 1959	8 Oct 1959	8 Oct 1959
<i>Health Act Amendment Act 1960</i>	23 of 1960	11 Oct 1960	11 Oct 1960
<i>Health Act Amendment Act (No. 2) 1960</i>	38 of 1960	3 Nov 1960	3 Nov 1960
<i>Health Act Amendment Act 1962</i>	33 of 1962	29 Oct 1962	29 Oct 1962
<i>Health Act Amendment Act (No. 3) 1962</i>	49 of 1962	20 Nov 1962	20 Nov 1962
<i>Health Act Amendment Act 1964</i>	18 of 1964	8 Oct 1964	8 Oct 1964
<i>Health Act Amendment Act 1965</i>	8 of 1965	15 Sep 1965	15 Sep 1965
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
Reprint of the <i>Health Act 1911</i> approved 1 Jun 1966 in Volume 19 of Reprinted Acts (includes amendments listed above)			
<i>Health Act Amendment Act 1966</i>	35 of 1966	31 Oct 1966	16 Dec 1966 (see s. 2 and <i>Gazette</i> 16 Dec 1966 p. 3315)
<i>Health Act Amendment Act 1968</i>	52 of 1968	12 Nov 1968	12 Nov 1968
<i>Health Act Amendment Act 1970</i>	24 of 1970	20 May 1970	1 Oct 1970 (see s. 2 and <i>Gazette</i> 25 Sep 1970 p. 3015)
<i>Age of Majority Act 1972</i> s. 6(2)	46 of 1972	18 Sep 1972	1 Nov 1972 (see s. 2 and <i>Gazette</i> 13 Oct 1972 p. 4069)

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Short title	Number and year	Assent	Commencement
<i>Metric Conversion Act 1972</i>	94 of 1972 (as amended by No. 19, 83 of 1973 and 42 of 1975)	4 Dec 1972	Relevant amendments (see Third Sch. ¹²) took effect on 8 Feb 1974 (see s. 4(2) and <i>Gazette</i> 8 Feb 1974 p. 325) Relevant amendments (see Fourth Sch. ¹²) took effect on 19 Dec 1975 (see s. 4(2) and <i>Gazette</i> 19 Dec 1975 p. 4577)
<i>Health Act Amendment Act 1973</i>	102 of 1973	28 Dec 1973	22 Mar 1974 (see s. 2 and <i>Gazette</i> 22 Mar 1974 p. 902)
Reprint of the <i>Health Act 1911</i> approved 14 Apr 1975 (includes amendments listed above except those listed in the <i>Metric Conversion Act 1972</i> Fourth Sch.)			
<i>Health Act Amendment Act 1975</i>	2 of 1975	9 May 1975	Act other than s. 7: 9 May 1975 (see s. 2(1)); s. 7: 6 Feb 1976 (see s. 2(2) and <i>Gazette</i> 6 Feb 1976 p. 273)
<i>Health Act Amendment Act 1976</i>	101 of 1976	17 Nov 1976	18 Feb 1977 (see s. 2 and <i>Gazette</i> 18 Feb 1977 p. 467)
<i>Health Act Amendment Act 1978</i>	47 of 1978	29 Aug 1978	Act other than s. 3(a) and 30: 16 Mar 1979 (see s. 2 and <i>Gazette</i> 16 Mar 1979 p. 676); s. 3(a) and 30: 21 Dec 1979 (see s. 2 and <i>Gazette</i> 21 Dec 1979 p. 3906)
<i>Acts Amendment and Repeal (Valuation of Land) Act 1978 Pt. VII</i>	76 of 1978	20 Oct 1978	1 Jul 1979 (see s. 2 and <i>Gazette</i> 11 May 1979 p. 1211)
<i>Health Act Amendment Act 1979</i>	72 of 1979	27 Nov 1979	27 Nov 1979
Reprint of the <i>Health Act 1911</i> approved 14 May 1981 (includes amendments listed above)			
<i>Acts Amendment (Statutory Designations) and Validation Act 1981</i> s. 4 ¹³	63 of 1981	13 Oct 1981	13 Oct 1981
<i>Health Amendment Act 1982</i>	30 of 1982	27 May 1982	30 Jul 1982 (see s. 2 and <i>Gazette</i> 30 Jul 1982 p. 2931)

