



AUSTRALIAN CAPITAL TERRITORY

Public Health Act 1997

No. 69 of 1997

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AUSTRALIAN CAPITAL TERRITORY

Public Health Act 1997

No. 69 of 1997

An Act relating to public health

[Notified in ACT Gazette S300: 9 October 1997]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Public Health Act 1997*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Repeal of *Public Health Act 1928*

3. The following Acts are repealed:

Public Health Act 1928

Public Health Act 1930

Public Health Act 1951

Public Health (Amendment) Act 1989.

Objectives

4. This Act shall be construed and administered in accordance with the following objectives:

- (a) the protection of the public from public health risks including those associated with facilities, equipment, products and activities not adequately controlled by another law of the Territory or a law of the Commonwealth;
- (b) through the monitoring of health indicators, to provide the public with information about the health of the population and to design and implement appropriate policies and programs for the maintenance and improvement of the population's health;
- (c) the provision of a rapid response to public health risks;
- (d) the performance of functions under this Act in a professional and responsible manner;
- (e) the avoidance of any undue infringement of individual liberty and privacy in the performance of functions under this Act.

Interpretation

5. (1) In this Act, unless the contrary intention appears—

“abatement notice” means a notice under section 69;

“activity licence” means a licence under section 30;

“Analyst” means an Analyst under section 15;

“authorisation”, in relation to a Public Health Officer or an Authorised Medical Officer performing a function under this Act, means an authorisation under subsection 14 (2) issued to that officer in relation to that function;

“Authorised Medical Officer” means an Authorised Medical Officer under section 13;

“authorised officer”, in relation to the performance of a function for the purposes of this Act, means—

- (a) the Chief Health Officer; or
- (b) a Public Health Officer or an Authorised Medical Officer who has been issued with an authorisation to perform that function;

“Chief Health Officer” means the Chief Health Officer under section 7;

“Code of Practice” means a Code of Practice determined under section 133;

“contact” means a person who—

- (a) has been or may have been a source of infection to a person who has a notifiable condition; or
- (b) has been or may have been exposed to infection by a person with a notifiable condition;

“corresponding public health risk law”, in relation to a public health risk activity or a public health risk procedure, means a law of a State or another Territory that regulates the performance of the activity or procedure, as the case may be;

“counsellor” means—

- (a) a registered psychologist within the meaning of the *Psychologists Act 1994*;
- (b) a nurse counsellor; or
- (c) a social worker;

“defined influential person”, in relation to a person proposing to carry on, or carrying on, a public health risk activity, means—

- (a) if the person is to employ or otherwise engage, or employs or otherwise engages, a manager to carry on the activity, or that part of the activity that involves the performance of public health risk procedures—the manager;
- (b) if the person is a body corporate—a director, secretary, officer or manager of the body; and
- (c) if the person is to carry on, or carries on, the activity in partnership with any other person or person—
 - (i) each other partner; and

(ii) if any partner is a body corporate—a director, secretary, officer or manager of the body;

“determined fee” means the fee determined under section 137 for the purpose of the provision of this Act in which the expression occurs;

“director”, in relation to a body corporate, includes a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory;

“education” means pre-primary, primary or secondary education;

“emergency declaration” means a declaration under section 119;

“emergency direction” means a direction under section 120;

“functions” includes powers and duties;

“improvement notice” means a notice under section 58;

“insanitary condition” means a condition, state or activity in relation to any of the following that a reasonable person would consider to be, or to be liable to become, a public health risk, damaging to public health or offensive to community health standards:

- (a) a building or structure;
- (b) land, water or land covered by water;
- (c) an animal, including a bird;
- (d) refuse;
- (e) noise or an emission;
- (f) any other matter or thing;

“medical practitioner” means a registered medical practitioner under the *Medical Practitioners Act 1930*;

“notifiable condition” means a disease or medical condition—

- (a) determined by the Minister under paragraph 100 (1) (a); or
- (b) declared by the Chief Health Officer under paragraph 101 (1) (a);

“pathologist” includes an assistant, and a technical officer, employed in a pathology laboratory;

“patient”, in relation to a medical practitioner, means a person being professionally attended by the practitioner;

“place” means premises or land;

“premises” includes a vehicle, vessel or aircraft, and a permanent or temporary structure;

“procedure licence” means a licence under section 45;

“prohibition notice” means a notice under section 61;

“public health” means—

- (a) the health of individuals in the context of the wider health of the community; or
- (b) the organised response by society to protect and promote health and prevent illness, injury and disability;

“public health direction” means a direction under section 113;

“Public Health Officer” means a Public Health Officer under section 12;

“public health risk activity” means an activity declared by the Minister to be a public health risk activity under section 18;

“public health risk procedure” means a procedure declared by the Minister under section 18 to be a public health risk procedure in relation to a public health risk activity;

“responsible person”, in relation to a person having a notifiable condition, means—

- (a) a medical practitioner;
- (b) a counsellor who has counselled the person in relation to that condition; or
- (c) a person who is responsible for the care, support or education of the person;

“this Act” includes the regulations;

“transmissible notifiable condition” means a notifiable condition—

- (a) determined by the Minister to be a transmissible notifiable condition under paragraph 100 (1) (b); or
- (b) declared by the Chief Health Officer to be a transmissible notifiable condition under paragraph 101 (1) (b).

(2) In this Act, a reference to an occupier of a place includes a reference to—

- (a) an owner of the place;
- (b) a person who is in charge of the place; and

- (c) a person authorised to be present at the place as an agent of an occupier, owner or person in charge of the place.

(3) In this Act, unless the contrary intention appears, a reference to the contravention of this Act or a corresponding public health risk law includes a reference to a contravention of a notice, direction or similar instrument issued under this Act or such a law, as the case may be.

Construction consistent with certain other laws

6. (1) This Act shall be construed and administered in a manner that is consistent with a health law or an environment law unless the contrary intention appears from this Act or that law.

(2) This Act shall be taken to be consistent with a health law or an environment law to the extent that it is capable of operating concurrently with that law.

(3) In this section—

“environment law” means a law of the Territory that has as 1 of its objects or purposes the protection of the environment;

“health law” means a law of the Territory that has as 1 of its objects or purposes the protection of public health.

PART II—STATUTORY OFFICES

Chief Health Officer

7. (1) The Minister shall, by instrument, appoint a person to be the Chief Health Officer.

(2) The Chief Health Officer shall be—

- (a) a public servant; and
- (b) a medical practitioner.

(3) An instrument of appointment is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(4) The Minister may, by instrument, suspend the Chief Health Officer from duty on grounds of misbehaviour or physical or mental incapacity, being grounds the particulars of which are stated in the instrument.

(5) An instrument of suspension is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(6) Following the suspension of the Chief Health Officer, the Minister may, by instrument, revoke the appointment of the Chief Health Officer if—

- (a) after the last day on which the instrument of suspension could have been disallowed under the *Subordinate Laws Act 1989*, the instrument has not been disallowed; and
- (b) the Minister is satisfied that the grounds for suspension stated in the instrument of suspension still exist.

Acting Chief Health Officer

8. (1) The Chief Executive may, in writing, appoint a person to act as the Chief Health Officer during—

- (a) a vacancy in the office of Chief Health Officer; or
- (b) during any period, or during all periods, when the Chief Health Officer is for any reason unable to perform the functions of the office.

(2) An acting Chief Health Officer shall be a medical practitioner.

(3) A person appointed to act as the Chief Health Officer during a vacancy in the office of Chief Health Officer shall not so act continuously for more than 12 months.

(4) Anything done by or in relation to a person purporting to act pursuant to an appointment under subsection (1) is not invalid on the ground that—

- (a) the appointment was ineffective or had ceased to have effect; or
- (b) the occasion to act had not arisen or had ceased.

Functions of Chief Health Officer

9. The functions of the Chief Health Officer are as follows:

- (a) to develop and implement strategies to promote and protect public health;
- (b) to ensure that this Act is complied with;
- (c) to advise the Minister about proposed legislative or administrative changes related to public health;
- (d) to carry out any other functions for the purposes of this Act determined by the Minister by instrument.

Biennial reporting by Chief Health Officer

10. (1) The Chief Health Officer shall prepare a written report every 2 years about public health indicators in the Territory in respect of the following matters:

- (a) trends and indicators in health status;
- (b) potential public health risks;
- (c) morbidity and mortality;
- (d) notifiable conditions;
- (e) health promotion activities;
- (f) harm minimisation activities;
- (g) access and equity indicators relevant to health;
- (h) social indicators relevant to health;
- (i) health services performance against minimum standards of care;
- (j) intersectoral activities relevant to health;
- (k) any other matter considered appropriate by the Chief Health Officer.

(2) The first report shall be prepared in relation to the 2 year period expiring on 30 June 1998, and each subsequent report shall be prepared in relation to each succeeding 2 year period.

(3) A report shall be submitted to the Minister within 3 months after it is prepared.

(4) The Minister shall cause a report to be laid before the Legislative Assembly within 15 sitting days after receiving it.

Delegation by Chief Health Officer

11. The Chief Health Officer may, by instrument, delegate any of his or her powers under this Act to any person, or to any person within a class specified in the instrument.

Public Health Officers

12. (1) There may be 1 or more Public Health Officers.

(2) The Chief Executive shall create and maintain 1 or more offices in the Government Service the duties of which include performing the functions of a Public Health Officer.

- (3)** The following persons shall be Public Health Officers:
- (a) any public servant for the time being performing the duties of the Government Service office referred to in subsection (2);
 - (b) any other person appointed in writing by the Chief Executive for the purpose.

Authorised Medical Officers

13. (1) There may be 1 or more Authorised Medical Officers.

(2) The Chief Executive shall create and maintain 1 or more offices in the Government Service the duties of which include performing the functions of an Authorised Medical Officer.

(3) Only a medical practitioner may perform the functions of an Authorised Medical Officer.

(4) Subject to subsection (3), the following persons shall be Authorised Medical Officers:

- (a) any public servant for the time being performing the duties of the Government Service office referred to in subsection (2);
- (b) any other person appointed in writing by the Chief Executive for the purpose.

Functions of Public Health Officers and Authorised Medical Officers

14. (1) A Public Health Officer or an Authorised Medical Officer may perform the following functions:

- (a) a function conferred pursuant to an authorisation under subsection (2);
- (b) any other function for the purposes of this Act authorised by the Chief Health Officer by instrument;
- (c) any function conferred under any other law of the Territory.

(2) The Chief Health Officer may, by instrument, authorise a Public Health Officer or an Authorised Medical Officer to perform 1 or more specified functions assigned to an authorised officer by this Act.

Analysts

- 15. (1)** There may be 1 or more Analysts for the purposes of this Act.
- (2)** The following persons shall be Analysts:
- (a) any public servant for the time being performing the duties of the Government Service office of Government Analyst referred to in subsection 183A (2) of the *Drugs of Dependence Act 1989*;
 - (b) any other person appointed in writing by the Chief Executive for the purpose.

Identity cards

16. (1) The Chief Executive shall issue to an officer an identity card specifying the officer's name and office, and on which appears a recent photograph of the officer.

(2) Upon ceasing to occupy, or to act in, an office, a person shall not, without reasonable excuse, fail to return his or her identity card to the Chief Executive.

Penalty: 1 penalty unit.

(3) In this section—

“office” means the following offices:

- (a) Chief Health Officer;
- (b) Public Health Officer;
- (c) Authorised Medical Officer;
- (d) Analyst.

Protection from liability

17. No action or suit lies against a person in relation to an act done or omitted to be done in good faith in the performance of a function under this Act.

**PART III—PUBLIC HEALTH RISK ACTIVITIES AND
PUBLIC HEALTH RISK PROCEDURES**

Division 1—General

Public health risk activities and procedures—declaration

18. (1) The Minister may, by instrument, declare an activity that may result in the transmission of disease, or that may otherwise adversely affect the health of individuals in the context of the wider health of the community, to be a public health risk activity.

(2) A declaration under this section may, in relation to a public health risk activity, declare 1 or more procedures in relation to that activity to be public health risk procedures.

(3) A declaration under this section shall indicate whether the declared activity or procedure is a licensable or a non-licensable activity or procedure, as the case may be.

(4) A declaration under this section is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Differential fees

19. In a determination of fees for the purposes of any provision of this Part under section 130, the Minister may—

- (a) determine different fees to apply in different circumstances; and
- (b) determine exemptions for specified persons, or in specified circumstances.

Compliance with Codes of Practice

20. (1) A person carrying on a public health risk activity shall not, without reasonable excuse, fail to comply with a Code of Practice in relation to that activity.

(2) A person performing a public health risk procedure shall not, without reasonable excuse, fail to comply with a Code of Practice in relation to that procedure.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

Activity licences—offences

21. (1) A person shall not carry on a public health risk activity declared to be licensable under subsection 18 (3) unless the person—

- (a) is the holder of an activity licence in relation to the activity; or
- (b) is a defined influential person in relation to the holder of an activity licence in relation to the activity.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

(2) A person shall not carry on a public health risk activity declared to be licensable under subsection 18 (3) except in accordance with an activity licence.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

(3) This section does not apply to a person who is exempt under section 22.

