

Public Health Bill 2014

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Defined terms

Western Australia

LEGISLATIVE ASSEMBLY

Public Health Bill 2014

A Bill for

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

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Public Health Act 2014*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 (other than sections 3 to 5) — on the day on which this Act receives the Royal Assent;
- (b) the following provisions — on the day after that day —
 - (i) sections 3 to 5;
 - (ii) Part 16;
 - (iii) Part 18 (other than Divisions 1, 3 and 4);
 - (iv) Part 19, but only section 299 and 311;
- (c) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Objects and principles

(1) The objects of this Act are —

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

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

21

Table

1. Sustainability principle

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

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

2. Precautionary principle

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

3. Principle of proportionality

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

4. Principle of intergenerational equity

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

5. Principle relating to local government

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

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

4 **4. Terms used**

- 5 (1) In this Act, unless the contrary intention appears —
6 *activity licence* has the meaning given in section 55;
7 *appropriate enforcement agency*, in relation to the provision in
8 which the term is used, means the enforcement agency
9 prescribed by the regulations for the purposes of that provision;
10 *approved form* means a form approved by the Chief Health
11 Officer;
12 *authorised officer* has the meaning given in subsection (2);
13 *CEO* has the meaning given in the *Health Legislation*
14 *Administration Act 1984* section 3;
15 *certificate of registration* has the meaning given in section 55;
16 *Chief Health Officer* means the person designated as the Chief
17 Health Officer under section 11;
18 *child care service* means —
19 (a) an education and care service as defined in the
20 *Education and Care Services National Law (Western*
21 *Australia)* section 5(1); or
22 (b) a child care service as defined in the *Child Care*
23 *Services Act 2007* section 4;
24 *Commissioner of Police* means the person holding or acting in
25 the office of Commissioner of Police under the *Police Act 1892*;
26 *Department* means the department of the Public Service
27 principally assisting in the administration of this Act;

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departmental officer —

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

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

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

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

emergency officer means an authorised officer or other person who is authorised by the Chief Health Officer under section 165(2);

emergency power means a power provided for in Part 11 Division 5;

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

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- 1 **enforcement agency** means —
- 2 (a) the Chief Health Officer; or
- 3 (b) a local government; or
- 4 (c) a person or body, or a person or body within a class of
- 5 persons or bodies, prescribed by the regulations for the
- 6 purposes of this definition;
- 7 **enforcement order** means an enforcement order issued under
- 8 Part 13 Division 3;
- 9 **environmental health officer** means an environmental health
- 10 officer appointed under section 17;
- 11 **general public health duty** means the requirement imposed by
- 12 section 34(1);
- 13 **harm** includes physical or psychological harm to individuals,
- 14 whether of long-term or immediate impact or effect;
- 15 **improvement notice** means an improvement notice issued under
- 16 Part 13 Division 2;
- 17 **judicial officer** means a JP or a magistrate;
- 18 **material public health risk** —
- 19 (a) means a public health risk involving potential harm to
- 20 public health that is neither trivial nor negligible; and
- 21 (b) includes a public health risk declared by the regulations
- 22 to be a material public health risk; but
- 23 (c) does not include a public health risk declared by the
- 24 regulations not to be a material public health risk;
- 25 **medical examination** includes —
- 26 (a) the taking of a sample of blood, urine, tissue or hair, or
- 27 another biological specimen; and
- 28 (b) the performance of any diagnostic examination or
- 29 diagnostic procedure;
- 30 **medical practitioner** means a person registered under the
- 31 *Health Practitioner Regulation National Law (Western*
- 32 *Australia)* in the medical profession;

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- 1 **midwife** means a person registered under the *Health*
2 *Practitioner Regulation National Law (Western Australia)*
3 whose name is entered on the Register of Midwives kept under
4 that Law;
- 5 **needle and syringe programme** means a programme to do one
6 or more of the following principally for the purpose of
7 preventing the spread of infectious diseases that are carried in
8 the blood —
- 9 (a) to supply people with any of the following —
- 10 (i) sterile hypodermic syringes;
- 11 (ii) sterile hypodermic needles;
- 12 (iii) things that may be used in connection with the
13 administration, by injection, of prohibited drugs
14 (as defined in the *Misuse of Drugs Act 1981*
15 section 3(1)), for example, swabs and spoons;
- 16 (b) to facilitate the safe disposal, after use, of any of the
17 things mentioned in paragraph (a);
- 18 (c) to advise, counsel or disseminate information to people;
- 19 **notifiable infectious disease** means an infectious disease
20 declared under section 81 to be a notifiable infectious disease;
- 21 **notifiable infectious disease-related condition** means a medical
22 condition declared under section 82 to be a notifiable infectious
23 disease-related condition;
- 24 **nurse** means a person registered under the *Health Practitioner*
25 *Regulation National Law (Western Australia)* in the nursing and
26 midwifery profession whose name is entered on the Register of
27 Nurses kept under that Law;
- 28 **nurse practitioner** means a person registered under the *Health*
29 *Practitioner Regulation National Law (Western Australia)*
30 whose name is entered on the Register of Nurses kept under that
31 Law as being qualified to practise as a nurse practitioner;
- 32 **officer**, in relation to a body corporate, has the meaning given in
33 section 271(1);

- 1 **personal details**, in relation to a person, means —
2 (a) the person’s full name; and
3 (b) the person’s date of birth; and
4 (c) the address where the person is residing; and
5 (d) the address where the person usually resides, if that is
6 different from the address referred to in paragraph (c);

- 7 **premises** includes —
8 (a) land (whether vacant or not); and
9 (b) land covered by water, whether permanently or
10 temporarily or from time to time; and
11 (c) the whole or any part of a building or other structure, of
12 whatever type and whether of a permanent or temporary
13 nature; and
14 (d) a vehicle;

15 **prescribed condition of health** has the meaning given in
16 section 139;

- 17 **public authority** means —
18 (a) an agency as defined in the *Public Sector Management*
19 *Act 1994* section 3(1); or
20 (b) a body, corporate or unincorporate, that is established or
21 continued for a public purpose by the State, regardless
22 of the way it is established; or
23 (c) a local government; or
24 (d) a regional local government, but only in Part 11 and
25 section 288; or
26 (e) the Police Force of Western Australia; or
27 (f) a person or body, or a person or body within a class of
28 persons or bodies, prescribed by the regulations for the
29 purposes of this paragraph;

- 30 **public health** means the health of individuals in the context
31 of —
32 (a) the wider health of the community; and

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1 (b) the combination of safeguards, policies and programmes
2 designed to protect, maintain, promote and improve the
3 health of individuals and their communities and to
4 prevent and reduce the incidence of illness and
5 disability;

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

10 **public health emergency management plan** means a public
11 health emergency management plan prepared under section 156;