Short title	Number and year	Assent	Commencement
<i>Human Tissue and Transplant Act 1982</i> s. 36(2)	116 of 1982	8 Dec 1982	1 Mar 1983 (see s. 2)
<i>Health Legislation Amendment Act 1984</i> Pt. VIII ¹⁴	28 of 1984	31 May 1984	1 Jul 1984 (see s. 2 and <i>Gazette</i> 15 Jun 1984 p. 1629)
<i>Health Amendment Act 1985</i> ¹⁵	26 of 1985	6 May 1985	6 Nov 1985 (see s. 2)
<i>Acts Amendment and Repeal (Statutory Bodies) Act 1985</i> Pt. II	57 of 1985	28 Oct 1985	25 Nov 1985
<i>Acts Amendment (Hospitals) Act 1985</i> Pt. II	53 of 1985	5 Nov 1985	23 Jan 1987 (see s. 2 and <i>Gazette</i> 23 Jan 1987 p. 179)
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> s. 3 ¹⁶	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Commercial Arbitration Act 1985</i> s. 3(1) ¹⁷	109 of 1985	7 Jan 1986	1 Apr 1986 (see s. 2 and <i>Gazette</i> 28 Feb 1986 p. 605)
<i>Health Amendment Act 1986</i>	93 of 1986	10 Dec 1986	10 Dec 1986 (see s. 2)
<i>Health Amendment Act 1987</i>	80 of 1987	28 Nov 1987	Act other than s. 4(d), 83 and 90: 1 Jan 1988 (see s. 2 and <i>Gazette</i> 31 Dec 1987 p. 4567)
<i>Guardianship and Administration Act 1990</i> s. 123	24 of 1990	7 Sep 1990	20 Oct 1992 (see s. 2 and <i>Gazette</i> 2 Oct 1992 p. 4811)
Reprint of the <i>Health Act 1911</i> as at 18 Dec 1990 (includes amendments listed above except those in the <i>Guardianship and Administration Act 1990</i>)			
<i>Tobacco Control Act 1990</i> s. 38(1) ¹⁸	104 of 1990	2 Jan 1991	8 Feb 1991 (see s. 2(1) and <i>Gazette</i> 8 Feb 1991 p. 575)

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Short title	Number and year	Assent	Commencement
<i>Health Amendment Act 1991</i> ^{19,20}	59 of 1991	23 Dec 1991	s. 3-5, 20-24, 28(a): 24 Jan 1992 (see s. 2 and <i>Gazette</i> 24 Jan 1992 p. 349); s. 14, 15, 26, 27 and 28(b), (c) and (d): 1 Apr 1992 (see s. 2 and <i>Gazette</i> 1 Apr 1992 p. 1427); s. 25: 1 Jul 1992 (see s. 2 and <i>Gazette</i> 26 Jun 1992 p. 2644); Pt. 3: 4 Sep 1992 (see s. 2 and <i>Gazette</i> 4 Sep 1992 p. 4453); Pt. 5: 23 Dec 1992 (see s. 2 and <i>Gazette</i> 23 Dec 1992 p. 6209)
<i>Nurses Act 1992</i> s. 84	27 of 1992	23 Jun 1992	29 Oct 1993 (see s. 2 and <i>Gazette</i> 29 Oct 1993 p. 5881)
<i>Financial Administration Legislation Amendment Act 1993</i> s. 11	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
Proclamation (Untitled) published in <i>Gazette</i> 26 Nov 1993 p. 6321			26 Nov 1993
<i>Local Government Amendment Act 1994</i> s. 42	27 of 1994	23 Jun 1994	1 Jul 1994 (see s. 2)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 3(2)	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Statutes (Repeals and Minor Amendments) Act 1994</i> s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Pawnbrokers and Second-hand Dealers Act 1994</i> s. 100	88 of 1994	5 Jan 1995	1 Apr 1996 (see s. 2 and <i>Gazette</i> 29 Mar 1996 p. 1495)
<i>Hospitals Amendment Act 1994</i> s. 18	103 of 1994	11 Jan 1995	17 Dec 1997 (see s. 2 and <i>Gazette</i> 16 Dec 1997 p. 7313)
<i>Agricultural and Veterinary Chemicals (Western Australia) Act 1995</i> Pt. II Div. 2	3 of 1995	17 May 1995	24 Jun 1995 (see s. 2 and <i>Gazette</i> 23 Jun 1995 p. 2419)