Exemption—activity accreditation schemes

22. (1) For the purposes of subsection 21 (3), a person who carries on a public health risk activity is exempt if—

- (a) the person is currently accredited in accordance with the requirements of an activity accreditation scheme determined under paragraph (2) (a) in relation to that activity;
- (b) the person has not, within the previous 12 months, contravened an activity accreditation standard in association with that scheme, being a standard determined under paragraph (2) (b), except in accordance with an approval under paragraph 27 (1) (a); and
- (c) the person has not, within the previous 12 months, contravened this Act.

(2) The Minister may, by instrument, determine—

- (a) an activity accreditation scheme; and
- (b) activity accreditation standards in association with such a scheme.

(3) A determination under subsection (2) may apply, adopt or incorporate any matter contained in an instrument or other writing as in force or existing from time to time.

(4) A determination under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Procedure licences—offences

23. (1) A person shall not perform a public health risk procedure declared to be licensable under subsection 18 (3) unless the person holds a procedure licence in relation to the procedure.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

(2) The holder of a public health risk procedure licence shall not perform the licensed public health risk procedure except in accordance with the licence.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

(3) This section does not apply to a person who is exempt under section 24.

Exemption—procedure accreditation schemes

24. (1) For the purposes of subsection 23 (3), a person is exempt if—

- (a) the person is currently accredited in accordance with the requirements of a procedure accreditation scheme determined under paragraph (2) (a);
- (b) the person has not, within the previous 12 months, contravened a procedure accreditation standard in association with that scheme, being a standard determined under paragraph (2) (b), except in accordance with an approval under paragraph 27 (2) (a); and
- (c) the person has not, within the previous 12 months, contravened this Act.

(2) The Minister may, by instrument, determine—

- (a) a procedure accreditation scheme; and

(b) procedure accreditation standards in association with such a scheme.

(3) A determination under subsection (2) may apply, adopt or incorporate any matter contained in an instrument or other writing as in force or existing from time to time.

(4) A determination under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

False representations

25. (1) A person who is not the holder of an activity licence or a procedure licence shall not falsely represent that he or she holds such a licence.

(2) The holder of an activity licence or a procedure licence whose licence is under suspension shall not represent that he or she holds the licence without disclosing that the licence is under suspension.

(3) A person who is not accredited in accordance with an accreditation scheme determined under paragraph 22 (2) (a) or 24 (2) (a) shall not falsely represent that he or she is so accredited.

Penalty:

(a) if the offender is a natural person—30 penalty units;

(b) if the offender is a body corporate—150 penalty units.

Alteration of premises and appliances

26. (1) A person who carries on a public health risk activity shall not, except in accordance with an approval under paragraph 27 (1) (b)—

(a) structurally alter the premises where that activity is carried on, including fixtures or fittings in those premises; or

(b) introduce, alter or replace any appliance used in connection with a procedure associated with that activity that is (or is to be) installed in, or attached to, those premises;

if the person has reasonable grounds for believing that such an alteration of premises, or such introduction, alteration or replacement of an appliance, would increase the public health risk associated with that activity.

(2) A person who performs a public health risk procedure shall not, except in accordance with an approval of the Minister under paragraph 27 (2) (b), introduce, alter or replace any appliance used in connection with the procedure if the person has reasonable grounds for believing that such introduction, alteration or replacement would increase the public health risk associated with that procedure.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

Ministerial approvals

27. (1) The Minister may, on application by a person who carries on a public health risk activity, issue an approval—

- (a) for the purposes of paragraph 22 (1) (b)—for the applicant to carry on that activity otherwise than in accordance with the applicable activity accreditation standards; or
- (b) for the purposes of subsection 26 (1)—for the applicant to structurally alter the premises where that activity is carried on, or to introduce, alter or replace an appliance installed in, or attached to, those premises.

(2) The Minister may, on application by a person who performs a public health risk procedure, issue an approval—

- (a) for the purposes of paragraph 24 (1) (b)—for the person to perform that procedure otherwise than in accordance with the applicable procedure accreditation standards; or
- (b) for the purposes of subsection 26 (2)—for the person to introduce, alter or replace any appliance used in connection with the procedure.

(3) An application under subsection (1) or (2)—

- (a) shall be in a form approved by the Minister and signed by the applicant;
- (b) where it is proposed to alter premises—shall be accompanied by a copy of the relevant plans and specifications; and
- (c) shall be accompanied by the determined fee.

(4) The Minister may, by written notice, require an applicant to provide specified further information in writing about the application.

(5) The Minister shall, by notice in writing to the applicant, issue an approval under subsection (1) or (2) unless satisfied that to do so would be likely to lead to a significantly increased risk to public health in the carrying on of the relevant activity, or in the performance of the relevant procedure, as the case may be.

(6) If the Minister refuses an application, he or she shall give written notice to the applicant of the refusal stating the reasons for the refusal.

Inspection

28. A person who carries on a public health risk activity or performs a public health risk procedure shall ensure that, at any reasonable time upon request by an authorised officer—

- (a) if the person is licensed under Division 2 or 3—the licence is available for inspection at the premises at which the activity is carried on, or the procedure is performed; and
- (b) any records associated with the licensing, conduct or accreditation under section 22 or 24 of the activity or procedure are available for inspection at those premises.

Penalty:

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

Division 2—Activity licences

Activity licence—application

29. (1) A person may apply to the Minister for a licence to carry on a public health risk activity.

(2) An application shall—

- (a) be in a form approved by the Minister and executed by the applicant;
- (b) specify the public health risk activity;
- (c) specify the premises on or from which the applicant intends to carry on the public health risk activity;
- (d) subject to subsection (3), in the case of existing premises, be accompanied by a sketch plan of the premises showing—
 - (i) the layout of all fixtures, fittings, appliances and any other equipment installed in the premises; and

- (ii) the area, or each area forming part of the premises that will be used for the purposes of the public health risk activity, and the use to which it will be put;
 - (e) in the case of premises that, at the date of the application, have not been completed or are being altered—be accompanied by a copy of the relevant plans and specifications; and
 - (f) be accompanied by the determined fee.
- (3) Paragraph (2) (d) does not apply where—
- (a) another person named in the application is the holder of an activity licence in relation to a public health risk activity carried on at the premises;
 - (b) the applicant intends to carry on the same public health risk activity at those premises; and
 - (c) the applicant states that there has been no change in any matter required to be shown in a sketch plan by paragraph (2) (d) since the latest of the following dates:
 - (i) the date of the last presentation of a sketch plan of the premises under that paragraph;
 - (ii) the date of the last approval by the Minister of an alteration of the premises under paragraph 27 (1) (b).

(4) The Minister may, by written notice, require the applicant to provide specified further information in writing about the application.

Activity licence—grant or refusal

30. (1) Where an application for an activity licence has been made in accordance with section 29, the Minister shall, subject to this section, by notice in writing to the applicant—

- (a) grant the licence; or
- (b) refuse to grant the licence.

(2) An activity licence may be granted subject to specified conditions.

(3) An activity licence shall not be granted in respect of premises that, at the date of the application, had not been completely constructed, or were being altered, until the Minister is satisfied that the construction of the premises, or the alterations, have been completed.

(4) For the purposes of making a decision under subsection (1) or (2), the Minister shall have regard to the following matters:

- (a) the suitability of the premises for the purpose of carrying on the public health risk activity;
- (b) the competence and experience of the applicant, and of any defined influential person in relation to the applicant;
- (c) the adequacy of the applicant's equipment for the carrying on or performance in accordance with any applicable Code of Practice of the public health risk activity or of any associated public health risk procedure;
- (d) any previous contravention by the applicant or any defined influential person in relation to the applicant of this Act or a corresponding public health risk law;
- (e) the potential public health risks associated with the proposed activity;
- (f) any other matters that, in the interests of public health, the Minister believes to be relevant.

Activity licence—form

31. An activity licence—

- (a) shall be in a form approved by the Minister; and
- (b) shall specify—
 - (i) the name of the licensee;
 - (ii) the licensed public health risk activity;
 - (iii) the licensed premises;
 - (iv) the term for which the licence is granted; and
 - (v) any conditions to which the licence is subject.

Activity licence—duration

32. An activity licence remains in force, except while it is suspended, until it is surrendered or cancelled, for the period specified on the licence, and may be renewed under section 33.

Activity licence—renewal

33. (1) The holder of an activity licence may, before the expiration of the term of the licence, apply to the Minister for its renewal.

(2) An application for the renewal of an activity licence shall be in writing signed by the licensee, and accompanied by the determined fee.

(3) On application under this section, the Minister shall renew the licence for a period of the same length as the current term of the licence.

Activity licence—variation

34. (1) On application by the holder of an activity licence, the Minister shall, if satisfied that it is not prejudicial to the interests of public health to do so, by notice in writing to the licensee, vary the licence accordingly.

(2) Where the Minister has reasonable grounds for believing that it is desirable to vary an activity licence in the interests of public health, the Minister shall give the licensee a written notice—

- (a) stating the reasons why the Minister intends to vary the licence; and
- (b) informing the licensee that the licensee may, within a specified period, give a written response to the Minister in relation to the matters stated in the notice.

(3) After the expiration of the period specified in a notice under paragraph (2) (b), and after taking into consideration any response given by the licensee, the Minister may, if satisfied on reasonable grounds that it is desirable to do so in the interests of public health, vary the licence by notice in writing to the licensee.

(4) After the expiration of the period specified in a notice under paragraph (2) (b), the Minister shall, if satisfied that it is not desirable to vary the licence, give written notice to the licensee to that effect.

(5) The variation of a licence takes effect on—

- (a) the date on which notice of the variation is given to the licensee; or
- (b) such later date as is specified in the notice of variation.

(6) In this section—

“licence” includes a suspended licence;

“vary”, in relation to a licence, includes—

- (a) vary a licence condition;
- (b) revoke a licence condition;
- (c) impose a licence condition; and

- (d) vary the term of the licence.

Activity licence—return for endorsement of variation

35. (1) The holder of an activity licence that has been varied shall not, without reasonable excuse, fail to return the licence to the Minister within 7 days after the date of effect of the variation.

Penalty:

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

(2) As soon as practicable after the return of a licence under subsection (1), the Minister shall endorse the variation on the licence and return it to the licensee.

Activity licence—application for transfer

36. (1) The holder of an activity licence (except a licence that is under suspension) and a person to whom it is proposed to transfer the licence may jointly apply for the transfer of the licence.

(2) An application shall—

- (a) be in a form approved by the Minister and signed by each joint applicant; and
- (b) be accompanied by the licence and the determined fee.

(3) The Minister may, by written notice, require the proposed transferee to provide specified further information in writing about the application.

Activity licence—grant or refusal of transfer

37. (1) Where an application for the transfer of an activity licence has been made in accordance with section 36, the Minister shall, subject to this section, by notice in writing to each applicant—

- (a) approve the transfer; or
- (b) refuse to approve the transfer.

(2) In association with the transfer of a licence, the Minister may vary the term of the licence.

(3) For the purposes of making a decision under subsection (1) or (2), the Minister shall have regard to the following matters:

- (a) the competence and experience of the proposed transferee and of any defined influential person in relation to the proposed transferee;

- (b) the adequacy of the equipment proposed to be used by the proposed transferee for the carrying on or performance in accordance with any applicable Code of Practice of the public health risk activity or of any associated public health risk procedure;
- (c) any previous contravention by the proposed transferee or any defined influential person in relation to the proposed transferee with this Act or a corresponding public health risk law;
- (d) any other matters that, in the interests of public health, the Minister believes to be relevant.

(4) The transfer of a licence takes effect on the date of receipt by the transferee of the notice of decision under subsection (1), or on such later date as is specified in the notice.

(5) The Minister shall return a licence that is the subject of an application for transfer—

- (a) if the application is approved—to the proposed transferee, unless a delay in the transfer's coming into effect makes it more convenient to return the licence to the existing licensee; or
- (b) in any other case—to the existing licensee;

together with the notice of decision.

Activity licence—surrender

38. (1) The holder of an activity licence may surrender the licence by giving to the Minister—

- (a) a signed notice that the licence is being surrendered; and
- (b) the licence.

(2) A licence that is under suspension may be surrendered under this section.

Activity licence—suspension and cancellation

39. (1) The grounds for the suspension or cancellation of an activity licence under this section are as follows:

- (a) the obtaining of the licence by fraud or misrepresentation;
- (b) the contravention by the licensee or any defined influential person in relation to the licensee of this Act or a corresponding public health risk law;
- (c) the lack of competence of the licensee or of any defined influential person in relation to the licensee.