12 **public health official** means —

- 13 (a) a departmental officer; or
14 (b) a person employed or engaged under the *Hospitals and*
15 *Health Services Act 1927* section 7E(1) by an agency (as
16 defined in section 2(1) of that Act); or
17 (c) a person employed or engaged under the *Hospitals and*
18 *Health Services Act 1927* section 19(1) or (2) by a board
19 (as defined in section 2(1) of that Act);

20 **public health order** means a public health order made under
21 section 107;

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

23 **public health risk activity** means —

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

28 **public health state of emergency** means a public health state of
29 emergency declared under section 158;

30 **public health state of emergency declaration** means a
31 declaration of a public health state of emergency under
32 section 158;

- 1 **remote communication** means any way of communicating at a
2 distance, including by telephone, fax, email and radio;
- 3 **sample**, except in section 229(1)(f), means a sample taken, in
4 accordance with accepted medical practice, from any part of the
5 body of a person, including a sample of blood, urine, tissue or
6 hair, or another biological specimen;
- 7 **school** means —
- 8 (a) a government school, or a non-government school, as
9 defined in the *School Education Act 1999* section 4; or
- 10 (b) a community kindergarten registered under the *School*
11 *Education Act 1999* Part 5; or
- 12 (c) the place where a child care service is provided;
- 13 **senior next of kin**, in relation to a deceased person, has the
14 meaning given in the *Coroners Act 1996* section 37(5);
- 15 **senior police officer** means a police officer who is, or is acting
16 as, a Superintendent or an officer of a rank more senior than a
17 Superintendent;
- 18 **serious public health incident power** means a power provided
19 for in section 148(1);
- 20 **serious public health risk** —
- 21 (a) means a public health risk involving potential harm to
22 public health that is irreversible, of a high impact or on a
23 wide scale; and
- 24 (b) includes a public health risk declared by the regulations
25 to be a serious public health risk; but
- 26 (c) does not include a public health risk declared by the
27 regulations not to be a serious public health risk;
- 28 **test order** means an order made under section 91;
- 29 **urgently notifiable infectious disease** means a notifiable
30 infectious disease declared under section 81 to be an urgently
31 notifiable infectious disease;

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1 **vaccine preventable notifiable infectious disease** means a
2 notifiable infectious disease declared under section 81 to be a
3 vaccine preventable notifiable infectious disease;

4 **vehicle** —

5 (a) means any means of transport, whether self-propelled or
6 not, and whether used on land or sea or in the air; and

7 (b) without limiting paragraph (a), includes —

8 (i) a caravan, trailer or other land vehicle; and

9 (ii) a vessel;

10 **vessel** —

11 (a) means any thing used, or capable of being used, in
12 navigation by water, of whatever size and whether or not
13 it has any means of propulsion; and

14 (b) without limiting paragraph (a), includes the following —

15 (i) a houseboat, pontoon or raft;

16 (ii) a hovercraft, seaplane or other similar craft;

17 (iii) a submarine or other submersible;

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

20 (2) A reference in a provision of this Act to an **authorised**
21 **officer** —

22 (a) is a reference to a person who is an authorised officer by
23 virtue of a designation under section 24, but (except in a
24 provision listed in the Table) only if that designation has
25 effect for the purposes of the provision in which that
26 reference occurs; and

27 (b) includes an authorised officer exercising powers as an
28 emergency officer.

29

Table

Part 2 Division 4	sections 127, 128, 129, 130 and 132
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Parts 10 and 11	section 215(1)(b)
sections 234, 236, 238, 240, 241, 242, 243, 244, 246, 247 and 248	sections 269, 274 and 286

- 1 **5. Crown bound**
- 2 (1) This Act binds the State and, so far as the legislative power of
- 3 the State permits, the Crown in all its other capacities.
- 4 (2) Nothing in this Act makes the Crown in any capacity liable to
- 5 be prosecuted for an offence.
- 6 (3) Subsection (1) is subject to Part 16.

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Part 2 — Administration

Division 1 — Chief Health Officer

Subdivision 1 — Functions of Chief Health Officer

6. Functions of Chief Health Officer

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

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

7. Chief Health Officer may give directions to local governments

- (1) This section applies if the Chief Health Officer —
 - (a) considers that there is, or is likely to be, a material public health risk in a local government district; and
 - (b) is unable to reach agreement with the local government as to the measures to be taken by the local government to prevent, control or abate that risk.

- 1 (2) If this section applies, the Chief Health Officer may, in writing,
2 direct the local government to take the measures that the Chief
3 Health Officer considers necessary to prevent, control or abate
4 that risk.
- 5 (3) A local government has power to do anything necessary to
6 comply with a direction under subsection (2).
- 7 (4) If a local government that is given a direction under
8 subsection (2) fails to comply with it, the Chief Health Officer
9 may do anything that the Chief Health Officer considers
10 necessary to achieve the purpose for which the direction was
11 given.
- 12 (5) The amount of any costs incurred by the Chief Health Officer in
13 doing anything under subsection (4) —
- 14 (a) is to be taken to be a debt due to the State by the local
15 government that has failed to comply with the direction;
16 and
- 17 (b) is recoverable in a court of competent jurisdiction.
- 18 (6) In any proceedings for the recovery of the debt, a certificate
19 signed by the Chief Health Officer stating the amount of any
20 costs and the manner in which they were incurred is evidence of
21 the matters certified.
- 22 **8. Chief Health Officer may act without seeking local**
23 **government agreement in urgent circumstances**
- 24 (1) If the Chief Health Officer considers that the circumstances of
25 the material public health risk referred to in section 7(1) are
26 sufficiently urgent, the Chief Health Officer may do anything
27 that the Chief Health Officer considers necessary to prevent,
28 control or abate that risk without having first sought to reach
29 agreement with the local government as to the measures referred
30 to in section 7(1)(b).

- 1 (2) Any costs incurred by the Chief Health Officer in doing
2 anything under subsection (1) are not recoverable from the local
3 government.

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

- 5 (1) The Chief Health Officer may delegate any function of the
6 Chief Health Officer under another provision of this Act to a
7 public health official.
- 8 (2) A delegation must be in writing signed by the Chief Health
9 Officer.
- 10 (3) A delegation may expressly authorise the delegate to further
11 delegate the function to another public health official.
- 12 (4) A person performing a function that has been delegated to the
13 person under, or as authorised under, this section is to be taken
14 to do so in accordance with the terms of the delegation unless
15 the contrary is shown.
- 16 (5) Nothing in this section limits the ability of the Chief Health
17 Officer to act through an officer or agent.

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

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

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

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

- 25 (1) The Minister must designate a person as the Chief Health
26 Officer.
- 27 (2) A person cannot be designated as Chief Health Officer
28 unless —
- 29 (a) the person is a departmental officer; and

- 1 (b) the person is a medical practitioner; and
2 (c) the Minister is satisfied that the person has appropriate
3 qualifications and experience in public health.