Short title	Number and year	Assent	Commencement
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995</i> s. 188	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 29 Dec 1995 p. 6291)
<i>Sentencing (Consequential Provisions) Act 1995</i> s. 147	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Coroners Act 1996</i> s. 61	2 of 1996	24 May 1996	7 Apr 1997 (see s. 2 and <i>Gazette</i> 18 Mar 1997 p. 1529)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4 ²¹	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Health Amendment Act 1996</i>	28 of 1996	22 Jul 1996	Act other than s. 7 and 13: 22 Jul 1996 (see s. 2(1)); s. 7 and 13: 23 Jul 1997 (see s. 2(2) and (3))
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Acts Amendment (Assemblies and Noise) Act 1996</i> Pt. 2	50 of 1996	31 Oct 1996	4 Dec 1996 (see s. 2 and <i>Gazette</i> 3 Dec 1996 p. 6695)
<i>Dental Amendment Act 1996</i> s. 18	64 of 1996	11 Nov 1996	1 Jan 1997 (see s. 2 and <i>Gazette</i> 31 Dec 1996 p. 7427)
<i>Transfer of Land Amendment Act 1996</i> s. 153(1) and (2)	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
Reprint of the <i>Health Act 1911</i> as at 11 Mar 1997 (includes amendments listed above except those in the <i>Hospitals Amendment Act 1994</i> , <i>Coroners Act 1996</i> and the <i>Health Amendment Act 1996</i> s. 7 and 13) (Correction to reprint in <i>Gazette</i> 2 Dec 1997 p. 7058)			
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 30 and s. 142	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 68	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))

Health Act 1911

Short title	Number and year	Assent	Commencement
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 39 ^{22, 23}	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Acts Amendment (Abortion) Act 1998</i> s. 7 ²⁴	15 of 1998	26 May 1998	26 May 1998 (see s. 2)
<i>Acts Repeal and Amendment (Births, Deaths and Marriages Registration) Act 1998</i> s. 14	40 of 1998	30 Oct 1998	14 Apr 1999 (see s. 2 and <i>Gazette</i> 9 Apr 1999 p. 1433)
<i>Health Amendment Act 1998</i>	62 of 1998	12 Jan 1999	12 Jan 1999 (see s. 2)
<i>School Education Act 1999</i> s. 247	36 of 1999	2 Nov 1999	1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7904)
<i>Water Services Coordination Amendment Act 1999</i> s. 11(5)	39 of 1999	9 Nov 1999	19 Jun 2000 (see s. 2 and <i>Gazette</i> 16 Jun 2000 p. 2939)
Reprint of the <i>Health Act 1911</i> as at 31 Mar 2000 (includes amendments listed above except those in the <i>School Education Act 1999</i> and the <i>Water Services Coordination Amendment Act 1999</i>)			
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 16	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
Proclamation (Untitled) published in <i>Gazette</i> 17 Nov 2000 p. 6289			17 Nov 2000
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 30	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Acts Amendment (Equality of Status) Act 2003</i> Pt. 26	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 71	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 64	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>Children and Community Services Act 2004</i> s. 251	34 of 2004	20 Oct 2004	1 Mar 2006 (see s. 2 and <i>Gazette</i> 14 Feb 2006 p. 695)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 58 ²⁵	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Health Legislation Amendment Act 2004</i> Pt. 2	61 of 2004	24 Nov 2004	24 Nov 2004 (see s. 2)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 78, 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
Reprint 13: The Health Act 1911 as at 15 Jul 2005 (includes amendments listed above except those in the <i>Children and Community Services Act 2004</i>)			
<i>Tobacco Products Control Act 2006</i> s. 126	5 of 2006	12 Apr 2006	31 Jul 2006 (see s. 2 and <i>Gazette</i> 25 Jul 2006 p. 2701)
<i>Health Amendment Act 2006</i>	23 of 2006	9 Jun 2006	7 Jul 2006 (see s. 2)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 9 Div. 2 ^{31, 32}	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)

^{1a} On the date as at which this reprint was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. 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>Health Amendment Act 1987</i> s. 4(d), 83 and 90 ²⁶	80 of 1987	28 Nov 1987	To be proclaimed (see s. 2)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 142 ²⁸	59 of 2004	23 Nov 2004	To be proclaimed (see s. 2)

² The *Licensing Act 1911* was repealed by the *Liquor Act 1970*, which was repealed by the *Liquor Licensing Act 1988*.