(2) This section applies where the Minister has reasonable grounds for believing that—

- (a) there exists a ground for the suspension or the cancellation of an activity licence under this section; and
- (b) it is desirable in the interests of public health to suspend or cancel the licence.

(3) Where this section applies, the Minister shall give written notice to the licensee—

- (a) specifying the ground upon which the Minister intends to suspend or cancel the licence;
- (b) stating the facts and circumstances that, in the Minister's opinion, constitute that ground; and
- (c) informing the licensee that the licensee may, within 28 days after the date of the notice, give a written response to the Minister in relation to the matters stated in the notice.

(4) After the expiration of 28 days after the date of a notice under subsection (3), in consideration of any written response received from the licensee, the Minister shall, if satisfied on reasonable grounds of the matters referred to in paragraphs (2) (a) and (b), by notice in writing to the licensee—

- (a) in the case of a notice of intention to suspend the licence for a specified period—suspend the licence for that period, or for such shorter period as the Minister thinks fit; or
- (b) in the case of a notice of intention to cancel the licence—cancel the licence or suspend it for such period as the Minister thinks fit.

(5) After the expiration of 28 days after the date of a notice under subsection (3), the Minister shall, if not satisfied on reasonable grounds of the matters referred to in paragraphs (2) (a) and (b), give written notice to the licensee to that effect.

(6) The suspension or cancellation of a licence takes effect on—

- (a) the date on which notice of the suspension or cancellation is given to the licensee; or
- (b) such later date as is specified in the notice.

Activity licence—emergency suspension

40. (1) The grounds for the suspension of an activity licence under this section are as follows:

- (a) contravention by the licensee or any defined influential person in relation to the licensee of a condition to which the licence is subject;
- (b) subject to section 41, the giving of a prohibition notice to the licensee.

(2) The Minister may, by notice in writing given to the holder of an activity licence, suspend the licence for a period not exceeding 6 months where the Minister has reasonable grounds for believing that—

- (a) there exists a ground for the suspension of a licence under this section; and
- (b) it is necessary to suspend the licence in order to prevent or remove an imminent serious risk to public health.

(3) A suspension takes effect on the date on which the notice is given to the licensee.

(4) A notice of suspension shall—

- (a) specify the ground upon which the licence is suspended;
- (b) specify the period of the suspension; and
- (c) state the facts and circumstances that, in the Minister’s opinion, constitute that ground.

Activity licence—automatic suspension

41. (1) An activity licence is suspended by virtue of this subsection where an authorised officer gives the licensee a prohibition notice that contains a prohibition under paragraph 61 (4) (a) in relation to the licensed activity.

(2) A suspension under this section—

- (a) takes effect—
 - (i) at the expiry of the period, or the latest-expiring period, specified in the prohibition notice under paragraph 61 (5) (f); or
 - (ii) if no such period is specified—when the notice is given; and
- (b) ceases when the prohibition notice is revoked.

Activity licence—return of defunct licences

42. The holder of an activity licence that has been suspended or cancelled shall not, without reasonable excuse, fail to return the licence to the Minister within 7 days after the date of effect of the suspension or cancellation.

Penalty:

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

Division 3—Procedure licences

Procedure licence—application

43. (1) A person may apply to the Minister for a licence to perform a public health risk procedure.

(2) An application shall—

- (a) be in a form approved by the Minister and signed by the applicant;
- (b) specify the public health risk procedure; and
- (c) be accompanied by the determined fee.

Procedure licence—further information

44. The Minister may, by written notice, require an applicant for a procedure licence to provide specified further information in writing about the application.

Procedure licence—grant or refusal

45. (1) Where an application for a procedure licence has been made in accordance with section 43, the Minister shall, by notice in writing to the applicant—

- (a) grant the licence; or
- (b) refuse to grant the licence.

(2) The Minister shall not refuse to grant a procedure licence unless he or she is satisfied, after taking into account the matters referred to in subsection (4), that the applicant is not suitable to hold a procedure licence.

(3) A procedure licence may be granted subject to specified conditions.

(4) For the purposes of making a decision under subsection (1) or (3), the Minister shall have regard to the following matters:

- (a) the competence and experience of the applicant;

- (b) any previous contravention by the applicant of this Act or a corresponding public health risk law;
- (c) any other matters that, in the interests of public health, the Minister believes to be relevant.

Procedure licence—form

46. A procedure licence—

- (a) shall be in a form approved by the Minister; and
- (b) shall specify—
 - (i) the name of the licensee;
 - (ii) the licensed public health risk procedure; and
 - (iii) any conditions to which the licence is subject.

Procedure licence—annual fees

47. The holder of a procedure licence shall, on or before the anniversary of the grant of the licence, pay to the Minister the determined fee.

Procedure licence—suspension and cancellation for failure to pay annual fee

48. (1) Where a fee payable under section 47 is not paid in accordance with that section, the licence is, by virtue of this subsection, suspended.

(2) A suspension under subsection (1)—

- (a) takes effect on the day after the relevant anniversary of the grant of the licence; and
- (b) ceases when the fee payable under section 47 is paid or the licence is cancelled under subsection (3) of this section, whichever first occurs.

(3) On or after the day notified under subsection (4), the Minister may cancel a licence that has remained suspended by virtue of subsection (2) for a period of not less than 3 months.

(4) The Minister shall not cancel a licence under subsection (3) unless, at least 1 month before doing so, he or she gives the licensee a written notice stating that unless the determined fee is paid, the licence may be cancelled on or after a specified day.

(5) A reference in this section to a licence includes a reference to a licence that is under suspension under another section of this Act.

(6) Where a licence that is under suspension by virtue of another section of this Act (in this subsection referred to as the “other suspension”)—

- (a) is also under suspension by virtue of subsection (1) (in this subsection referred to as “this suspension”); and
- (b) this suspension ceases by virtue of paragraph (2) (b);

the cessation of this suspension does not affect the other suspension.

Procedure licence—variation

49. (1) On application by the holder of a procedure licence, the Minister shall, if satisfied that it is not prejudicial to the interests of public health to do so, vary the licence accordingly by notice in writing given to the licensee.

(2) Where the Minister has reasonable grounds for believing that it is desirable to vary a procedure licence in the interests of public health, the Minister shall give the licensee a written notice—

- (a) stating the reasons why the Minister intends to vary the licence; and
- (b) informing the licensee that the licensee may, within a specified period, give a written response to the Minister in relation to the matters stated in the notice.

(3) After the expiration of the period specified in a notice under paragraph (2) (b), and after taking into consideration any response given by the licensee, the Minister may, if satisfied on reasonable grounds that it is desirable to do so in the interests of public health, vary the licence, by notice in writing to the licensee.

(4) After the expiration of the period specified in a notice under paragraph (2) (b), the Minister shall, if satisfied that it is not desirable to vary the licence, give written notice to the licensee to that effect.

(5) The variation of a licence takes effect on—

- (a) the date on which notice of the variation is given to the licensee; or
- (b) such later date as is specified in the notice of variation.

(6) In this section—

“licence” includes a suspended licence;

“vary”, in relation to a licence, includes—

- (a) vary a licence condition;
- (b) revoke a licence condition; and
- (c) impose a licence condition.

Procedure licence—return for endorsement of variation

50. (1) The holder of a procedure licence that has been varied shall not, without reasonable excuse, fail to return the licence to the Minister within 7 days after the date of effect of the variation.

Penalty:

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

(2) As soon as practicable after the return of a licence under subsection (1), the Minister shall endorse the variation on the licence and return it to the licensee.

Procedure licence—duration

51. A procedure licence remains in force, except while it is suspended, until it is surrendered or cancelled.

Procedure licence—surrender

52. (1) The holder of a procedure licence may surrender the licence by giving to the Minister—

- (a) a signed notice that the licence is being surrendered; and
- (b) the licence.

(2) A licence that is under suspension may be surrendered under this section.

Procedure licence—suspension and cancellation

53. (1) The grounds for the suspension or cancellation of a procedure licence under this section are as follows:

- (a) the obtaining of the licence by fraud or misrepresentation;
- (b) contravention by the licensee of this Act or of a corresponding public health risk law;
- (c) the lack of competence of the licensee.

(2) This section applies where the Minister has reasonable grounds for believing that—

- (a) there exists a ground for the suspension or cancellation of a procedure licence under this section; and
- (b) it is desirable in the interests of public health to suspend or cancel the licence.

(3) Where this section applies, the Minister shall give written notice to the licensee—

- (a) specifying the ground upon which the Minister intends to suspend or cancel the licence;
- (b) stating the facts and circumstances that, in the Minister's opinion, constitute that ground; and
- (c) informing the licensee that the licensee may, within 28 days after the date of the notice, give a written response to the Minister in relation to the matters stated in the notice.

(4) After the expiration of 28 days after the date of a notice under subsection (3), in consideration of any written response received from the licensee, the Minister shall, if satisfied on reasonable grounds of the matters referred to in paragraphs (2) (a) and (b), by notice in writing to the licensee—

- (a) in the case of a notice of intention to suspend the licence for a specified period—suspend the licence for that period, or for such shorter period as the Minister thinks fit; or
- (b) in the case of a notice of intention to cancel the licence—cancel the licence or suspend it for such period as the Minister thinks fit.

(5) After the expiration of 28 days after the date of a notice under subsection (3), the Minister shall, if not satisfied on reasonable grounds of the matters referred to in paragraphs (2) (a) and (b), give written notice to the licensee of his or her decision not to suspend or cancel the licence.

(6) The suspension or cancellation of a licence takes effect on—

- (a) the date on which notice of the suspension or cancellation is given to the licensee; or
- (b) such later date as is specified in the notice.

Procedure licence—emergency suspension

54. (1) The grounds for the suspension of a procedure licence under this section are as follows:

- (a) contravention by the licensee of a condition to which the licence is subject;
- (b) subject to section 55, the giving of a prohibition notice to the licensee.

(2) The Minister may, by notice in writing given to the holder of a procedure licence, suspend the licence for a period not exceeding 6 months where the Minister has reasonable grounds for believing that—

- (a) there exists a ground for the suspension of a licence under this section; and
- (b) it is necessary to suspend the licence in order to prevent or remove an imminent serious risk to public health.

(3) A suspension takes effect on the date on which the notice is given to the licensee.

(4) A notice of suspension shall—

- (a) specify the ground upon which the licence is suspended;
- (b) specify the period of the suspension; and
- (c) state the facts and circumstances that, in the Minister's opinion, constitute that ground.

Procedure licence—automatic suspension

55. (1) A procedure licence is suspended by virtue of this subsection where an authorised officer gives the licensee a prohibition notice that contains a prohibition under paragraph 61 (4) (a) in relation to the licensed procedure.

(2) A suspension under this section—

- (a) takes effect—
 - (i) at the expiry of the period, or the latest-expiring period, specified in the prohibition notice under paragraph 61 (5) (f); or
 - (ii) if no such period is specified—when the notice is given; and
- (b) ceases when the prohibition notice is revoked.

Procedure licence—return of defunct licences

56. The holder of a procedure licence that has been suspended or cancelled shall not, without reasonable excuse, fail to return the licence to the Minister within 7 days after the date of effect of the suspension or cancellation.

Penalty:

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

Division 4—Improvement notices

Improvement notice—compliance

57. A person to whom an improvement notice is issued shall not, without reasonable excuse, fail to comply with the notice.

Penalty:

- (a) if the offender is a natural person—100 penalty units;
- (b) if the offender is a body corporate—500 penalty units.

Improvement notice—issue

58. (1) This section applies where an authorised officer has reasonable grounds for believing that a person who is carrying on a public health risk activity or performing a public health risk procedure is contravening or likely to contravene this Act.

(2) Where this section applies, the authorised officer may issue an improvement notice to the person carrying on the activity or performing the procedure, as the case may be.

(3) If the person carrying on a public health risk activity to whom an improvement notice is issued is not in charge of the premises where that activity is carried on, the authorised officer shall give a copy of a notice under subsection (2) to the person in charge of those premises.

(4) An improvement notice shall specify the following matters:

- (a) the contravention that the authorised officer believes is occurring or is likely to occur and the reasons for that belief;
- (b) a period or periods within which the person to whom the notice is given is required to rectify the matters or activities to which the notice relates.

(5) An improvement notice may specify action that the person to whom the notice is given is to take in order to comply with the notice.

(6) An improvement notice continues in force until revoked in accordance with section 60.

Improvement notice—extension of compliance period

59. (1) Before the end of a compliance period specified in an improvement notice under paragraph 58 (4) (b), an authorised officer may extend the period.

(2) An extension—

- (a) may be given on the application of the person to whom the improvement notice was issued, or on the motion of the authorised officer; and
- (b) shall be in writing given to the person to whom the notice was issued.

(3) If an authorised officer refuses an application for an extension, he or she shall give written notice to the applicant of the refusal stating the reasons for the refusal.

Improvement notice—revocation

60. (1) An authorised officer shall revoke an improvement notice if satisfied, after carrying out an appropriate inspection, that the notice has been complied with.