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

- 5 (1) A designation under section 11 —
6 (a) must be made by notice published in the *Gazette*; and
7 (b) must specify the term of the designation, which cannot
8 exceed 5 years.
- 9 (2) Subsection (1)(b) does not prevent a person from serving as
10 Chief Health Officer more than once.
- 11 (3) The Chief Health Officer is entitled to the remuneration
12 determined by the Salaries and Allowances Tribunal under the
13 *Salaries and Allowances Act 1975*.
- 14 (4) For the purposes of the *Salaries and Allowances Act 1975* and
15 any other written law, the office of Chief Health Officer is to be
16 taken to be prescribed under section 6(1)(e) of that Act for the
17 purposes of section 6 of that Act.

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

- 19 (1) The Chief Health Officer may resign from that office by writing
20 signed and given to the Minister.
- 21 (2) The resignation takes effect on the later of —
22 (a) receipt by the Minister; or
23 (b) the day specified in the resignation.
- 24 (3) A person vacates office as the Chief Health Officer if the person
25 ceases to be —
26 (a) a departmental officer; or
27 (b) a medical practitioner.

- 1 (4) The Minister may remove a person from the office of Chief
2 Health Officer on any of these grounds —
- 3 (a) mental or physical incapacity;
- 4 (b) incompetence;
- 5 (c) neglect of duty;
- 6 (d) misconduct.
- 7 (5) The removal of a person from office under subsection (4) does
8 not by itself affect the person's employment as a public service
9 officer.
- 10 (6) Subsection (4) does not limit the application of the *Public*
11 *Sector Management Act 1994* Part 5 to and in relation to any
12 person who holds or has held the office of Chief Health Officer.
- 13 **14. Acting Chief Health Officer**
- 14 (1) The CEO may designate a person to act in the office of the
15 Chief Health Officer —
- 16 (a) during a vacancy in the office, whether or not a
17 designation has previously been made under
18 section 11(1); or
- 19 (b) during a period, or during all periods, when the person
20 holding the office or a person acting in the office under
21 a designation under this section is on leave or is for any
22 other reason unable to perform the functions of the
23 office.
- 24 (2) A person cannot be designated under subsection (1) unless —
- 25 (a) the person is —
- 26 (i) a departmental officer; and
- 27 (ii) a medical practitioner;
- 28 and
- 29 (b) the CEO is satisfied that the person has appropriate
30 qualifications and experience in public health.

- 1 (3) A designation under subsection (1) —
2 (a) must be in writing; and
3 (b) may be expressed to have effect only in the
4 circumstances specified in it.
- 5 (4) A person cannot act under a designation under subsection (1)
6 for longer than 12 months at a time.
- 7 (5) The CEO may revoke a designation under subsection (1) at any
8 time.

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

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

21 **Division 2 — Functions of local governments**

22 **16. Functions of local governments**

- 23 A local government has the following functions in relation to
24 the administration of this Act —
25 (a) to initiate, support and manage public health planning
26 for its local government district;
27 (b) to develop and implement policies and programmes to
28 achieve the objects of this Act within its local
29 government district;

- 1 (c) to perform the functions that are conferred on local
2 governments by or under this Act;
- 3 (d) to administer and enforce this Act within its local
4 government district in accordance with the objects and
5 principles of this Act.

6 **17. Appointment of environmental health officers**

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

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

- 25 (1) The Chief Health Officer must, by notice published in the
26 *Gazette*, approve the qualifications and experience that persons
27 to be appointed as environmental health officers must have.
- 28 (2) An approval is not subsidiary legislation for the purposes of the
29 *Interpretation Act 1984*.

- 1 (3) The *Interpretation Act 1984* sections 43 (other than
2 subsection (6)) and 44 and Part VIII apply to an approval as if it
3 were subsidiary legislation.

4 **Division 3 — Functions of enforcement agencies**

5 **19. Functions of enforcement agencies**

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

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

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

18 **21. Enforcement agency may delegate**

- 19 (1) A power or duty conferred or imposed on an enforcement
20 agency may be delegated —
- 21 (a) if the enforcement agency is the Chief Health Officer, in
22 accordance with section 9; or
- 23 (b) if the enforcement agency is a local government, to —
- 24 (i) the chief executive officer of the local
25 government; or
- 26 (ii) an authorised officer designated by the local
27 government;
- 28 or
- 29 (c) if the enforcement agency is a person or body, or a
30 person or body within a class of persons or bodies,

1 prescribed by the regulations, to an authorised officer
2 designated by the agency.

3 (2) A delegation under subsection (1)(b) or (c) must be in writing.

4 (3) Without limiting the *Interpretation Act 1984* section 59, the
5 exercise or performance by a delegate of an enforcement agency
6 of a power or duty delegated under subsection (1)(b) or (c) is
7 subject to any condition or restriction imposed under section 20
8 on the exercise or performance by the enforcement agency of
9 the power or duty.

10 (4) Subsection (5) applies if —

11 (a) the regulations expressly authorise a delegated power or
12 duty of an enforcement agency referred to in
13 subsection (1)(b) or (c) to be further delegated; and

14 (b) the delegated power or duty is further delegated to a
15 person or body in accordance with those regulations.

16 (5) If this subsection applies, subsection (3) applies to the exercise
17 or performance by the person or body of that power or duty as if
18 it were exercised or performed, and delegated, as described in
19 subsection (3).

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

21 (1) An enforcement agency (other than the Chief Health Officer)
22 must report to the Chief Health Officer, at the intervals that the
23 Chief Health Officer requires, on the performance of functions
24 under this Act by the agency and by persons employed or
25 engaged by the agency.

26 (2) In addition to any report required under subsection (1), an
27 enforcement agency must forward to the Chief Health Officer
28 details of any proceedings for an offence under this Act taken
29 by the agency, and those details must be forwarded —

30 (a) within one month after the proceedings have been
31 instituted; and

- 1 (b) within one month after the proceedings have been
2 finally dealt with.
- 3 (3) The accountable authority of the Department must include in the
4 annual report submitted under the *Financial Management*
5 *Act 2006* Part 5 —
- 6 (a) a report on the performance by enforcement agencies
7 (including the Chief Health Officer) of functions under
8 this Act; and
- 9 (b) the current State public health plan prepared under
10 section 43.

11 **Division 4 — Authorised officers**

12 **23. Terms used**

13 In this Division —

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

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

17 *specified* means specified in a designation.