³ The *Health Act Amendment Act 1900* is repealed by section 4 of this Act.

⁴ Section 53B was repealed by the *Health Act Amendment Act 1933 (No. 2)* s. 6.

⁵ Other proclamations relating to offensive trades are made in the following *Gazettes* —

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

⁶ Repealed by the *Meat Industry Legislation (Amendment and Repeal) Act 1993* s. 10(1).

⁷ Under the *Public Sector Management Act 1994* the names of departments can be changed. At the time of this reprint the former Department of Lands and Surveys is called the Department of Land Information.

⁸ Under the *Alteration of Statutory Designations Order 2003* a reference in any law to the Department of Mines is to be read and construed as a reference to the Department of Industry and Resources.

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- 9 Renumbering of sections of the Act and certain Division headings was effected in
earlier reprints under the *Health Act Amendment Act 1933 (No. 2)* s. 42.
- 10 The amendment in the *Caravan Park and Camping Grounds Act 1995* s. 33 is not
included as the section it sought to amend had been repealed before the
amendment purported to come into operation.
- 11 Section 48A and the Second Schedule were inserted by the *Limitation Act
Amendment Act 1954* s. 8.
- 12 The Third and Fourth Schedules were inserted by the *Metric Conversion Act
Amendment Act (No. 2) 1973*.
- 13 The *Acts Amendment (Statutory Designations) and Validation Act 1981* s. 5 is a
validation provision that is of no further effect.
- 14 The *Health Legislation Amendment Act 1984* s. 104 is a savings and transitional
provision that is of no further effect.
- 15 The *Health Amendment Act 1985* s. 13 is a transitional provision that is of no
further effect.
- 16 The *Acts Amendment (Financial Administration and Audit) Act 1985* s. 4 is a
savings and transitional provision that is of no further effect.
- 17 The *Commercial Arbitration Act 1985* s. 3(2) is a savings and transitional
provision that is of no further effect.
- 18 The *Tobacco Control Act 1990* s. 38(2) is a transitional provision that is of no
further effect.
- 19 The *Health Amendment Act 1991* s. 5(3) and (4) are transitional provisions that are
of no further effect.
- 20 The *Health Amendment Act 1991* s. 15 is a savings and transitional provision that
is of no further effect.
- 21 In relation to the *Health Act 1911*, the *Local Government (Consequential
Amendments) Act 1996* Sch. 1 reads as follows:
- “

Savings

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

Transitional

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

”

²² The amendment in the *Statutes (Repeals and Minor Amendments) Act (No. 2) 1998* s. 39(3) is not included because the section it sought to amend had been repealed before the amendment purported to come into operation.

²³ The *Statutes (Repeals and Minor Amendments) Act (No. 2) 1998* s. 39(8) is a transitional provision that is of no further effect.

²⁴ The *Acts Amendment (Abortion) Act 1998* s. 8 reads as follows:

“

8. Review of provisions relating to abortion

- (1) The Minister administering the *Health Act 1911* is to carry out a review of the operation and effectiveness of the provisions of the *Health Act 1911* and *The Criminal Code* related to abortion as soon as is practicable after the expiration of 3 years from the commencement of this Act¹.
- (2) The Minister is to prepare a report based on the review made under subsection (1) and cause the report to be laid before each House of Parliament within 4 years after the commencement of this Act.

”

²⁵ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

²⁶ On the date as at which this reprint was prepared, the *Health Amendment Act 1987* s. 4(d), 83 and 90 had not come into operation. They read as follows:

“

4. Section 3 amended

Section 3 of the principal Act is amended in subsection (1) —
(d) by deleting the definitions of “Therapeutic substance” and “Therapeutic use”.

83. Division 7 of Part VIIA repealed and transitional

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

- (a) issued under section 246FK; and
 - (b) referred to in section 246FH(1)(a),
- of the principal Act.