(2) A revocation—

- (a) may be issued on the application of the person to whom the notice was issued, or on the motion of the authorised officer; and
- (b) shall be in writing given to the person to whom the notice was issued.

(3) An application for revocation shall—

- (a) be made in writing;
- (b) be addressed to the authorised officer who issued the notice;
- (c) specify the action taken to comply with the notice by the person to whom it was issued;
- (d) nominate a date on or after which an inspection may be made; and
- (e) be accompanied by the determined fee.

(4) If an authorised officer refuses an application for revocation, he or she shall give written notice to the applicant of the refusal stating the reasons for the refusal.

Division 5—Prohibition notices

Prohibition notice—issue

61. (1) This section applies where an authorised officer has reasonable grounds for believing that imminent serious risk to public health is being caused by, or is likely to be caused by—

- (a) the manner in which a public health risk activity is being carried on, or a public health risk procedure is being performed;
- (b) the use being made of premises on which a public health risk activity is carried on; or
- (c) the state or condition of premises on which a public health risk activity is carried on.

(2) Where this section applies to a public health risk activity or a public health risk procedure, the authorised officer may issue a prohibition notice to the person carrying on the activity or performing the procedure.

(3) If the person carrying on a public health risk activity, or performing a public health risk procedure, to which a prohibition notice relates is not in charge of the premises where that activity or procedure is carried on or performed, the authorised officer shall give a copy of a notice under subsection (2) to the person in charge of those premises.

(4) A prohibition notice may prohibit the person to whom it is issued from undertaking, or permitting, any or all of the following actions in relation to a public health risk activity or a public health risk procedure:

- (a) the carrying on of the activity or the performance of the procedure;
- (b) the carrying on of the activity or the performance of the procedure except in accordance with specified directions;
- (c) the use of specified premises for the activity or procedure.

(5) Without limiting the generality of subsection (4), a prohibition notice may include any or all of the following directions in relation to a public health risk activity or a public health risk procedure:

- (a) directions that the activity or procedure, or a specified aspect of the activity or procedure, is only to be carried on or performed in a part of specified premises (or is not to be carried on or performed in a part of such premises);
- (b) directions that any substance, compound or article is, or is not, to be used in connection with the activity or procedure;

- (c) directions that the activity or procedure be carried on or performed in a specified manner;
- (d) directions for the impounding or isolation of any appliance;
- (e) directions for the destruction or disposal, in a manner specified in the notice, of any appliance;
- (f) directions specifying a period within which the person to whom the notice is given is to comply with any direction.

(6) A prohibition notice continues in force until revoked in accordance with section 65.

Prohibition notice—extension of compliance period

62. (1) Before the end of a compliance period specified in a prohibition notice under paragraph 61 (5) (f), an authorised officer may extend the period.

(2) An extension—

- (a) may be given on the application of the person to whom the prohibition notice was issued, or on the motion of the authorised officer; and
- (b) shall be in writing given to the person to whom the notice was issued.

(3) If an authorised officer refuses an application for an extension, he or she shall give written notice to the applicant of the refusal stating the reasons for the refusal.

Prohibition notice—display

63. (1) A person to whom a prohibition notice has been issued shall cause a copy of that notice to be displayed, and to be kept displayed, so as to be readily visible to persons entering each premises specified in the notice by way of any public entrance to those premises.

(2) A person shall not, without reasonable excuse, contravene subsection (1).

Penalty for contravention of subsection (2):

- (a) if the offender is a natural person—10 penalty units;
- (b) if the offender is a body corporate—50 penalty units.

Prohibition notice—implementation

64. (1) An authorised officer may, subject to this section, do whatever he or she has reasonable grounds for believing to be necessary to implement a prohibition notice—

- (a) after the expiration of any compliance period specified under paragraph 61 (5) (f) (as extended, if at all, under section 62); or
- (b) if no such period is specified—after the expiration of a period the officer has reasonable grounds for considering sufficient for compliance with any positive direction in the notice, and in the interests of public health.

(2) For the purpose of implementing a prohibition notice under subsection (1), an authorised officer may, using such reasonable force and assistance as is necessary—

- (a) enter a place to which the notice relates at any reasonable time; or
- (b) enter a place to which the notice relates at any time, if the officer has reasonable grounds for believing that the circumstances are of such seriousness or urgency as to require such immediate entry.

(3) An authorised officer who enters a place pursuant to subsection (2) is not entitled to remain there if, on request by the occupier, the authorised officer does not produce his or her identity card, and, unless the authorised officer is the Chief Health Officer, his or her authorisation, to the occupier.

(4) Any costs or expenses incurred by the Territory in implementing, or attempting to implement, a prohibition notice under this section are a debt due to the Territory by the person to whom the notice was issued.

Prohibition notice—revocation

65. (1) An authorised officer shall revoke a prohibition notice if satisfied, after carrying out an appropriate inspection—

- (a) that the notice has been complied with; and
- (b) that adequate measures have been taken to prevent or remove the serious risk to public health that gave rise to the issue of the notice.

(2) A revocation—

- (a) may be issued on the application of the person to whom the notice was issued, or on the motion of the authorised officer; and
- (b) shall be in writing given to the person to whom the notice was issued.

- (3) An application for revocation shall—
- (a) be made in writing;
 - (b) be addressed to the authorised officer who issued the notice;
 - (c) specify the action taken to comply with the notice by the person to whom it was issued;
 - (d) nominate a date on or after which an inspection may be made; and
 - (e) be accompanied by the determined fee.

(4) If an authorised officer refuses an application for revocation, he or she shall give written notice to the applicant of the refusal stating the reasons for the refusal.

Prohibition orders

66. (1) The Chief Health Officer may apply to the Magistrates Court for an order that a person to whom a prohibition notice has been issued comply with the notice.

(2) For the purpose of considering an application under this section, the Court may adjourn the hearing (or further hearing) of the matter for the purpose of considering any relevant report from any person about the alleged risk to public health.

(3) On an application under subsection (1), after considering any report referred to in subsection (2), and any other relevant information in relation to the application submitted by the parties, if satisfied that the action or inaction of the person to whom the prohibition notice was issued has given rise to a serious and imminent risk to public health, the Court may make any of the following orders in relation to the person:

- (a) that the person comply with the notice within a period (if any) specified in the order;
- (b) that in order to prevent or alleviate the relevant public health risk, the person comply with any specified requirement in addition to any specified in the notice within a period (if any) specified in the order;
- (c) an order imposing a penalty of an amount equal to no more than—
 - (i) in the case of a natural person—100 penalty units; or
 - (ii) in the case of a body corporate—500 penalty units;
- (d) an order giving directions about the payment of all or any of the costs and expenses of the application.

(4) A person shall comply with an order under paragraph (3) (a) or (b).

Penalty:

(a) if the offender is a natural person—100 penalty units or imprisonment for 12 months, or both;

(b) if the offender is a body corporate—500 penalty units.

(5) For the purpose of implementing an order under paragraph (3) (a) or (b), an authorised officer may, using such reasonable force and assistance as is necessary, enter a place to which the order relates and do whatever is necessary to implement the order—

(a) after the expiration of any compliance period specified in the order; or

(b) if no such period is specified—after the expiration of a period the officer has reasonable grounds for considering sufficient for compliance with any positive direction in the order, and in the interests of public health.

(6) Any costs or expenses incurred by the Territory in implementing, or attempting to implement, an order under subsection (5) are a debt due to the Territory by the person in relation to whom the order was issued.

(7) The Magistrates Court may revoke an order under paragraph (3) (a) or (b) on application by the person in relation to whom the order was made, or the Chief Health Officer, if satisfied—

(a) that the order has been complied with; and

(b) that there is no reasonable likelihood of the recurrence of the circumstances giving rise to the making of the order.

PART IV—INSANITARY CONDITIONS

Offence—insanitary conditions

67. A person shall not—

(a) cause a condition, state or activity that the person has reasonable grounds for believing to be an insanitary condition; or

- (b) allow or suffer a condition, state or activity that the person has reasonable grounds for believing to be an insanitary condition to exist on, or to emanate from, a place occupied by that person.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

Complaints about insanitary conditions

68. (1) A person may give a written complaint to an authorised officer alleging the existence of an insanitary condition.

(2) An authorised officer shall investigate a complaint given under subsection (1).

(3) If, upon investigation, an authorised officer decides not to issue an abatement notice in relation to the alleged insanitary condition, the officer shall give a written notice of that decision to the complainant, informing him or her in addition about any available methods for settling the matter privately.

Abatement notices—issue

69. (1) If an authorised officer has reasonable grounds for believing that an insanitary condition exists, he or she may issue an abatement notice to—

- (a) the person causing the condition; or
- (b) if that person cannot be identified—the person who occupies the place at which the condition exists, or from which it emanates.

(2) In determining whether to issue an abatement notice in relation to a condition, state or activity, an authorised officer—

- (a) shall have regard to the number of persons affected, or potentially affected, by the condition, state or activity;
- (b) shall have regard to the degree, or potential degree, of public health risk, damage to public health or offensiveness to community health standards resulting from the condition, state or activity;
- (c) may have regard to any reasonable precautions that a person causing the relevant condition, state or activity has or has not taken to avoid or minimise the adverse effect, or the potential adverse effect, of the condition, state or activity; and

(d) may have regard to any reasonable precautions that a person adversely affected, or potentially adversely affected, by the relevant condition, state or activity has or has not taken to avoid or minimise the effect, or potential effect, of the condition, state or activity on his or her health or on the health of any other person for whose care, support or education the person is responsible.

(3) An abatement notice—

- (a) shall specify the insanitary condition which is required to be abated;
- (b) shall specify the period within which the insanitary condition is to be abated; and
- (c) may specify steps to be taken to prevent the recurrence of the insanitary condition and the period or periods within which they are to be undertaken.

(4) An abatement notice continues in force until revoked in accordance with section 72.

Abatement notice—extension of compliance period

70. (1) Before the end of a compliance period specified in an abatement notice under paragraph 69 (3) (b) or (c), an authorised officer may extend the period.

(2) An extension—

- (a) may be given on the application of the person to whom the abatement notice was issued, or on the motion of the authorised officer; and
- (b) shall be in writing given to the person to whom the notice was issued.

(3) If an authorised officer refuses an application for an extension, he or she shall give written notice to the applicant of the refusal stating the reasons for the refusal.

Abatement notice—implementation

71. (1) An authorised officer may, subject to this section, do whatever he or she has reasonable grounds for believing to be necessary to implement an abatement notice after the expiration of the compliance period specified under paragraph 69 (3) (b) (as extended, if at all, under section 70).

(2) An authorised officer shall only implement an abatement notice under subsection (1) if he or she has reasonable grounds for believing that it is necessary to do so to avert an imminent and serious risk to public health.

(3) For the purpose of implementing an abatement notice under subsection (1), an authorised officer may, using such reasonable force and assistance as is necessary—

- (a) enter a place to which the notice relates at any reasonable time; or
- (b) enter a place to which the notice relates at any time, if the officer has reasonable grounds for believing that the circumstances are of such seriousness or urgency as to require such immediate entry.

(4) An authorised officer who enters a place pursuant to subsection (3) is not entitled to remain there if, on request by the occupier, the authorised officer does not produce his or her identity card, and, unless the authorised officer is the Chief Health Officer, his or her authorisation, to the occupier.

(5) Any costs or expenses incurred by the Territory in implementing, or attempting to implement, an abatement notice under this section are a debt due to the Territory by the person to whom the notice was issued.

Abatement notice—revocation

72. (1) An authorised officer shall revoke an abatement notice if satisfied, after carrying out an appropriate inspection—

- (a) that the notice has been complied with; and
- (b) that adequate measures have been taken to prevent the recurrence of the relevant insanitary condition.

(2) A revocation—

- (a) may be issued on the application of the person to whom the notice was issued, or on the motion of the authorised officer; and
- (b) shall be in writing given to the person to whom the notice was issued.

(3) An application for revocation shall—

- (a) be made in writing;
- (b) be addressed to the authorised officer who issued the notice;
- (c) specify the action taken to comply with the notice by the person to whom it was issued, and any further measures taken to prevent the recurrence of the relevant insanitary condition;
- (d) nominate a date on or after which an inspection may be made; and

(e) be accompanied by the determined fee.

(4) If an authorised officer refuses an application for revocation, he or she shall give written notice to the applicant of the refusal stating the reasons for the refusal.

Abatement orders

73. (1) The Chief Health Officer may apply to the Magistrates Court for an order that a person to whom an abatement notice has been issued—

- (a) comply with the notice; or
- (b) if the insanitary condition has been removed, but is likely to recur—undertake specified action to prevent the recurrence of the insanitary condition, or to cease or refrain from undertaking any specified action.

(2) For the purpose of considering an application under this section, the Court may adjourn the hearing (or further hearing) of the matter for the purpose of considering any relevant report from any person about the alleged insanitary condition.