18 **24. Designation of authorised officers**

- 19 (1) An enforcement agency may designate a person or class of
20 persons as authorised officers —
- 21 (a) for the purposes of this Act or another specified Act; or
- 22 (b) for the purposes of the specified provisions of this Act
23 or another specified Act; or
- 24 (c) for the purposes of the provisions of this Act or another
25 specified Act other than the specified provisions of that
26 Act.
- 27 (2) The Chief Health Officer may designate a person or class of
28 persons under subsection (1) only if the person or, as the case
29 requires, the persons in that class are public health officials.

- 1 (3) An enforcement agency that is a local government may
2 designate under subsection (1) —
- 3 (a) an environmental health officer or environmental health
4 officers as a class; or
- 5 (b) a person who is not an environmental health officer or a
6 class of persons who are not environmental health
7 officers; or
- 8 (c) a mixture of the two.
- 9 (4) Enforcement agencies that are local governments may act
10 jointly in the designation of persons or classes of persons as
11 authorised officers.

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

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

27 **26. Further provisions relating to designations**

- 28 (1) The power to make a designation includes —
- 29 (a) the power to revoke a designation previously made; and
- 30 (b) in relation to a person (*person A*) who is designated, the
31 power to designate a person or class of persons to

- 1 perform functions of person A when it is impractical for
2 person A to perform the functions; and
- 3 (c) in relation to a class of persons (*class A*) who are
4 designated, the power to designate a person or class of
5 persons to perform functions of persons in class A when
6 it is impractical for persons in class A to perform the
7 functions.
- 8 (2) These must be in writing —
9 (a) a designation;
10 (b) a revocation of a designation.

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

- 12 Each enforcement agency must prepare and maintain a list of—
- 13 (a) the persons (if any) who are individually designated as
14 authorised officers by the agency; and
- 15 (b) the classes of persons (if any) who are designated as
16 authorised officers by the agency.

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

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

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

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

1 **30. Certificates of authority**

2 (1) An enforcement agency must issue to each person who is an
3 authorised officer by virtue of a designation by the agency a
4 certificate of authority as an authorised officer.

5 (2) The certificate of authority must —

6 (a) state that it is issued under this Act; and

7 (b) state the name of the person to whom it is issued and
8 bear —

9 (i) a photograph or digital image of that person; and

10 (ii) the person's signature;

11 and

12 (c) state the date, if any, on which it expires; and

13 (d) specify —

14 (i) the Acts or the provisions of the Acts for the
15 purposes of which the person is designated as an
16 authorised officer; and

17 (ii) any provisions of an Act that are excluded from
18 the designation;

19 and

20 (e) specify any conditions or restrictions to which the
21 person's authority is subject; and

22 (f) bear the signature of the person by whom it is issued and
23 state the capacity in which the person is acting in issuing
24 the certificate.

25 (3) An authorised officer must produce the certificate of
26 authority —

27 (a) if asked to do so by the person in charge of any premises
28 entered under this Act by the authorised officer; or

29 (b) if asked to do so by a person who, under this Act, is
30 required by the authorised officer to produce anything or
31 to answer any question.

1 (4) If an enforcement agency is satisfied that obtaining a
2 photograph or digital image of a person to whom a certificate of
3 authority is to be issued, or the person's signature, would
4 unreasonably delay the issuing of the certificate to that person,
5 the enforcement agency may issue a temporary certificate of
6 authority that does not comply with either or both of the
7 requirements of subsection (2)(b).

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

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

15 (1) In this section —
16 *certificate requirement*, in relation to a written law, means a
17 requirement that persons who are authorised to exercise powers
18 under that written law be issued with an identity card;
19 *identity card* means a certificate or other document evidencing a
20 person's identity or appointment;
21 *production requirement*, in relation to a written law, means a
22 requirement that a person who exercises, has exercised, or is
23 about to exercise a power under that written law produce an
24 identity card, whether on request or otherwise.

25 (2) This section applies if —
26 (a) a person is designated as an authorised officer for the
27 purposes of one or more provisions of another written
28 law; and
29 (b) that other written law has a certificate requirement.

30 (3) If this section applies —
31 (a) it is sufficient compliance with the certificate
32 requirement in the other written law if the certificate of

- 1 authority issued to that person under section 30 specifies
2 that the person is designated as an authorised officer for
3 the purposes of that other written law or one or more
4 provisions of that other written law; and
- 5 (b) it is sufficient compliance with any production
6 requirement in that other written law if —
- 7 (i) the production requirement relates to a provision
8 for the purposes of which the designation has
9 effect; and
- 10 (ii) the person produces that certificate of authority.

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

- 12 (1) A person to whom a certificate of authority is issued under
13 section 30 and who ceases to be an authorised officer must, as
14 soon as practicable, return the certificate to the enforcement
15 agency that issued the certificate.
- 16 (2) A person who contravenes subsection (1) without reasonable
17 excuse, the onus of proving which is on the person, commits an
18 offence.
- 19 Penalty for an offence under this subsection: a fine of \$1 000.

20 **Division 5 — Advisory committees**

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

- 22 (1) The Chief Health Officer may establish advisory committees to
23 assist the Chief Health Officer in the performance of the Chief
24 Health Officer's functions under this Act.
- 25 (2) The Chief Health Officer may appoint any person the Chief
26 Health Officer thinks fit to any advisory committee established
27 under subsection (1).
- 28 (3) The Chief Health Officer may determine —
- 29 (a) the term of office of members of an advisory committee;
30 and

- 1 (b) the functions and procedure of an advisory committee;
2 and
3 (c) after consultation with the Minister for Public Sector
4 Management, any remuneration and allowances to be
5 paid to the members of an advisory committee.

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Part 3 — General public health duty

34. General public health duty

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

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

- (1) A failure to comply with the general public health duty does not of itself —
 - (a) give rise to any right or remedy; or
 - (b) constitute an offence.
- (2) However, a failure to comply with the general public health duty may constitute grounds for action to be taken under this

1 Act, including the issue of an improvement notice or
2 enforcement order.

3 (3) Subsection (1) is subject to any regulations made under
4 section 293(3)(a)(i).

1 **Part 4 — Serious public health risks and material**
2 **public health risks**

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

4 In this Part —

5 *engage in conduct* means —

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

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

9 (1) A person must not —

- 10 (a) engage in conduct that the person knows will cause, or
11 is likely to cause, a serious public health risk; or
12 (b) engage in conduct in a manner that the person knows
13 will cause, or is likely to cause, a serious public health
14 risk; or
15 (c) allow or permit conduct to be engaged in if the person
16 knows that engagement in that conduct will cause, or is
17 likely to cause, a serious public health risk; or
18 (d) allow or permit conduct to be engaged in in a manner
19 that the person knows will cause, or is likely to cause, a
20 serious public health risk; or
21 (e) allow or permit conduct to continue to be engaged in if
22 the person knows that engagement in that conduct will
23 cause, or is likely to cause, a serious public health risk;
24 or
25 (f) allow or permit conduct to continue to be engaged in in
26 a manner that the person knows will cause, or is likely to
27 cause, a serious public health risk.