90. Part VIIB inserted

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

“

Part VIIB — Therapeutic devices, goods and substances and cosmetics

Division 1 — Preliminary

246FA. Interpretation in Part VIIB

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

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

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

“cosmetic” means substance that —

- (a) is included in a class of substances the sole or principal use of which is, or ordinarily is, a cosmetic use; or
- (b) is represented to be, or might reasonably be taken to be, for cosmetic use,
and includes goods in respect of which an order under section 246FB(3) is in force declaring those goods to be a cosmetic, but does not include —
 - (c) therapeutic goods; or
 - (d) goods in respect of which an order under section 246FB(3) is in force declaring those goods not to be a cosmetic;

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

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

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

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

- (a) bear any particulars that constitute, or might reasonably be taken for, a statement that the goods are intended for animal use and are not intended for human use; or

- (b) are otherwise represented, whether by writing or otherwise, or otherwise purport, to be intended for animal use and not to be intended for human use;

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

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

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

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

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

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

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

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

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

“public institution” means —

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

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

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

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

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

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

“therapeutic device” means device that is —

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

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

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

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

“therapeutic substance” means substance that is —

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

and includes —

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

but does not include —

- (g) article of food;
- (h) goods for animal use only; or
- (i) goods in respect of which an order under section 246FB(1) is in force

declaring those goods not to be a therapeutic substance;

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

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

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

“wholesale dealing”, in relation to any goods —

- (a) means sale or supply of the goods in the ordinary course of wholesale dealing for the purposes of resale; and
 - (b) includes sale or supply in wholesale quantities in the ordinary course of wholesale dealing and for use in any public institution or in connection with any prescribed profession, business, trade or industry carried on by any person who satisfies the wholesale dealer that he bona fide requires those goods for use, but not for resale, in connection with that profession, business, trade or industry.
- (2) For the purposes of the definition of “goods for animal use only” in subsection (1), goods are deemed to bear any particulars if those particulars are set out on —
- (a) the goods or any part of the goods;
 - (b) a container or package of the goods or any part of the goods;
 - (c) a label attached to the goods or any part of the goods; or

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

246FB. Orders as to certain goods

- (1) The Minister may by order declare any goods specified or described in the order —
 - (a) to be a therapeutic substance; or
 - (b) not to be a therapeutic substance,if he is of the opinion that, but for the order, doubt would exist or may arise about whether or not those goods are a therapeutic substance.
- (2) The Minister may by order declare any goods specified or described in the order —
 - (a) to be a therapeutic device; or
 - (b) not to be a therapeutic device,if he is of the opinion that, but for the order, doubt would exist or may arise about whether or not those goods are a therapeutic device.
- (3) The Minister may by order declare any goods specified or described in the order —
 - (a) to be a cosmetic; or
 - (b) not to be a cosmetic,if he is of the opinion that, but for the order, doubt would exist or may arise about whether or not those goods are a cosmetic.
- (4) The Minister may by order revoke or amend a declaration made under this section.

246FC. Exemptions

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

Division 2 — Licences

Subdivision 1 — Matters for which licences required

246FD. Manufacture of therapeutic substances or cosmetics without licence

- (1) As from the expiry of 3 months after the commencement of this section, the person who conducts or has the control of any premises on which any substance to which this section applies is manufactured for sale commits an offence, unless the manufacture of that substance on those premises is authorised under the terms of a licence.
- (2) This section applies to a substance that is —
 - (a) a therapeutic substance; or
 - (b) a cosmetic prescribed as being a substance to which this section applies,but does not apply to —
 - (c) a therapeutic substance prescribed as being a substance to which this section does not apply;
 - (d) a therapeutic substance that is manufactured by a medical practitioner or dentist for use in the treatment of a patient under his care; or
 - (e) a therapeutic substance that is manufactured by a pharmacist —
 - (i) on premises on which the business of a pharmacist is carried on in open shop;

- (ii) on the premises of a dispensary carried on by a friendly society registered under the *Friendly Societies Act 1894*; or
 - (iii) on the premises of a public hospital or public institution,
- for sale (otherwise than by wholesale) on or from those premises.

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

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

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

246FF. Manufacture of therapeutic devices without licence

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

246FG. Sale by wholesale of therapeutic devices without licence

- (1) As from the expiry of 3 months after the commencement of this section, a person who sells by

wholesale any device to which this section applies commits an offence, unless that sale is authorised under the terms of a licence.

- (2) This section applies to a therapeutic device prescribed as being a device to which this section applies.