(3) On an application under subsection (1), after considering any report referred to in subsection (2), and any other relevant information in relation to the application submitted by the parties, the Court may make any of the following orders in relation to the person to whom the abatement notice was issued:

- (a) that the person comply with the notice within a period specified in the order;
- (b) that in order to prevent the recurrence of the insanitary condition, the person undertake any specified action, or cease or refrain from undertaking any specified action, within a period specified in the order;
- (c) an order imposing a penalty of an amount equal to no more than—
 - (i) in the case of a natural person—50 penalty units; or
 - (ii) in the case of a body corporate—250 penalty units;
- (d) an order giving directions about the payment of all or any of the costs and expenses of the application.

(4) A person shall comply with an order under paragraph (3) (a) or (b).

Penalty:

- (a) if the offender is a natural person—100 penalty units;
- (b) if the offender is a body corporate—500 penalty units.

(5) For the purpose of implementing an order under paragraph (3) (a) or (b), an authorised officer may, after the expiration of the compliance period specified in the order, using such reasonable force and assistance as is necessary, enter a place to which the order relates and do whatever is necessary to implement the order.

(6) Any costs or expenses incurred by the Territory in implementing, or attempting to implement, an order under subsection (5) are a debt due to the Territory by the person in relation to whom the order was issued.

(7) The Magistrates Court may revoke an order under paragraph (3) (a) or (b) on application by the person in relation to whom the order was made, or the Chief Health Officer, if satisfied—

- (a) that the order has been complied with; and
- (b) that there is no reasonable likelihood of the recurrence of the circumstances giving rise to the making of the order.

Joint and several responsibility for insanitary conditions

74. (1) This section applies where—

- (a) an authorised officer has reasonable grounds for believing that an insanitary condition exists; and
- (b) either—
 - (i) there are reasonable grounds for believing that 2 or more persons have caused the condition; or
 - (ii) if the person or persons causing the condition cannot be identified—2 or more persons occupy the place at which the condition exists, or from which the condition emanates.

(2) Each of the persons to whom this section applies—

- (a) may be issued with an abatement notice in relation to the insanitary condition;
- (b) may be the subject of a joint abatement order under section 73 in relation to the insanitary condition;
- (c) is jointly and severally liable in relation to any such order; and

- (d) is jointly and severally liable for any costs or expenses referred to in subsection 73 (6) in relation to the implementation, or the attempted implementation, of any such order.

PART V—INSPECTION AND ANALYSIS

Division 1—Preliminary

Interpretation

75. (1) For the purposes of this Part, a thing is connected with a particular offence if—

- (a) the offence has been committed with respect to it;
- (b) it will afford evidence of the commission of the offence; or
- (c) it was used, or is intended to be used, for the purpose of committing the offence.

(2) A reference in this Part to an offence is to be read as including a reference to—

- (a) an offence that there are reasonable grounds for believing is being or has been committed; and
- (b) a contravention of this Act by or on behalf of the Territory that there are reasonable grounds for believing is being or has been committed.

(3) Where an authorised officer enters a place in accordance with this Part, a reference to the occupier of the place includes a reference to a person the authorised officer has reasonable grounds for believing to be an occupier of the place within the meaning of subsection 5 (2).

Division 2—Authorised officers' powers

Entry

76. (1) Where an authorised officer has reasonable grounds for believing that it is necessary to do so for the purposes of this Act, he or she may, using such reasonable force and assistance as is necessary—

- (a) if the officer has reasonable grounds for believing a public health risk activity to be carried on, or a public health risk procedure to be performed, at any place—
 - (i) enter the place at any reasonable time; or

- (ii) enter the place at any time with the consent of the occupier, or pursuant to a warrant issued under section 80 or 81;
 - (b) in the case of any other place, except a place used, or used in part, for residential purposes—
 - (i) enter the place at any reasonable time; or
 - (ii) enter the place at any time with the consent of the occupier, or pursuant to a warrant issued under section 80 or 81; or
 - (c) in the case of a place used, or used in part, for residential purposes, except a place referred to in paragraph (a)—enter the place at any time with the consent of the occupier, or pursuant to a warrant issued under section 80 or 81.
- (2)** Where an authorised officer has reasonable grounds for believing that it is necessary to do so for the purposes of this Act, he or she may, using such reasonable force and assistance as is necessary—
- (a) enter any place at any reasonable time if the officer has reasonable grounds for believing that entry is necessary to deal with a serious public health risk; or
 - (b) enter any place at any time if the officer has reasonable grounds for believing that the circumstances are of such seriousness or urgency as to require immediate entry to the place without the authority of a warrant.
- (3)** An authorised officer who enters a place pursuant to subsection (1) or (2) is not entitled to remain at the place if, on request by the occupier, the authorised officer does not produce his or her identity card, and, unless the authorised officer is the Chief Health Officer, his or her authorisation, to the occupier.

Consent to entry

77. (1) Before obtaining the consent of a person for the purposes of subsection 76 (1), an authorised officer shall—

- (a) produce his or her identity card;
- (b) produce his or her authorisation, unless the authorised officer is the Chief Health Officer; and
- (c) inform that person that he or she may refuse to give consent.

(2) Where an authorised officer obtains the consent of a person for the purposes of subsection 76 (1), the authorised officer shall ask the person to sign a written acknowledgment—

- (a) of the fact that the person has been informed that he or she may refuse to give consent;
- (b) of the fact that the person has voluntarily given consent; and
- (c) of the day on which, and the time at which, that consent was given.

(3) Where it is material in any proceedings for a court to be satisfied of the voluntary consent of a person for the purposes of subsection 76 (1) and an acknowledgment, in accordance with subsection (2) of this section, signed by the person is not produced in evidence, the court shall assume, unless the contrary is proved, that the person did not voluntarily give such consent.

Powers upon entry

78. Subject to this Act, where an authorised officer enters any place in accordance with this Act, he or she may, if he or she considers it to be necessary or desirable for the purposes of this Act—

- (a) inspect, examine, take measurements in relation to, or conduct tests concerning, the place or any system of work, plant, substance or thing at the place;
- (b) inspect and test, or remove for testing, any container, equipment or appliance at the place;
- (c) inspect and test, or remove for testing, any material or substance;
- (d) open or require a person to open any container or package, and examine the container or package;
- (e) take photographs or make video or sound recordings or films;
- (f) seize anything (including records, documents, packaging material, labels or labelling material and material used in connection with advertising) that the authorised officer has reasonable grounds for believing to be connected with an offence against this Act;
- (g) require the occupier to make available to the authorised officer any record, document, labelling or advertising material;
- (h) where information required for the purposes of the inspection is stored on computer or other electronic equipment—require the occupier to produce the information in a visible or audible form;

- (i) inspect, make copies of and take extracts from any record, document or information, being information referred to in paragraph (h);
- (j) require the occupier to provide information or answer questions reasonably related to the effect of the use of the place on public health;
- (k) require the occupier to render such assistance to the authorised officer as is necessary and reasonable to enable the authorised officer to exercise his or her powers under this section; and
- (l) stop, detain and inspect any vehicle, vessel or aircraft that the authorised officer has reasonable grounds for believing to have in or upon it anything connected with an offence against this Act.

Power to require name and address

79. (1) An authorised officer may require a person to state the person's name and address where the officer—

- (a) finds a person committing an offence against this Act; or
- (b) has reasonable grounds for believing that a person has committed an offence against this Act.

(2) In exercising a power under subsection (1), an authorised officer shall—

- (a) inform the person of the reasons for the requirement; and
- (b) as soon as practicable thereafter, record those reasons.

(3) A person is not required to comply with a requirement under subsection (2) if, on request by the person, the authorised officer does not produce his or her identity card and, unless the authorised officer is the Chief Health Officer, his or her authorisation.

(4) Subject to this section, a person shall not, without reasonable excuse, fail to comply with a requirement under subsection (1).

Penalty for contravention of subsection (4): 5 penalty units.

Search warrants

80. (1) Where an information on oath is laid before a magistrate alleging that there are reasonable grounds for suspecting that there may be, at any place, a thing of a particular kind connected with a particular offence against this Act and the information sets out those grounds, the magistrate may issue a search warrant authorising an authorised officer named in the warrant, with such assistance and by such force as is necessary and reasonable—

- (a) to enter the place;
- (b) to search the place for things of that kind; and
- (c) to exercise any of the powers referred to in section 78 in relation to such a thing.

(2) A magistrate shall not issue a warrant under subsection (1) unless—

- (a) the informant or some other person has given to the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(3) A warrant shall—

- (a) state the purpose for which it is issued;
- (b) specify the nature of the offence in relation to which the entry, search and exercise of the powers under section 78 are authorised;
- (c) specify particular hours during which the entry is authorised or state that the entry is authorised at any time of the day or night;
- (d) include a description of the kinds of things in relation to which the powers under section 78 may be exercised; and
- (e) specify a day, not being later than 1 month after the date of issue of the warrant, on which the warrant is to cease to have effect.

Warrants by telephone or other electronic means

81. (1) An authorised officer may make an application to a magistrate for a warrant by telephone, telex, facsimile or other electronic means—

- (a) in an urgent case; or

(b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

(2) The magistrate may require communication by voice to the extent that is practicable in the circumstances.

(3) An application under this section shall include all information required to be provided in an application for a warrant under section 80, but the application may, if necessary, be made before the information is sworn.

(4) If an application is made to a magistrate under this section and the magistrate, after considering the information and having received and considered such further information (if any) as the magistrate required, is satisfied that—

- (a) a warrant in the terms of the application should be issued urgently;
or
- (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;

the magistrate may complete and sign the same form of warrant that would be issued under section 80.

(5) If the magistrate decides to issue the warrant, the magistrate shall inform the applicant, by telephone, telex, facsimile or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.

(6) The applicant shall then complete a form of warrant in terms substantially corresponding to those given by the magistrate, stating on the form the name of the magistrate and the day on which and the time at which the warrant was signed.

(7) The applicant shall, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier, give or transmit to the issuing officer the form of warrant completed by the applicant and, if the information referred to in subsection (3) was not sworn, that information duly sworn.

(8) The magistrate shall attach to the documents provided under subsection (7) the form of warrant completed by the magistrate.

(9) If—

- (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and

- (b) the form of warrant signed by the magistrate is not produced in evidence;

the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

Obstruction of authorised officers

82. (1) A person shall not, without reasonable excuse, hinder or obstruct an authorised officer in the performance of the officer's functions for the purposes of this Act.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

(2) A person shall not, without reasonable excuse, contravene a requirement made of him or her by an authorised officer in the exercise of the officer's powers under section 78.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

(3) The fact that providing information or answering questions pursuant to a requirement under section 78 may tend to incriminate an occupier of a place shall be taken to be a reasonable excuse on the part of that occupier for the purposes of subsection (2) of this section.

False information

83. A person shall not knowingly or recklessly provide information that is false in a material particular to an authorised officer pursuant to a requirement under section 78 or subsection 79 (1).

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

Division 3—Seizure

Seizure notices

84. (1) An authorised officer who seizes anything under this Part shall, as soon as practicable, give a seizure notice to—

- (a) the owner of the thing seized; or
- (b) if the owner is not present or readily available—the person who had possession, custody or control of the thing immediately before its seizure.

(2) A seizure notice shall specify—

- (a) the thing seized, including the relevant quantity (if applicable);
- (b) the date and place of seizure;
- (c) the location of the thing seized;
- (d) the reasons for the seizure;
- (e) the procedure provided for by this Act for obtaining relief against the seizure; and
- (f) the name, address and telephone number of an authorised officer who may be contacted in relation to the seizure.

Storage of things seized *in situ*

85. (1) Anything seized by an authorised officer under this Part may, at the option of the officer, be detained at the place where it was found and for that purpose it may—

- (a) be placed in a room, compartment, cabinet or an enclosed area;
- (b) be secured against interference; and
- (c) be identified in a manner that makes it clear that the thing has been seized for the purposes of this Act.

(2) Where, in accordance with subsection (1), a thing has been detained at a place, the authorised officer responsible shall, as soon as practicable, give the occupier of the place a notice in writing specifying—

- (a) the thing detained, including the relevant quantity (if applicable);
- (b) the manner and circumstances in which the thing has been detained;
- (c) the expected period of such detention;
- (d) the liability of the occupier in respect of an offence under subsection 86 (2); and

- (e) the name, address and telephone number of an authorised officer who may be contacted in relation to the detention.

Interference with seized things

86. (1) Where an authorised officer has seized a thing under this Part and detained it at a place pursuant to section 85, a person shall not, without the permission of the officer, remove, break, open or interfere with the thing.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

(2) Where an offence against subsection (1) has been committed, then whether or not any person has been charged with or convicted of that offence, the occupier of the place where the offence was committed is guilty of an offence.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

(3) It is a defence to a prosecution for breach of subsection (2) if the defendant establishes that he or she—

- (a) had taken all reasonable steps to prevent the breach of subsection (1); or
- (b) had reasonable grounds for believing that another person had taken, or would take, all reasonable steps to prevent that breach.