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

30 Daily penalty for an offence under this subsection: a fine of
31 \$50 000.

- 1 (2) A person must not —
- 2 (a) engage in conduct that the person ought reasonably to
- 3 know will cause, or is likely to cause, a serious public
- 4 health risk; or
- 5 (b) engage in conduct in a manner that the person ought
- 6 reasonably to know will cause, or is likely to cause, a
- 7 serious public health risk; or
- 8 (c) allow or permit conduct to be engaged in if the person
- 9 ought reasonably to know that engagement in that
- 10 conduct will cause, or is likely to cause, a serious public
- 11 health risk; or
- 12 (d) allow or permit conduct to be engaged in in a manner
- 13 that the person ought reasonably to know will cause, or
- 14 is likely to cause, a serious public health risk; or
- 15 (e) allow or permit conduct to continue to be engaged in if
- 16 the person ought reasonably to know that engagement in
- 17 that conduct will cause, or is likely to cause, a serious
- 18 public health risk; or
- 19 (f) allow or permit conduct to continue to be engaged in in
- 20 a manner that the person ought reasonably to know will
- 21 cause, or is likely to cause, a serious public health risk.
- 22 Penalty for an offence under this subsection: a fine of \$100 000
- 23 and imprisonment for 2 years.
- 24 Daily penalty for an offence under this subsection: a fine of
- 25 \$20 000.
- 26 (3) A person must not —
- 27 (a) engage in conduct that causes, or will cause, or is likely
- 28 to cause, a serious public health risk; or
- 29 (b) engage in conduct in a manner that causes, or will cause,
- 30 or is likely to cause, a serious public health risk; or
- 31 (c) allow or permit conduct to be engaged in if engagement
- 32 in that conduct causes, or will cause, or is likely to
- 33 cause, a serious public health risk; or

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- 1 (d) allow or permit conduct to be engaged in in a manner
2 that causes, or will cause, or is likely to cause, a serious
3 public health risk; or
- 4 (e) allow or permit conduct to continue to be engaged in if
5 engagement in that conduct causes, or will cause, or is
6 likely to cause, a serious public health risk; or
- 7 (f) allow or permit conduct to continue to be engaged in in
8 a manner that causes, or will cause, or is likely to cause,
9 a serious public health risk.

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

11 Daily penalty for an offence under this subsection: a fine of
12 \$10 000.

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

- 14 (1) A person must not —
 - 15 (a) engage in conduct that the person knows will cause, or
16 is likely to cause, a material public health risk; or
 - 17 (b) engage in conduct in a manner that the person knows
18 will cause, or is likely to cause, a material public health
19 risk; or
 - 20 (c) allow or permit conduct to be engaged in if the person
21 knows that engagement in that conduct will cause, or is
22 likely to cause, a material public health risk; or
 - 23 (d) allow or permit conduct to be engaged in in a manner
24 that the person knows will cause, or is likely to cause, a
25 material public health risk; or
 - 26 (e) allow or permit conduct to continue to be engaged in if
27 the person knows that engagement in that conduct will
28 cause, or is likely to cause, a material public health risk;
29 or

- 1 (f) allow or permit conduct to continue to be engaged in in
2 a manner that the person knows will cause, or is likely to
3 cause, a material public health risk.
- 4 Penalty for an offence under this subsection: a fine of \$100 000
5 and imprisonment for 2 years.
- 6 Daily penalty for an offence under this subsection: a fine of
7 \$20 000.
- 8 (2) A person must not —
- 9 (a) engage in conduct that the person ought reasonably to
10 know will cause, or is likely to cause, a material public
11 health risk; or
- 12 (b) engage in conduct in a manner that the person ought
13 reasonably to know will cause, or is likely to cause, a
14 material public health risk; or
- 15 (c) allow or permit conduct to be engaged in if the person
16 ought reasonably to know that engagement in that
17 conduct will cause, or is likely to cause, a material
18 public health risk; or
- 19 (d) allow or permit conduct to be engaged in in a manner
20 that the person ought reasonably to know will cause, or
21 is likely to cause, a material public health risk; or
- 22 (e) allow or permit conduct to continue to be engaged in if
23 the person ought reasonably to know that engagement in
24 that conduct will cause, or is likely to cause, a material
25 public health risk; or
- 26 (f) allow or permit conduct to continue to be engaged in in
27 a manner that the person ought reasonably to know will
28 cause, or is likely to cause, a material public health risk.
- 29 Penalty for an offence under this subsection: a fine of \$75 000.
- 30 Daily penalty for an offence under this subsection: a fine of
31 \$15 000.

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- 1 (3) A person must not —
- 2 (a) engage in conduct that causes, or will cause, or is likely
- 3 to cause, a material public health risk; or
- 4 (b) engage in conduct in a manner that causes, or will cause,
- 5 or is likely to cause, a material public health risk; or
- 6 (c) allow or permit conduct to be engaged in if engagement
- 7 in that conduct causes, or will cause, or is likely to
- 8 cause, a material public health risk; or
- 9 (d) allow or permit conduct to be engaged in in a manner
- 10 that causes, or will cause, or is likely to cause, a material
- 11 public health risk; or
- 12 (e) allow or permit conduct to continue to be engaged in if
- 13 engagement in that conduct causes, or will cause, or is
- 14 likely to cause, a material public health risk; or
- 15 (f) allow or permit conduct to continue to be engaged in in
- 16 a manner that causes, or will cause, or is likely to cause,
- 17 a material public health risk.

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

19 Daily penalty for an offence under this subsection: a fine of

20 \$8 000.

21 **39. Defence of due diligence**

- 22 (1) In any proceedings against a person for an offence under this
- 23 Part, it is a defence to prove that the person took all reasonable
- 24 precautions and exercised all due diligence to prevent the
- 25 commission of the offence.
- 26 (2) The defence provided by subsection (1) does not apply unless it
- 27 is proved that the person —
- 28 (a) took reasonable steps to prevent or avoid the
- 29 circumstances that gave rise to the public health risk,
- 30 including by putting in place any systems or safeguards
- 31 that might reasonably be expected to be provided; and
- 32 (b) complied with the requirements of any notice or order
- 33 under this Act that related to the public health risk; and

- 1 (c) as soon as becoming aware of the circumstances that
 2 gave rise to the public health risk —
- 3 (i) reported those circumstances to an appropriate
 4 enforcement agency; and
- 5 (ii) took all reasonable steps necessary to prevent or
 6 reduce the public health risk.
- 7 (3) If the person is an employer, then in addition to the things that
 8 must be proved under subsection (2), it must also be proved that
 9 the person —
- 10 (a) had proper systems and safeguards in place to prevent
 11 the circumstances that gave rise to the public health risk;
 12 and
- 13 (b) actively promoted and enforced compliance with this
 14 Act.