Subdivision 2 — Provisions applicable to licences

246FH. Classes of licences which may be issued

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

may be issued under section 246FK.

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

246FI. Duration of licence

A licence shall remain in force until cancelled or suspended.

246FJ. Conditions attaching to licence and variation of licence

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

- (b) vary or remove any conditions attached to the licence; or
- (c) otherwise vary the licence.

246FK. Application for and issue of licences

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

246FL. Cancellation or suspension of licence

- (1) The Executive Director, Public Health, may, by notice in writing served on the holder of a licence, cancel or suspend the licence —
 - (a) if the prescribed licence fee is not paid in accordance with the regulations at the prescribed time;
 - (b) if the holder of the licence has been convicted of an offence under this Part or the regulations;
 - (c) if the holder of the licence has not complied with any of the conditions attached to the licence; or
 - (d) if the holder of the licence requests in writing that it be cancelled or suspended.
- (2) Different licence fees may be prescribed for the purposes of subsection (1)(a) for different classes of licences.

- (3) The Executive Director, Public Health, may restore any licence that is suspended, notwithstanding that any period during which the suspension is to continue has not expired.
- (4) A licence shall be deemed not to be in force during any period of its suspension.
- (5) When the Executive Director, Public Health, suspends a licence, he shall specify the period during which the suspension is to continue and may specify further such periods from time to time.

Division 3 — Standards

246FM. Standards

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

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

246FN. Adoption by reference of standards

- (1) In this section —
- “a prescribed publication” means —
- (a) an edition of the British Pharmacopoeia;
 - (b) an edition of the Pharmaceutical Codex;
or
 - (c) an edition of some other publication,
(whether published before or after the commencement of this section) that is specified in the regulations, together with any additions or amendments thereto (whether published or

made before or after that commencement) that are so specified;

“**the British Pharmacopoeia**” means the book of that name published before the coming into operation of Part VII of the *Medicines Act 1968* of the United Kingdom under the direction of the General Medical Council of the United Kingdom or published after that coming into operation in accordance with the provisions of that Part;

“**the Pharmaceutical Codex**” means the book of that name published by direction of the Council of the Pharmaceutical Society of Great Britain.

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

246FO. Sale of goods not in conformity with standards

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

246FP. Defence

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

- (a) if the regulations make provision for or with respect to the determination of the person whose duty it is to ensure conformity with that

standard in relation to the goods, that it was not his duty to ensure conformity therewith; or

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

Division 4 — Advertisements and related matters

246FQ. Interpretation in Division 4

In this Division —

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

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

246FR. Prohibition of certain representations in advertisements

- (1) A person who publishes an advertisement in respect of —
 - (a) any therapeutic goods commits an offence if it contains a representation prescribed as a prohibited representation;

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

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

- (1) Except as provided by the regulations, a person who publishes an advertisement for any therapeutic goods

and does not include in that advertisement the name and address of the person authorising the publication of that advertisement and such other information as may be prescribed commits an offence.

- (2) Nothing in this section —
 - (a) applies in respect of any advertisement that is published orally or by any means of producing or transmitting light or sound; or
 - (b) affects the operation of any other provision of this Part that relates to standards with respect to the labelling of therapeutic goods.

246FT. Order prohibiting false or misleading representations or names

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

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

Division 5 — Inspection and seizure of goods

246FU. Powers of public health officials under this Part

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

- (d) open and examine any receptacle, container or package which he believes on reasonable grounds may contain goods;
- (e) examine any goods;
- (f) seize and remove for analysis portions or samples of goods; or
- (g) subject to subsection (3), seize any goods,

to which this section applies.

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

246FV. Release of seized goods

- (1) Subject to subsection (5), goods seized under section 246FU shall be released on the expiry of the prescribed period after that seizure unless —
 - (a) the forfeiture of the goods is consented to under section 246FZ; or
 - (b) a Local Court orders under section 246FW that the goods be forfeited.
- (2) Goods seized under section 246FU may be released before the expiry of the prescribed period.
- (3) The release of any goods under subsection (1) or (2) shall be made —

- (a) by or at the direction of the public health official who seized them or of the Executive Director, Public Health; and
 - (b) to the owner of the goods or the person in whose possession, care, custody or control they were at the time of the relevant seizure.
- (4) Nothing in this section requires the release of any goods or any part thereof damaged or destroyed in the course of an analysis thereof.
- (5) A Local Court may, in any particular case, extend the period referred to in subsection (1).