Access to seized records

87. Where a record or document is seized under this Part, the authorised officer shall permit the person otherwise entitled to possession of it, or his or her agent, to inspect, make copies of or take extracts from the record or document.

Return of seized things

88. (1) This section applies where, after a thing has been seized under this Part—

- (a) at the expiration of the period of 3 months after the seizure of the thing, no proceedings have been commenced in relation to any alleged offence against this Act in respect of the thing;
- (b) if such proceedings were commenced within that period—the charge has been withdrawn or the proceedings (including any appeal in relation to those proceedings) have otherwise been determined with no conviction being recorded; or
- (c) the Minister becomes satisfied at any time that no contravention of this Act has been committed in respect of the thing.

(2) Where this section applies, and the thing seized has not been destroyed or disposed of in a manner that would prevent its being dealt with under this subsection, the Minister shall cause the thing to be delivered to—

- (a) the person from whom it was seized; or
- (b) any other person the Minister believes to be entitled to it.

(3) Where any thing is delivered under subsection (2) after being forfeited to the Territory under section 90, the forfeiture is not to be taken to have affected any proprietary or any other interests in the thing existing before the forfeiture.

Court orders for relief against seizure

89. (1) A person claiming to be entitled to any thing seized under this Part may apply to a court of competent jurisdiction for an order disallowing the seizure within 10 days after the seizure.

(2) An application under subsection (1) shall be made in accordance with the relevant rules of court and shall not be heard unless the applicant has served a copy of the application on the authorised officer responsible for the relevant seizure.

(3) The authorised officer responsible for the relevant seizure is entitled to appear as respondent at the hearing of an application.

(4) If, on the hearing of an application, it appears to the court that the thing seized is required to be produced in evidence in any pending proceedings in connection with an offence against this Act, the court may, on the application of the respondent, or on its own motion, adjourn the hearing until the conclusion of those proceedings.

(5) On the hearing of an application, the court may make an order disallowing the seizure—

- (a) if—
 - (i) it is proved that the applicant would, but for the seizure, be entitled to the return of the thing seized; and
 - (ii) it is not proved beyond reasonable doubt that an offence was being or had been, at the time of the seizure, committed, being an offence with which the thing is connected; or
- (b) if there are exceptional circumstances justifying the making of an order disallowing the seizure.

(6) If the court makes an order disallowing a seizure, the court may make any or all of the following ancillary orders:

- (a) an order directing the respondent to cause the thing to be delivered to the applicant or to such other person as appears to the court to be entitled to it;
- (b) if the thing cannot for any reason be so delivered or the thing has in consequence of the seizure depreciated in value—an order directing the Territory to pay to the applicant just and reasonable compensation;
- (c) if the applicant has sustained financial loss by reason of the seizure—an order directing the Territory to pay the applicant just and reasonable compensation;
- (d) an order giving directions about the payment of all or any of the costs and expenses of the application.

Forfeiture

90. (1) This section applies where—

- (a) any thing seized under this Part has not been dealt with in accordance with subsection 88 (2); and
- (b) an application for disallowance of the seizure under subsection 89 (1)—
 - (i) has not been made within 10 days after seizure; or
 - (ii) has been made within that period, but the application has been refused or has been withdrawn before a decision in respect of the application had been made.

- (2) Where this section applies to a thing—
 - (a) the thing is forfeited to the Territory; and
 - (b) the thing may be destroyed, sold or otherwise disposed of in accordance with the Minister’s general or specific direction.

Cost of destruction or disposal of things forfeited

91. (1) This section applies where—

- (a) a person is convicted of an offence against this Act in respect of any thing forfeited to the Territory under this Part; and
- (b) that person was the owner of the thing immediately before it was forfeited.

(2) Where this section applies, any cost incurred by or on behalf of the Territory in connection with the lawful destruction or disposal of the thing is a debt due to the Territory by that person.

(3) Where a debt under subsection (2) is due by 2 or more persons, the liability of those persons is joint and several.

Destruction of contaminated items

92. An authorised officer may, notwithstanding any provision to the contrary in this Part, cause a thing that has been seized under this Part to be destroyed if the officer has reasonable grounds for believing that the thing is so contaminated, or the condition of the thing is such, that its continued use would give rise to a serious public health risk.

Division 4—Analysis

Analyst’s power of entry

93. (1) An Analyst may accompany an authorised officer who has entered a place under this Act in order to conduct such tests as are necessary to determine whether a contravention of this Act has occurred.

(2) A person shall not, without reasonable excuse, obstruct or hinder an Analyst in the exercise of his or her powers under subsection (1).

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

(3) An Analyst who enters a place under subsection (1) is not authorised to remain at the place if, on request by the occupier, the Analyst does not produce his or her identity card.

Notice of taking of sample

94. Where an authorised officer takes a sample under this Part with the intention that it be submitted for analysis, the officer shall, before or as soon as practicable after taking the sample, give notice of his or her intention to have the sample analysed to—

- (a) the owner of the matter comprised in the sample; or
- (b) if the owner is not present or readily available—
 - (i) if the sample is associated with the carrying on of a public health risk activity, or the performance of a public health risk procedure—the person carrying on the activity, or performing the procedure, or another person acting with the authority of either of those persons; or
 - (ii) the person from whom the sample was taken or the occupier of the place from which the sample was taken.

Analysis

95. Where a sample is submitted to an Analyst for analysis for the purposes of this Act, the Analyst shall—

- (a) analyse the sample, or supervise the analysis of the sample by another person acting under his or her direction; and
- (b) furnish the person who submitted the sample for analysis with a certificate under subsection 96 (1).

Certificate evidence of analysis

96. (1) An Analyst may make a certificate stating the following matters in relation to a sample taken or seized under this Part:

- (a) that the Analyst signing the certificate holds office under this Act;
- (b) when and from whom the sample was received;
- (c) which (if any) labels or other means of identifying the sample accompanied it when it was received;
- (d) the results of the analysis.

(2) In any proceedings for an offence against this Act, a certificate under subsection (1) purporting to be signed by an Analyst is evidence of the matters stated in the certificate and of the facts on which they are based.

(3) Subsection (2) only applies if a copy of the certificate was served on the defendant in the proceedings, or on the defendant's legal representative on the record of those proceedings, not later than 14 days, or such shorter period as the court orders, before the commencement of the proceedings.

(4) For the purposes of subsection (1), a certificate that purports to be signed by an Analyst shall, unless the contrary is proved, be taken to have been signed by the Analyst who purports to have signed it.

(5) Where the certificate of an Analyst is admitted in evidence in a proceeding, the defendant may require the Analyst to be called as a witness for the prosecution and the Analyst may be cross-examined as if he or she had given evidence of the matters stated in the certificate.

(6) Subsection (5) does not entitle a person to require the Analyst to be called as a witness for the prosecution unless—

- (a) the prosecutor has been given at least 4 days' notice of the person's intention to require the Analyst to be called; or
- (b) the court, by order, allows the Analyst to be so called.

Time limit for certain prosecutions

97. Where a sample has been taken under this Part for the purpose of analysis, no prosecution for an offence against this Act in relation to which the sample is evidence may be commenced after the expiration of the period of 6 months after the sample was taken.

Prohibited use of analysis

98. A person shall not use for trade or advertising purposes the results of an analysis made for the purposes of this Act.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

PART VI—NOTIFIABLE CONDITIONS AND PUBLIC HEALTH HAZARDS

Division 1—Preliminary

Principles—notifiable conditions

99. This Part shall be construed and administered in accordance with the following principles:

- (a) the investigation of notifiable conditions, and any actions taken as a consequence, shall be carried out in order to minimise the adverse public health effects of such conditions;
- (b) a person who engages in activities that are known to carry a potential risk of exposure to a transmissible notifiable condition, and any person responsible for the care, support or education of such a person, has the following responsibilities:
 - (i) to take all reasonable precautions to avoid the contracting of the condition by the person who engages in such activities;
 - (ii) if there are reasonable grounds for believing that the person who engages in such activities has been exposed to the condition—to ascertain whether the condition has been contracted, and what precautions should reasonably be taken to avoid exposing others to the condition;
 - (iii) if there are reasonable grounds for believing that the person who engages in such activities has contracted, or is likely to have contracted the condition—to comply with preventative measures or treatment that will minimise the risk to others of exposure to the condition;
 - (iv) if there are reasonable grounds for believing that the person who engages in such activities has contracted, or is likely to have contracted the condition—to take reasonable measures to ensure that others are not unknowingly placed at risk through any action or inaction of the person or any person responsible for the care, support or education of the person;

- (c) a person who has, or may have, a notifiable condition, or who engages in activities that are known to carry a potential risk of exposure to a notifiable condition, shall be accorded the following rights, to the extent that their exercise does not conflict with the requirements of this Part and does not infringe unduly on the well-being of others:
 - (i) the right to privacy;
 - (ii) the right to receive all reasonably available information about the medical and social consequences of the condition and any proposed treatment.

Notifiable conditions—Ministerial determination

100. (1) The Minister may, by instrument, determine—

- (a) a disease or medical condition to be a notifiable condition; and
- (b) a disease referred to in paragraph (a) to be a transmissible notifiable condition.

(2) A determination under subsection (1) may apply, adopt or incorporate any matter contained in an instrument or other writing as in force or existing from time to time.

(3) A determination under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Notifiable conditions—temporary status

101. (1) The Chief Health Officer may, if he or she considers it to be necessary or desirable in the interests of public health, by instrument declare—

- (a) a disease or medical condition to be a notifiable condition; and
- (b) a disease referred to in paragraph (a) of this subsection, or paragraph 100 (1) (a), to be a transmissible notifiable condition.

(2) A declaration under subsection (1)—

- (a) comes into force on the day on which it is made, or on a later date specified in the declaration; and
- (b) remains in force for a period specified in the notice of not longer than 6 months.

(3) A declaration under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Division 2—Notification of notifiable conditions

Medical practitioners

102. (1) If a medical practitioner has reasonable grounds for believing that his or her patient has or may have a notifiable condition, the practitioner shall—

- (a) give the patient information about—
 - (i) the transmission of the condition and how to prevent the transmission of the condition to others; and
 - (ii) any other matter determined in writing by the Chief Health Officer;
- (b) advise the patient of his or her rights under paragraph 99 (c);
- (c) make reasonable arrangements for the patient to receive counselling in accordance with any applicable Code of Practice, if the person agrees; and
- (d) request the patient to give the practitioner information for the purpose of complying with subsection (4).

(2) Subsection (1) does not apply if the medical practitioner establishes that he or she had reasonable grounds for believing that the patient had been given the information referred to in paragraph (1) (a) by another medical practitioner.

(3) Failure to comply with subsection (1) by a medical practitioner—

- (a) is to be taken to be unsatisfactory professional conduct for the purposes of Part IV of the *Medical Practitioners Act 1930*; and
- (b) is a ground for a patient of the practitioner's to make a complaint to the Commissioner for Health Complaints under subsection 22 (1) of the *Health Complaints Act 1993*.

(4) A medical practitioner shall, as soon as practicable, notify the Chief Health Officer of any of his or her patients who the practitioner has reasonable grounds for believing to have a notifiable condition.

Penalty: 5 penalty units.

(5) A medical practitioner shall, as soon as practicable, notify the Chief Health Officer of any deceased person who was a patient of the practitioner's immediately before death, or who was examined by the practitioner after death, if the practitioner has reasonable grounds for believing that the person had, or may have had, a notifiable condition at the time of death.

Penalty: 5 penalty units.

(6) A notification under subsection (4) or (5) shall be in accordance with the applicable Code of Practice.

(7) It is a defence to a prosecution for an offence against subsection (4) or (5) if the medical practitioner concerned establishes that he or she had reasonable grounds for believing that the Chief Health Officer had already been notified about the patient's notifiable condition.

Pathologists

103. (1) This section applies where—

- (a) a pathologist has tested a specimen taken from a person for any purpose;
- (b) either—
 - (i) the pathologist carried out the test in the Territory; or
 - (ii) the person from whom the specimen was taken is resident in the Territory; and
- (c) the result of the test indicates that the person has, or may have, a notifiable condition.

(2) Where this section applies, the following persons shall notify the Chief Health Officer that the person whose specimen was tested has or may have a notifiable condition:

- (a) the pathologist;
- (b) if the pathologist is employed in a laboratory at a hospital—the person in charge of the laboratory;
- (c) if the pathologist carried out the test in the course of his or her employment other than at a hospital—the pathologist's employer.

(3) A notification under this section shall be in accordance with the applicable Code of Practice.

(4) A person shall not, without reasonable excuse, fail to comply with subsection (2).

Penalty for contravention of subsection (4):

- (a) if the offender is a natural person—5 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—25 penalty units.