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

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

27 **Table**

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

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

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

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Part 5 — Public health plans

42. Term used: public health plan

In this Part —

public health plan means —

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

43. State public health plans

(1) The Chief Health Officer must prepare a public health plan (the *State public health plan*) that applies to the whole of the State.

(2) The State public health plan must —

- (a) identify the public health needs of the State; and
- (b) include an examination of data relating to health status and health determinants in the State; and
- (c) establish objectives and policy priorities for —
 - (i) the promotion, improvement and protection of public health in the State; and
 - (ii) the development and delivery of public health services in the State;

and

- (d) identify how, based on available evidence, the objectives and policy priorities referred to in paragraph (c) are proposed to be achieved; and
- (e) describe how the Chief Health Officer proposes to work with local governments and other bodies undertaking public health initiatives, projects and programmes to achieve the objectives and policy priorities referred to in paragraph (c); and

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- 1 (f) include a strategic framework for the identification,
2 evaluation and management of public health risks in the
3 State and any other matters relating to public health
4 risks in the State —
5 (i) that the Chief Health Officer considers
6 appropriate to include in the plan; or
7 (ii) that are required to be included in the plan by the
8 regulations.
- 9 (3) The Chief Health Officer must review the State public health
10 plan each year and may amend or replace it at any time.
- 11 (4) Unless it is sooner replaced, the State public health plan must be
12 replaced at the end of the period of 5 years after it was prepared.
- 13 (5) The Chief Health Officer must prepare the first State public
14 health plan not later than 12 months after this section comes into
15 operation.

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

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

25 **45. Local public health plans**

- 26 (1) A local government must prepare a public health plan (a *local*
27 *public health plan*) that applies to its local government district.
- 28 (2) A local public health plan must be consistent with the State
29 public health plan.

- 1 (3) A local public health plan may be prepared in conjunction with
2 a plan for the future of the local government district prepared
3 under the *Local Government Act 1995* section 5.56.
- 4 (4) A local public health plan must —
- 5 (a) identify the public health needs of the local government
6 district; and
- 7 (b) include an examination of data relating to health status
8 and health determinants in the local government district;
9 and
- 10 (c) establish objectives and policy priorities for —
- 11 (i) the promotion, improvement and protection of
12 public health in the local government district;
13 and
- 14 (ii) the development and delivery of public health
15 services in the local government district;
- 16 and
- 17 (d) identify how, based on available evidence, the
18 objectives and policy priorities referred to in
19 paragraph (c) are proposed to be achieved; and
- 20 (e) describe how the local government proposes to work
21 with the Chief Health Officer and other bodies
22 undertaking public health initiatives, projects and
23 programmes to achieve the objectives and policy
24 priorities referred to in paragraph (c); and
- 25 (f) include a strategic framework for the identification,
26 evaluation and management of public health risks in the
27 local government district and any other matters relating
28 to public health risks in the local government district —
- 29 (i) that the local government considers appropriate
30 to include in the plan; or
- 31 (ii) that are required to be included in the plan by the
32 Chief Health Officer or the regulations;
- 33 and

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- 1 (g) include a report, in accordance with the regulations, on
2 the performance by the local government of its functions
3 under this Act.
- 4 (5) A local government must review its local public health plan
5 each year and may amend or replace it at any time.
- 6 (6) Unless it is sooner replaced, a local public health plan must be
7 replaced at the end of the period of 5 years after it was prepared.
- 8 (7) A local government must prepare its first local public health
9 plan not later than 2 years after this section comes into
10 operation.
- 11 **46. Publication of current local public health plans**
- 12 (1) A local government must make its current local public health
13 plan publicly available without charge.
- 14 (2) A local government may comply with subsection (1) in any way
15 the local government considers appropriate, including (without
16 limitation) by making the current local public health plan
17 available on a website maintained by or on behalf of the local
18 government.
- 19 **47. Provision of local public health plans to Chief Health Officer**
- 20 (1) The Chief Health Officer may, by notice in writing, direct a
21 local government to provide the Chief Health Officer with all or
22 any of the following —
- 23 (a) a copy of the local government’s current local public
24 health plan;
- 25 (b) a copy of any amendments to the local government’s
26 current local public health plan.
- 27 (2) A notice under subsection (1) may —
- 28 (a) direct a local government to supply a copy of a
29 particular local public health plan or particular
30 amendments to a plan; or

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

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Part 6 — Public health assessments

48. Terms used

In this Part —

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

decision-making authority —

- (a) means a public authority authorised by or under a written law to make a decision in respect of an assessment, approval, review or other process to which a proposal is subject under the written law; and
- (b) includes, in relation to a particular proposal, a Minister prescribed by the regulations for the purposes of this definition as being the Minister responsible for the proposal;

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

proponent, of a proposal, means —

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

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

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

49. Regulations may provide for assessable proposals

The regulations may —

- (a) provide that a proposal that is subject under another written law to a specified assessment, approval, review or other process by a decision-making authority is an assessable proposal; and

- 1 (b) require the proponent of an assessable proposal to give
2 notice of the proposal to the Chief Health Officer; and
3 (c) provide for the form, content and timing of the notice
4 that the proponent of an assessable proposal is required
5 to give to the Chief Health Officer.

6 **50. Chief Health Officer may require public health assessments**
7 **of assessable proposals**

- 8 (1) The Chief Health Officer may, by written notice given to the
9 proponent of an assessable proposal, require a public health
10 assessment to be carried out in respect of the proposal by and at
11 the expense of the proponent.
- 12 (2) The Chief Health Officer must, without delay, give the
13 decision-making authority in respect of which the proposal is an
14 assessable proposal a copy of the notice given under
15 subsection (1).
- 16 (3) The proponent of the assessable proposal must —
17 (a) comply with the notice given under subsection (1); and
18 (b) provide a written report setting out the findings of the
19 public health assessment to the Chief Health Officer.
- 20 (4) On receiving a report under subsection (3)(b), the Chief Health
21 Officer must, without delay, give a copy of the report to the
22 decision-making authority in respect of which the proposal is an
23 assessable proposal.
- 24 (5) The proponent of the assessable proposal may comply with the
25 notice given under subsection (1) by causing a public health
26 assessment to be carried out on behalf of the proponent in
27 respect of the proposal.