246FW. Order that seized goods be forfeited

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

246FX. Making of orders under this Division

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

246FY. Storage of and interference with seized goods

- (1) Subject to any direction of the Executive Director, Public Health, goods seized under this Division may, at the option of the public health official who seized them, be —
- (a) kept or stored on the premises on which they were seized; or

- (b) taken to such other place as the public health official who seized them thinks fit to be kept or stored,

until released or disposed of under this Division.

- (2) A person who removes, alters or interferes in any way with goods seized under this Division without the authority of a public health official or the Executive Director, Public Health, commits an offence.

246FZ. Forfeiture of goods with consent

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

246FZA. Disposal of forfeited goods

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

246FZB. Obstruction of public health official

A person who —

- (a) wilfully delays or obstructs a public health official in the exercise of any of the powers of the public health official under this Part commits an offence; or
- (b) fails to produce any goods, books or documents which he is required to produce under this Part commits an offence, unless those goods, books or documents are not in his possession, care, custody or control.

246FZC. Analysis

- (1) A public health official may submit any goods seized under section 246FU(2)(f) or (g) to an analyst for analysis.

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

Division 6 — Miscellaneous

Subdivision 1 — General

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

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

with that notice, knowingly furnishes any information that is false or misleading in a material particular commits an offence.

246FZE. Selling therapeutic goods by automatic machines prohibited

A person who —

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

commits an offence.

246FZF. Hawking, etc., of therapeutic goods

- (1) A person who sells in any street or from house to house or hawks or peddles or distributes free or as samples in any street or public place or from house to house any therapeutic goods commits an offence.
- (2) Subsection (1) does not apply to the free distribution of clinical samples of therapeutic goods to a medical practitioner, pharmacist, dentist or veterinary surgeon by a person engaged in the manufacture of, or wholesale dealing in, therapeutic goods, if that distribution is made to the medical practitioner, pharmacist, dentist or veterinary surgeon personally or by posting a letter or parcel containing the goods addressed to him.

- (3) The regulations may make provision for or with respect to the conditions to be complied with in respect of the free distribution of clinical samples of therapeutic goods, as referred to in subsection (2), and, without affecting the generality of this subsection, may provide that any of the prescribed provisions of this Part and the regulations shall apply to and in respect of those samples as if their distribution or intended distribution were a sale or intended sale.

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

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

246FZH. Service of notices, etc.

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

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

Subdivision 2 — Regulations and orders

246FZI. Regulations

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

- (a) any forms to be used for the purposes of this Part;
- (b) the procedure for the calling of meetings of the Drug Advisory Committee and the conduct of business at those meetings;

- (c) prescribing the conditions to be complied with concerning the situation and construction of premises used for the manufacture or storage of therapeutic goods or cosmetics, securing the sanitation of those premises, and the provision of facilities for protecting those therapeutic goods or cosmetics from contamination or deterioration;
- (d) prescribing the conditions to be complied with in the manufacture, distribution, conveyance, storage or handling of therapeutic goods or cosmetics;
- (e) methods of analysis of therapeutic goods or cosmetics to determine conformity with standards;
- (f) the delivery up of licences issued under this Part and the issue of substitute or duplicate licences;
- (g) requiring persons engaged in the manufacture, distribution, conveyance, storage, handling or sale of therapeutic goods or cosmetics to keep records; and
- (h) all matters which by this Part are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Part.

246FZJ. Provisions applicable to regulations and orders

- (1) Regulations and orders made under this Part may be made so as to differ according to time, place and circumstances.
- (2) A regulation or order made under this Part may authorise any matter or thing to be from time to time determined, applied or any regulated by any person or body specified therein.
- (3) Any goods may be specified or described in a regulation or order made under this Part by reference to any act, matter or thing specified or described in that regulation or order, and, without affecting the generality of subsections (1) and (2), may be specified or described by reference to any one or more of the following —