Hospitals

104. (1) The person in charge of a hospital shall notify the Chief Health Officer of any in-patient at the hospital who has or may have a notifiable condition.

Penalty: 25 penalty units.

(2) A notification under this section shall be in accordance with the applicable Code of Practice.

Notification by responsible persons

105. (1) A counsellor shall notify the Chief Health Officer of any person whom they have counselled who the counsellor has reasonable grounds for believing has, or may have, a notifiable condition.

Penalty: 25 penalty units.

(2) A person shall notify the Chief Health Officer of any person for whose care, support or education the person is responsible who the first-mentioned person has reasonable grounds for believing has, or may have, a notifiable condition.

Penalty: 25 penalty units.

(3) A notification under this section shall be in accordance with the applicable Code of Practice.

Notification by affected persons—notifiable conditions

106. (1) This section applies where an authorised officer has reasonable grounds for believing that a person has a notifiable condition.

(2) Where this section applies, an authorised officer may request the person concerned to provide any or all of the following information to the officer:

- (a) the person's name and address;
- (b) information about circumstances under which the person may have acquired, or been exposed to, the condition;

- (c) in the case of a transmissible notifiable condition—
 - (i) information about circumstances under which the person may have transmitted the condition; and
 - (ii) the name and address, or the name and whereabouts, of any person the authorised officer has reasonable grounds for believing to be a contact of the person's.

(3) Before requesting information from a person under subsection (2), an authorised officer shall inform the person of the reason for the request.

(4) Upon request by a person who is the subject of a request by an authorised officer under subsection (2), the authorised officer shall produce his or her identity card and, unless the authorised officer is the Chief Health Officer, his or her authorisation.

(5) A person shall comply with a request made by an authorised officer under subsection (2), unless—

- (a) the authorised officer fails to comply with this section; or
- (b) the person has any other reasonable excuse for failing to comply with the request.

Penalty: 5 penalty units.

(6) As soon as possible after making a request under subsection (2), an authorised officer shall make a written record of the grounds for his or her belief that the person concerned has a notifiable condition.

Unauthorised assertions

107. (1) A person shall not make an assertion to a contact of a third person that the third person has a transmissible notifiable condition without the consent of the third person, unless authorised to do so under this Act.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

(2) This section applies in relation to a person asserted to have a transmissible notifiable condition irrespective of the truth of the assertion.

(3) In this section—

“contact”, in relation to a person asserted to have a transmissible notifiable condition, means a person who would be a contact of the other person if the other person had that condition.

Authorised notification of contacts

108. (1) This section applies where—

- (a) a responsible person requests a person with a transmissible notifiable condition—
 - (i) to inform a contact of the contact's potential exposure to the notifiable condition; or
 - (ii) to give permission to the responsible person to do so; and
- (b) the person with the condition refuses that request.

(2) Where this section applies, the responsible person may inform the Chief Health Officer of the contact's potential exposure to that condition.

(3) Upon being informed under subsection (2), the Chief Health Officer may take reasonable steps to ensure that the contact is informed of his or her potential exposure to the transmissible notifiable condition, having regard to—

- (a) the degree of risk of the contact's having contracted, or contracting, the condition;
- (b) the possibility of causing undue anxiety to the person with the condition or to the contact; and
- (c) any other relevant circumstances.

(4) The steps that the Chief Health Officer may take under subsection (3) to ensure that a contact is informed of his or her potential exposure to a transmissible notifiable condition include giving written authority to inform the contact to—

- (a) a medical practitioner; or
- (b) a counsellor whom the Chief Health Officer has reasonable grounds for considering to be suitably qualified and experienced for the purpose.

(5) If a responsible person is authorised under this section to notify the Chief Health Officer or a contact about the contact's potential exposure to a transmissible notifiable condition, that authority operates notwithstanding any duty of confidentiality the responsible person may owe to the person with the condition.

(6) In this section—

“contact”, in relation to a person with a transmissible notifiable condition, means a person who a responsible person in relation to the person has reasonable grounds for believing to be a contact of the person’s.

Use of notified information

109. (1) Information acquired by the Territory as a result of notification under this Division may be used for the following purposes:

- (a) the prevention and control of notifiable conditions in the Territory and elsewhere;
- (b) the prevention and control of risks to public health generally in the Territory and elsewhere;
- (c) research related to public health in the Territory and elsewhere.

(2) Information shall only be used under subsection (1) in accordance with the principles set out in section 99 and the objectives set out in section 4.

Disclosure of information—persons with notifiable conditions

110. (1) A person shall not, without good reason, disclose information notified under this Division in such a manner that the person to whom the notification relates who has, or who may have, the relevant notifiable condition is reasonably able to be identified, unless—

- (a) the disclosure is for the purposes of this Act or another law of the Territory, the Commonwealth, a State or another Territory, or is authorised under a Code of Practice; or
- (b) the person to whom the notification relates consents in writing to such disclosure.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

(2) Upon a person’s written request, the Chief Health Officer shall disclose to the person any information notified under this Division that relates to that person alone.

Disclosure of information—medical practitioners, pathologists, hospitals

111. A person shall not, without good reason, disclose information notified under this Division in such a manner that a medical practitioner, pathologist, responsible person, pathology laboratory or hospital to whom or to which the notification relates is reasonably able to be identified, unless the medical practitioner, pathologist or responsible person, or the person in charge of the laboratory or hospital, as the case may be, consents in writing to the disclosure.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

Division 3—Public health hazards

Notification of public health hazards

112. (1) A person shall not, without reasonable excuse, fail to notify the Chief Health Officer of the presence or occurrence, at a place occupied by the person, in any food, water or air or elsewhere in the environment, of any substance or matter that the person has reasonable grounds for believing to constitute a significant public health hazard.

Penalty:

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

(2) In this section—

“substance or matter” includes—

- (a) a contaminant;
- (b) an organism that causes, or that may cause, a notifiable condition; and
- (c) any other human pathogenic organism.

Public health directions—issue

113. (1) Where the Chief Health Officer has reasonable grounds for believing that it is necessary to prevent or alleviate a significant public health hazard, he or she may issue any or all of the following directions to a person for that purpose:

- (a) a direction requiring a person to refrain from behaviour, or an activity, that significantly contributes, or that could so contribute, to the hazard;
- (b) a direction requiring a person to cease performing work of a particular kind, or to cease working at a particular place, while such work significantly contributes, or could so contribute, to the hazard;
- (c) a direction requiring a person who has a transmissible notifiable condition to undergo a medical examination;
- (d) a direction requiring a person who has a transmissible notifiable condition, or a contact of such a person, to undergo specified counselling;
- (e) a direction requiring a person who has a transmissible notifiable condition, or a contact of such a person, to be confined to a particular place for a specified period, being the least restrictive confinement appropriate to the person's medical condition;
- (f) a direction requiring a person not to enter, or not to remain in, a particular place for a specified period;
- (g) a direction requiring a person to cease using a particular piece of equipment;
- (h) a direction requiring a person to clean and decontaminate a particular place;
- (i) a direction requiring a person to undertake, or to refrain from undertaking, any other action, where the Chief Health Officer has reasonable grounds for believing the requirement to be necessary for the purposes of preventing or alleviating the hazard;
- (j) a direction requiring a person to take whatever action is necessary to ensure that another person or persons for whose care, support or education the person is responsible complies with a specified requirement or requirements referred to elsewhere in this subsection.

(2) In subsection (1), a reference to a person who has a transmissible notifiable condition, or to a contact of such a person, is to be taken to be a reference to a person who the Chief Health Officer has reasonable grounds for believing to have such a condition, or to be such a contact.

(3) A direction under subsection (1)—

- (a) shall be in writing signed by the Chief Health Officer;
- (b) may include conditions about the period within which, or the manner in which, the direction is to be complied with;
- (c) shall state the public health hazard to be prevented or alleviated, and any other reason for issuing the direction; and
- (d) shall include a statement to the effect that failure to comply with the direction might result in either or both of the following:
 - (i) action being taken by an authorised officer to implement the direction;
 - (ii) a court order being made to enforce the direction.

(4) In making a decision under subsection (1), the Chief Health Officer shall have regard to the following matters:

- (a) the number of persons potentially affected by the public health hazard;
- (b) the degree to which the public health hazard would affect individuals and the community;
- (c) the availability of other control measures.

(5) The Chief Health Officer shall undertake the minimum action necessary under subsection (1) to prevent or alleviate the relevant public health hazard.

Public health directions—notice to medical practitioner

114. Where a public health direction is issued by the Chief Health Officer in relation to a person for reasons including the Chief Health Officer's belief that the person has a disease or a notifiable condition, the Chief Health Officer shall give written notice of the direction to any medical practitioner professionally attending the person at the time of the direction.

Public health directions—extension of compliance period

115. (1) Before the end of a compliance period specified in a public health direction under paragraph 113 (3) (b), an authorised officer may extend the period.

(2) An extension—

- (a) may be given on the application of the person to whom the public health direction was issued, or on the motion of the authorised officer; and
- (b) shall be in writing given to the person to whom the direction was issued.

(3) If an authorised officer refuses an application for an extension, he or she shall give written notice to the applicant of the refusal stating the reasons for the refusal.

Public health direction—implementation

116. (1) An authorised officer may, subject to this section, do whatever he or she has reasonable grounds for believing to be necessary to implement a public health notice—

- (a) after the expiration of any compliance period specified under paragraph 113 (3) (b) (as extended, if at all, under section 115); or
- (b) if no such period is specified—after the expiration of a period the officer has reasonable grounds for considering to be sufficient for compliance with any positive direction in the notice, and in the interests of public health.

(2) An authorised officer shall only implement a public health direction under subsection (1) if he or she has reasonable grounds for believing that it is necessary to do so to avert an imminent and serious risk to public health.

(3) For the purpose of implementing a public health direction under subsection (1), an authorised officer may, using such reasonable force and assistance as is necessary—

- (a) enter a place to which the notice relates at any reasonable time; or
- (b) enter a place to which the notice relates at any time, if the officer has reasonable grounds for believing that the circumstances are of such seriousness or urgency as to require such immediate entry.

(4) An authorised officer who enters a place pursuant to subsection (3) is not entitled to remain there if, on request by the occupier, the authorised officer does not produce his or her identity card, and, unless the authorised officer is the Chief Health Officer, his or her authorisation, to the occupier.

(5) Any costs or expenses incurred by the Territory in implementing, or attempting to implement, a public health direction under this section are a debt due to the Territory by the person to whom the direction was issued.

Public health directions—revocation

117. (1) An authorised officer shall revoke a public health direction if satisfied, after carrying out an appropriate inspection—

- (a) that the direction has been complied with; and
- (b) that adequate measures have been taken to prevent or alleviate the relevant public health hazard.

(2) A revocation—

- (a) may be issued on the application of the person to whom the direction was issued, or on the motion of the authorised officer; and
- (b) shall be in writing given to the person to whom the direction was issued.

(3) An application for revocation shall—

- (a) be made in writing;
- (b) be addressed to the authorised officer who issued the direction;
- (c) specify the action taken to comply with the direction by the person to whom it was issued, and any further measures taken to prevent or alleviate the relevant public health hazard;
- (d) nominate a date on or after which an inspection may be made; and
- (e) be accompanied by the determined fee.

(4) If an authorised officer refuses an application for revocation, he or she shall give written notice to the applicant of the refusal stating the reasons for the refusal.

Public health orders

118. (1) The Chief Health Officer may apply to the Magistrates Court for an order that a person to whom a public health direction has been issued comply with the direction.

(2) For the purpose of considering an application under this section, the Court may adjourn the hearing (or further hearing) of the matter for the purpose of considering any relevant report from any person about the alleged public health hazard.

(3) On an application under subsection (1), after considering any report referred to in subsection (2), and any other relevant information in relation to the application submitted by the parties, the Court may make any of the following orders in relation to the person to whom the public health direction was issued:

- (a) that the person comply with the direction within a period (if any) specified in the order;
- (b) that in order to prevent or alleviate the relevant public health hazard, the person undertake any specified action, or cease or refrain from undertaking any specified action, within a period (if any) specified in the order;
- (c) an order imposing a penalty of an amount equal to no more than—
 - (i) in the case of a natural person—50 penalty units; or
 - (ii) in the case of a body corporate—250 penalty units;
- (d) an order giving directions about the payment of all or any of the costs and expenses of the application.

(4) A person shall comply with an order under paragraph (3) (a) or (b).

Penalty:

- (a) if the offender is a natural person—100 penalty units;
- (b) if the offender is a body corporate—500 penalty units.

(5) For the purpose of implementing an order under paragraph (3) (a) or (b), an authorised officer may, using such reasonable force and assistance as is necessary, enter a place to which the order relates and do whatever is necessary to implement the order—

- (a) after the expiration of any compliance period specified in the order; or
- (b) if no such period is specified—after the expiration of a period the officer has reasonable grounds for considering sufficient for compliance with any positive direction in the order, and in the interests of public health.