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- 1 **51. Chief Health Officer may give advice or make**
2 **recommendations in relation to assessable proposal**
- 3 (1) The Chief Health Officer must —
- 4 (a) consider a report given to the Chief Health Officer under
5 section 50(3) by the proponent of an assessable
6 proposal; and
- 7 (b) give written advice or make written recommendations in
8 relation to the proposal to the decision-making authority
9 in respect of which the proposal is an assessable
10 proposal.
- 11 (2) Without limiting subsection (1), the Chief Health Officer may
12 give advice or make recommendations to the decision-making
13 authority under that subsection —
- 14 (a) as to any public health risks and any benefits to public
15 health that may result from implementing the proposal;
16 or
- 17 (b) as to whether or not the proposal should be
18 implemented; or
- 19 (c) as to any conditions or restrictions subject to which the
20 proposal should be implemented.
- 21 (3) The Chief Health Officer must, without delay, give the
22 proponent of the assessable proposal a copy of any advice or
23 recommendations that the Chief Health Officer gives or makes
24 to the decision-making authority.
- 25 **52. Decision-making authority to have regard to advice and**
26 **recommendations of Chief Health Officer**
- 27 (1) A decision-making authority to which advice is given or
28 recommendations are made under section 51 in relation to a
29 proposal must not make any decision that could have the effect
30 of causing or allowing the proposal to be implemented unless
31 the decision-making authority has had regard to that advice or
32 those recommendations.

1 (2) This section applies despite any other written law.

2 **53. Minister may request Chief Health Officer to conduct**
3 **inquiry into other proposals**

4 (1) If the Minister considers that a proposal that is not an assessable
5 proposal would be likely, if implemented, to have a significant
6 effect on public health, the Minister may request the Chief
7 Health Officer to conduct an inquiry under Part 14 into the
8 proposal.

9 (2) The Chief Health Officer must comply with a request under
10 subsection (1).

11 **54. Regulations may provide for certain matters**

12 (1) In this section —

13 *nominated proposal* means an assessable proposal in respect of
14 which a public health assessment is required to be carried out
15 under section 50;

16 *specified* means specified by the Chief Health Officer.

17 (2) The regulations may —

18 (a) provide for the form, content, timing and procedure of a
19 public health assessment that is required to be carried
20 out under section 50; and

21 (b) provide for the form, content and timing of the report
22 setting out the findings of the public health assessment,
23 as referred to in section 50(3) (the *assessment report*);
24 and

25 (c) provide for —

26 (i) fees or charges payable by the proponent of a
27 nominated proposal for the Chief Health
28 Officer's consideration of the assessment report
29 provided in respect of the proposal; and

30 (ii) the recovery of those fees or charges;

31 and

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- 1 (d) require the proponent of a nominated proposal to make
2 copies of the assessment report available —
3 (i) without charge to public authorities; and
4 (ii) at a charge not exceeding the amount prescribed
5 by the regulations to members of the public;
6 and
7 (e) require the proponent of a nominated proposal to
8 advertise, in the manner prescribed by the regulations,
9 that copies of the assessment report are available to
10 public authorities and members of the public; and
11 (f) provide for the period within which, the extent to which
12 and the manner in which written submissions may be
13 made by a person or public authority to the Chief Health
14 Officer in respect of the assessment report; and
15 (g) require the proponent of a nominated proposal to
16 provide to the Chief Health Officer, within the specified
17 period, a written response to any of those submissions;
18 and
19 (h) require the proponent of a nominated proposal, or any
20 other person, to provide to the Chief Health Officer
21 within the specified period specified information that is
22 relevant to the proposal; and
23 (i) confer power on the Chief Health Officer to make any
24 investigation or inquiry in relation to a nominated
25 proposal that the Chief Health Officer thinks fit; and
26 (j) require —
27 (i) the implementation of a nominated proposal to
28 be monitored in the specified manner by and at
29 the expense of the proponent of the proposal; and
30 (ii) specified information relating to the monitoring
31 of the implementation of the nominated proposal
32 to be provided by the proponent of the proposal
33 to the Chief Health Officer.

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Part 7 — Registration and licensing

Division 1 — Preliminary

55. Terms used

In this Part —

activity licence means a licence granted under section 69;

certificate of registration means a certificate of registration issued under section 59(6);

corresponding public health law means a law of another State, a Territory or the Commonwealth that is prescribed by the regulations to be a law that corresponds to this Act;

licensable activity means a public health risk activity declared under section 56 to be licensable;

proprietor, of a business, means —

- (a) the person carrying on the business; or
- (b) if that person cannot be identified, the person in charge of the business;

registrable activity means a public health risk activity declared under section 56 to be registrable;

vary, a condition, includes to revoke a condition or to impose a condition.

56. Regulations may declare licensable and registrable activities

The regulations may declare that a public health risk activity is —

- (a) registrable; or
- (b) licensable; or
- (c) both registrable and licensable.

1 **57. Application of Part to Crown**

2 (1) To avoid doubt, this Part applies to —

3 (a) registrable activities carried on by the Crown in any
4 capacity; and

5 (b) licensable activities carried on by any individual in their
6 capacity as an employee, agent or officer of the Crown.

7 (2) This section is subject to Part 16.

8 **Division 2 — Registration of registrable activities**

9 **58. Carrying on unregistered registrable activity**

10 (1) In this section —

11 *exempt person* means a person, or a person within a class of
12 persons, prescribed by the regulations for the purposes of this
13 definition.

14 (2) A person, other than an exempt person, must not carry on a
15 registrable activity at any premises unless the registrable
16 activity is registered in respect of those premises under this
17 Division.

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

19 **59. Registration of registrable activity**

20 (1) The appropriate enforcement agency may register a registrable
21 activity in respect of any premises for the purposes of this
22 Division.

23 (2) A person who proposes to carry on a registrable activity at any
24 premises may apply, in the approved form, to the appropriate
25 enforcement agency for the registration of the registrable
26 activity in respect of those premises under this Division.

27 (3) The application must be accompanied by —

28 (a) any plans, specifications or other documents or
29 information that the appropriate enforcement agency

- 1 reasonably requires for a proper consideration of the
2 application; and
- 3 (b) either —
- 4 (i) if the appropriate enforcement agency is a local
5 government, the fee, if any, imposed by the
6 agency in accordance with section 283; or
- 7 (ii) in any other case, the fee, if any, prescribed by
8 the regulations.
- 9 (4) After considering the application, the appropriate enforcement
10 agency may —
- 11 (a) grant the application, with or without conditions; or
12 (b) refuse the application.
- 13 (5) In deciding whether to grant or refuse the application, the
14 appropriate enforcement agency must have regard to any
15 matters prescribed by the regulations for the purposes of this
16 subsection.
- 17 (6) If the appropriate enforcement agency grants the application, the
18 agency must issue the applicant with a certificate of registration,
19 in the approved form, that —
- 20 (a) specifies the premises and the registrable activity in
21 respect of which the registration is granted; and
- 22 (b) sets out any conditions to which the registration is
23 subject.
- 24 (7) If the appropriate enforcement agency refuses the application,
25 the agency must give written notice of the refusal to the
26 applicant setting out the reasons for the refusal.
- 27 **60. Registration remains in force until cancelled**
- 28 (1) The registration of a registrable activity in respect of any
29 premises under this Division remains in force until cancelled.
- 30 (2) Subsection (1) is subject to section 63(2).