- (a) the common or scientific name of the goods;
 - (b) any class of goods;
 - (c) the composition of the goods;
 - (d) the use or intended use of the goods;
 - (e) the purpose for which the goods may be used;
 - (f) any dealing or proposed dealing in respect of the goods; or
 - (g) the manner in which the goods are packed.
- (4) A regulation or order made under this Part may be made so as to apply to or in respect of —
- (a) any matter, or all matters, or any class of matters, specified or described in that regulation or order; or
 - (b) all matters, or any class of matters, specified or described in that regulation or order, other than any matter or class of matters so specified or described that is expressed to be excluded.
- (5) When any provision of this Part authorises any matter to be prescribed or to be specified or described in any regulation or order made under this Part, subsection (4) applies, without affecting the generality of that subsection, to a regulation or order prescribing or specifying or describing that matter.
- (6) Nothing in this section affects the application of the *Interpretation Act 1984* to regulations and orders made under this Part.
- (7) In subsections (4) and (5) —
- “**matter**” means goods, representation or act, or any other matter or thing.

Subdivision 3 — Legal proceedings

246FZK. Proceedings for offences

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

246FZL. Appeal to District Court in certain cases

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

246FZM. Evidence

- (1) In any legal proceedings under this Part, a certificate purporting to be signed by the Executive Director, Public Health, or an officer of the Department authorised generally or specially by the Executive Director, Public Health, to do so, and to certify that the person specified therein was or was not the holder of a licence on any day, or during any period, specified therein shall be admissible in evidence and shall be *prima facie* evidence of the fact so certified.
- (2) In any legal proceedings under this Part, a certificate purporting to be signed by a public health official and to certify that any matter specified therein is a copy of, or extract from, any book or document made or taken by

him under this Part shall be admissible in evidence without production of the book or document.

- (3) In any legal proceedings under this Part, a certificate purporting to be signed by an analyst and setting out the results of an analysis of any goods under section 246FZC shall be *prima facie* evidence of the identity of the goods analysed and of the result of that analysis, and that that analysis was carried out in such manner as may be specified therein.

246FZN. Offence by employer when employee has committed offence

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

246FZO. Offences by bodies corporate

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

”
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²⁷ Footnote no longer applicable.

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

“

142. Other amendments to various Acts

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

”

Schedule 2 cl. 23 reads as follows:

“

Schedule 2 — Other amendments to Acts

23. Health Act 1911

s. 36(1)	Delete “a magistrate sitting as a court of petty sessions within the district.” and insert instead — “ the Magistrates Court at the place nearest to or in the district. ”
s. 36(2)	Delete “magistrate” and insert instead — “ court ”.
s. 36(3)	Delete “magistrate” and insert instead — “ court, constituted by a magistrate, ”. Delete “he” and insert instead — “ it ”.
s. 246Y(6)	Delete “a Local Court” and insert instead — “ the Magistrates Court ”.
s. 246Y(8)	Delete “A Local Court to which an appeal has been made under subsection (6) —” and insert instead — “ The Magistrates Court — ”.
s. 246ZG(1)	Delete “a Local Court” and insert instead — “ the Magistrates Court ”.
s. 246ZG(3)	Delete “A Local Court to which an application is made under subsection (1)” and insert instead — “ On receipt of an application made under subsection (1), the Magistrates Court ”

s. 246ZG(4)	Delete “Local Court concerned” and insert instead — “ Magistrates Court ”. In paragraph (a) delete “that Local Court” and insert instead — “ the court ”.
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The amendments it seeks to make cannot be done due to amendments made by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* s. 479, 489, and 490.

²⁹ Footnote no longer applicable.

³⁰ Footnote no longer applicable.

³¹ The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 9 Div. 13 reads as follows:

“

Division 13 — Transitional provisions

289. Commissioner of Health

- (1) A thing done or omitted to be done by, to or in relation to, the Commissioner of Health before commencement under, or for the purposes of, an enactment has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the CEO.
- (2) In this section —
 - “**CEO**” has the meaning given by section 3 of the *Health Legislation Administration Act 1984* as in force after commencement;
 - “**commencement**” means the time at which this Division comes into operation;
 - “**Commissioner of Health**” means the Commissioner of Health referred to in section 6(1)(a) of the *Health Legislation Administration Act 1984* as in force before commencement.

”

³² The *Machinery of Government (Miscellaneous Amendments) Act 2006* Part 19 provides general transitional provisions concerning references to Departments and chief executive officers that are amended or repealed by that Act.