(6) Any costs or expenses incurred by the Territory in implementing, or attempting to implement, an order under subsection (5) are a debt due to the Territory by the person in relation to whom the order was issued.

(7) The Magistrates Court may revoke an order under paragraph (3) (a) or (b) on application by the person in relation to whom the order was made, or the Chief Health Officer, if satisfied—

- (a) that the order has been complied with; and
- (b) that there is no reasonable likelihood of the recurrence of the circumstances giving rise to the making of the order.

PART VII—PUBLIC HEALTH EMERGENCIES

Emergency declarations

119. (1) The Minister may, in writing, declare a public health emergency if satisfied that it is justified in the circumstances.

(2) An emergency declaration shall specify—

- (a) the nature of the emergency;
- (b) any area to which it relates; and
- (c) the period during which the declaration is to remain in force.

(3) An emergency declaration comes into force on the day on which it is made and remains in force for—

- (a) the period, not exceeding 5 days, specified in the declaration; or
- (b) any extended (or further extended) period under subsection (4).

(4) The Minister may, in writing, extend or further extend the period during which an emergency declaration is to remain in force by a period of up to 2 days.

(5) The Minister shall cause to be published in the *Gazette*, and in a daily newspaper, an emergency declaration, or any extension of the period of a declaration, as soon as practicable after the declaration or extension is made.

Emergency actions and directions

120. (1) While an emergency declaration is in force, the Chief Health Officer may take any action, or give any direction (orally or in writing), he or she considers to be necessary or desirable to alleviate the emergency specified in the declaration, including actions or directions in relation to any of the following:

- (a) the reduction, removal or destruction of any threat to public health;
- (b) the segregation or isolation of any persons in an area;

- (c) the evacuation of any persons from an area;
- (d) the prevention or permission of access to an area;
- (e) the control of the movement of any vehicle.

(2) For the purposes of subsection (1), the directions the Chief Health Officer may give to a person include any or all of the following:

- (a) that the person undergo a medical examination, either of a general nature or of a particular type, as specified in the direction, within a specified time;
- (b) that the person immediately or within a specified time move away from or to a specified area, or remain in a specified area for a specified time, while the emergency remains in force;
- (c) that the person immediately or within a specified time surrender any substance or thing in the person's possession or control to an authorised person within the meaning of section 121;
- (d) that the person immediately or within a specified time destroy, or modify in a specified manner, a thing or substance in the person's possession or control;
- (e) that the person take any other specified action, or cease undertaking any specified action, if the Chief Health Officer considers such action or cessation to be necessary or desirable.

(3) A person shall not, without reasonable excuse, fail to comply with a direction under this section.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

(4) The Chief Health Officer shall make a signed written record of all action taken, and of each direction issued, for the purposes of subsection (1).

(5) In the prosecution of a person under subsection (3) for the failure of the person to comply with a direction, a record of the direction made by the Chief Health Officer under subsection (4) is evidence that the direction was given, of the matters referred to in the record and of the facts on which those matters were based.

Emergency powers

121. (1) While an emergency declaration is in force, an authorised person may, for the purposes of section 120, using such reasonable force and assistance as is necessary—

- (a) enter, using such reasonable force and assistance as is necessary, any place to—
 - (i) save any person’s life;
 - (ii) prevent injury to any person; or
 - (iii) rescue any endangered person;
- (b) prevent access to any place;
- (c) close to pedestrian or vehicular traffic any roadway, path or any other thoroughfare; or
- (d) remove from a place any person obstructing the authorised person in the exercise of a power under this section.

(2) The Chief Health Officer may, by writing, authorise a person, or a person of a specified class, for the purposes of this section.

(3) An authorised person who enters a place pursuant to subsection (1) is not entitled to remain in that place if, on request by the occupier, the person does not produce—

- (a) in the case of the Chief Health Officer—his or her identity card;
- (b) in the case of a Public Health Officer—his or her identity card and authorisation under subsection 14 (2);
- (c) in the case of an ambulance officer— proof of identification of a kind approved for general purposes by the Chief Executive of the administrative unit in which the officer is employed;
- (d) in the case of a police officer—proof of identification of a kind approved for general purposes by the Commissioner of Police; or
- (e) in the case of a person authorised under subsection (2) of this section—the authorisation, or, in the case of a class authorisation, a copy of the authorisation.

(4) In this section—

“authorised person” means—

- (a) the Chief Health Officer;
- (b) a Public Health Officer authorised for the purpose under subsection 14 (2);

- (c) an ambulance officer employed in the Government Service;
- (d) a police officer; or
- (e) a person authorised under subsection (2) of this section.

Compensation

122. (1) An eligible person may apply to the Minister for compensation in relation to any loss or damage suffered by a person as a result of anything done in the performance of a function under this Division, being a function performed while an emergency declaration was in force.

(2) Compensation is payable by the Territory to an eligible person in an amount the Minister considers appropriate, having regard to the loss or damage suffered by the person.

(3) Compensation is not payable to an eligible person—

- (a) in relation to any loss or damage suffered because of the action or inaction of the person who suffered the loss or damage; or
- (b) in relation to any loss or damage that caused or contributed to the public health emergency.

(4) In this section—

“eligible person”, in relation to loss or damage referred to in subsection (1), means—

- (a) the person who suffered the loss or damage; or
- (b) if the damage suffered by a person referred to in paragraph (a) results in his or her death—any member of the deceased’s family, within the meaning of the *Compensation (Fatal Injuries) Act 1968*, who has sustained loss or damage by reason of the death.

Reports on emergencies

123. (1) As soon as practicable after an emergency declaration ceases to be in force, the Chief Health Officer shall prepare a written report about the emergency in respect of the following matters:

- (a) particulars of the events giving rise to the emergency;
- (b) particulars of action taken to deal with the emergency;
- (c) directions given in the course of the emergency under subsection 120 (1);

(d) any other matter considered appropriate by the Chief Health Officer.

(3) A report shall be submitted to the Minister within 3 months after it is prepared.

(4) The Minister shall cause a report to be laid before the Legislative Assembly within 15 sitting days after receiving it.

PART VIII—PUBLIC HEALTH INVESTIGATIONS

Investigations

124. (1) Subject to subsection (4), the Chief Health Officer may hold an investigation in respect of—

- (a) any matter concerning public health; or
- (b) the administration of this Act.

(2) The Chief Health Officer shall hold an investigation under subsection (1) if directed to do so by the Minister.

(3) The Minister shall cause a copy of a direction under subsection (2) to be tabled in the Legislative Assembly within 15 sitting days after it is made.

(4) The Chief Health Officer shall not hold an investigation under subsection (1) in relation to a matter which is capable of forming the subject of a preliminary assessment, an Assessment or an Inquiry under Part IV of the *Land (Planning and Environment) Act 1991*.

Procedure

125. (1) An investigation shall be conducted with as little formality and technicality as a proper consideration of the matter permits.

(2) An investigation need not involve a hearing (whether public or private).

(3) An investigation shall be conducted in accordance with any applicable Code of Practice.

(4) For the purposes of an investigation, the Chief Health Officer—

- (a) is not bound by the rules of evidence; and
- (b) shall observe the rules of natural justice.

(5) A person appearing for the purposes of an investigation may be represented by any other person, subject to any applicable Code of Practice.

Powers

126. For the purposes of an investigation, the Chief Health Officer may, subject to any applicable Code of Practice—

- (a) require a person to appear and give evidence;
- (b) require a person to answer any relevant question;
- (c) take evidence on oath or by affirmation;
- (d) require a person to take an oath or to make an affirmation;
- (e) take statements and receive affidavits;
- (f) require the production of any relevant document; or
- (g) exercise any other power the Chief Health Officer considers to be necessary for the purpose.

Reports

127. (1) The Chief Health Officer shall give the Minister a written report of the findings of an investigation as soon as practicable after its conclusion.

(2) The Minister shall cause a copy of the report to be laid before the Legislative Assembly within 15 sitting days after its receipt.

Protection and immunity

128. (1) In performing any function under this Division, the Chief Health Officer has the same protection and immunity as a judge of the Supreme Court.

(2) A person giving evidence for the purposes of an investigation has the same protection as a witness in a proceeding in the Supreme Court.

(3) Evidence given for the purposes of an investigation (whether orally or in writing), or any record of proceedings of an investigation, is not admissible in civil or criminal proceedings in any court, except proceedings for an offence against section 129.

Investigation offences

129. (1) For the purposes of an investigation, a person shall not, without reasonable excuse, fail to—

- (a) appear or give evidence if required;
- (b) answer a question if required;
- (c) produce a document if required; or

(d) take an oath or make an affirmation if required.

Penalty:

(a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;

(b) if the offender is a body corporate—250 penalty units.

(2) A person appearing at an investigation shall not knowingly or recklessly give evidence that is false or misleading in a material particular.

Penalty:

(a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;

(b) if the offender is a body corporate—250 penalty units.

(3) A person shall not hinder, obstruct or delay the conduct of an investigation.

Penalty:

(a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;

(b) if the offender is a body corporate—250 penalty units.

PART IX—REVIEW AND APPEALS

Review of decisions

130. Application may be made to the Administrative Appeals Tribunal for a review of any of the following decisions of the Minister:

(a) refusal to grant an activity licence under subsection 30 (1);

(b) refusal to vary an activity licence under subsection 34 (1);

(c) refusal to approve the transfer of an activity licence under subsection 37 (1);

(d) refusal to grant a procedure licence under subsection 45 (1);

(e) refusal to vary a procedure licence under subsection 49 (1);

Notification of decisions

131. (1) Where a person makes a decision referred to in section 130, the person shall cause notice in writing of the decision to be given—

(a) in the case of a decision referred to in paragraph 130 (a)—to the applicant for the activity licence;

- (b) in the case of a decision referred to in paragraph 130 (b)—to the holder of the activity licence;
- (c) in the case of a decision referred to in paragraph 130 (c)—to the holder of the activity licence and the proposed transferee;
- (d) in the case of a decision referred to in paragraph 130 (d)—to the applicant for the procedure licence;
- (e) in the case of a decision referred to in paragraph 130 (e)—to the holder of the procedure licence.

(2) A notice under subsection (1) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

Appeals

132. An appeal as of right lies to the Supreme Court in relation to any of the following orders of the Magistrates Court:

- (a) a prohibition order under subsection 66 (3);
- (b) an order under subsection 66 (7) dismissing an application for the revocation of a prohibition order;
- (c) an abatement order under subsection 73 (3);
- (d) an order under subsection 73 (7) dismissing an application for the revocation of an abatement order;
- (e) a public health order under subsection 118 (3);
- (f) an order under subsection 118 (7) dismissing an application for the revocation of a public health order.

PART X—MISCELLANEOUS

Codes of Practice

133. (1) The Minister may, by instrument, determine Codes of Practice setting out minimum standards or guidelines for the purposes of this Act.

(2) A determination under subsection (1) may apply, adopt or incorporate any matter contained in an instrument or other writing as in force or existing from time to time.

(3) A Code of Practice determined under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Environmental Assessments and Inquiries

134. For the purposes of section 231 of the *Land (Planning and Environment) Act 1991*, the Minister may—

- (a) direct that an Assessment be made under Division 3 of Part IV of that Act; or
- (b) establish a panel to conduct an Inquiry under Division 4 of Part IV of that Act;

about any aspect of a proposed development under Part VI of that Act that the Minister considers would be likely to have a significant effect on public health.

Evidence—records, costs and expenses

135. (1) Where—

- (a) an authorised officer, in the performance of his or her functions for the purposes of this Act, makes or causes to be made a copy of a document or part of a document; and
- (b) certifies that the copy is a true copy of that document or part;

then, in any proceedings under this Act, the copy is admissible in evidence for all purposes for which the document or part could have been so admitted unless the court is satisfied that the certificate of the authorised officer is not accurate.

(2) In any proceedings for the recovery by the Territory of a debt under this Act, a certificate signed by the Minister stating the amount of any costs or expenses and the manner in which they were incurred is evidence of the matters stated and of the facts on which they are based.

Conduct of directors, servants and agents

136. (1) Where, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and
- (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

(2) A reference in subsection (1) to the state of mind of a body or person shall be read as including a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and

- (b) the body's or person's reasons for the intention, opinion, belief or purpose.

(3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of this Act, to have been engaged in also by the body or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

(4) Where—

- (a) a natural person is convicted of an offence against this Act; and
- (b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(5) A reference in this section to engaging in conduct shall be read as including a reference to failing or refusing to engage in conduct.

Determination of fees

137. The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act.

Regulations

138. (1) The Executive may make regulations for the purposes of this Act.

(2) The regulations may prescribe a penalty for an offence against the regulations not exceeding—

- (a) in the case of a natural person—10 penalty units; or
- (b) in the case of a body corporate—50 penalty units.

NOTE

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 15 May 1997]