1 **61. Annual or other fee in relation to registration**

2 (1) The regulations may prescribe an annual or other fee in relation
3 to the registration of a registrable activity in respect of any
4 premises, to be paid by the time the regulations require the
5 payment to be made.

6 (2) If the appropriate enforcement agency is a local government, the
7 agency may, in accordance with section 283, impose an annual
8 or other fee in relation to the registration of a registrable activity
9 in respect of any premises, to be paid by the time the agency
10 requires the payment to be made.

11 **62. Variation of conditions, suspension or cancellation of**
12 **registration**

13 (1) The appropriate enforcement agency, either on its own initiative
14 or on the application of the holder of the certificate of
15 registration, may vary the conditions of, suspend or cancel the
16 registration of a registrable activity registered by the agency in
17 respect of any premises under this Division.

18 (2) The registration of a registrable activity in respect of any
19 premises may be suspended or cancelled on any grounds
20 prescribed by the regulations or on any of these grounds —
21 (a) the registration has been obtained by fraud or
22 misrepresentation;
23 (b) the holder of the certificate of registration has been
24 convicted of an offence under this Act or a
25 corresponding public health law;
26 (c) the holder of the certificate of registration has failed to
27 comply with a code of practice prescribed by the
28 regulations in respect of the registrable activity that is
29 registered in respect of those premises;
30 (d) if the appropriate enforcement agency is a local
31 government, any annual or other fee imposed by the
32 agency in relation to the registration of the registrable

- 1 activity in respect of those premises has not been paid
2 by the time the agency requires the payment to be made;
- 3 (e) in a case where paragraph (d) does not apply, any annual
4 or other fee prescribed by the regulations in relation to
5 the registration of the registrable activity in respect of
6 those premises has not been paid by the time the
7 regulations require the payment to be made;
- 8 (f) any condition to which the registration of the registrable
9 activity is subject has not been complied with;
- 10 (g) the registrable activity has ceased to be carried on at
11 those premises;
- 12 (h) the holder of the certificate of registration has applied
13 for the suspension or cancellation.
- 14 (3) The appropriate enforcement agency may vary the conditions
15 of, suspend or cancel the registration of a registrable activity in
16 respect of any premises only —
- 17 (a) after having given the holder of the certificate of
18 registration —
- 19 (i) written reasons for the agency's intention to
20 vary, suspend or cancel; and
- 21 (ii) an opportunity to make submissions;
- 22 and
- 23 (b) after having considered any submissions made by that
24 person.
- 25 (4) Subsection (3) does not apply to the variation of the conditions,
26 or the suspension or cancellation, of the registration in
27 accordance with an application by the holder of the certificate of
28 registration for the variation, suspension or cancellation.
- 29 (5) A variation of the conditions, or the suspension or cancellation,
30 of the registration of a registrable activity in respect of any
31 premises —
- 32 (a) must be by written notice; and

- 1 (b) must be served on the holder of the certificate of
2 registration; and
- 3 (c) takes effect on the day on which the notice is served or
4 on a later day specified in the notice.

5 **63. Further provisions relating to suspension of registration**

- 6 (1) Unless a longer period of suspension is requested by the holder
7 of the certificate of registration, the registration of a registrable
8 activity in respect of any premises cannot be suspended under
9 section 62 for longer than 3 months.
- 10 (2) While the registration of a registrable activity in respect of any
11 premises is suspended under section 62, the registrable activity
12 is to be regarded as not registered in respect of those premises.
- 13 (3) If the registration of a registrable activity in respect of any
14 premises is suspended under section 62 (other than at the
15 request of the holder of the certificate of registration), the
16 appropriate enforcement agency may, at any time before the
17 suspension ceases, extend the period of suspension for one
18 further period of not more than 3 months if the enforcement
19 agency is satisfied that the ground for the suspension is
20 continuing.
- 21 (4) Section 62(5) applies with all necessary changes to the
22 extension of a period of suspension as if it were the imposition
23 of a period of suspension.
- 24 (5) If the registration of a registrable activity in respect of any
25 premises is suspended under section 62 —
- 26 (a) in any case where the holder of the certificate of
27 registration requested the suspension, the appropriate
28 enforcement agency must immediately terminate the
29 suspension if the holder requests that the suspension be
30 terminated;
- 31 (b) in any other case, the appropriate enforcement agency
32 may, by written notice served on the holder of the
33 certificate of registration, terminate the suspension if the

1 enforcement agency is satisfied at any time that it is no
2 longer necessary or appropriate for the suspension to
3 continue.

4 **64. Notification of certain matters relating to registrable activity**
5 **or premises**

6 (1) A person who carries on, or who carried on, a registrable
7 activity that is registered in respect of any premises under this
8 Division must give written notification, in the approved form, to
9 the appropriate enforcement agency of any of these
10 occurrences —

- 11 (a) the registrable activity ceases to be carried on at those
12 premises;
- 13 (b) the person ceases to carry on the registrable activity at
14 those premises;
- 15 (c) approval of any proposed alteration of those premises is
16 sought from a public authority or other person or body.

17 (2) A person must give the notification required under
18 subsection (1) within 5 working days after the relevant
19 occurrence takes place.

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

21 (3) A person who carries on a registrable activity that is registered
22 in respect of any premises under this Division must not make
23 any change to the registrable activity carried on at those
24 premises that is likely to affect the nature or extent of the public
25 health risk from that activity unless —

- 26 (a) the person has given written notification to the
27 appropriate enforcement agency of the proposed change
28 to the registrable activity; and
- 29 (b) that change has been approved by the agency.

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

1 **65. Transfer of certificate of registration**

- 2 (1) The registration of a registrable activity in respect of any
3 premises is not transferable to any other premises.
- 4 (2) The holder of a certificate of registration can transfer that
5 certificate to another person, but only if the appropriate
6 enforcement authority first approves the transfer.
- 7 (3) An application for the approval of the transfer of a certificate of
8 registration must be made and dealt with as if it were an
9 application made under section 59 for the registration of the
10 registrable activity in respect of the premises to which the
11 certificate of registration relates, and that section applies
12 accordingly with any necessary changes.

13 **66. Review of decisions relating to registration**

14 An applicant for the registration of a registrable activity in
15 respect of any premises under this Division, or the holder of a
16 certificate of registration that specifies any premises, may apply
17 to the State Administrative Tribunal for a review of a decision
18 of the appropriate enforcement agency that relates to —

- 19 (a) the grant or refusal of the application for the registration
20 of the registrable activity in respect of those premises
21 under this Division; or
- 22 (b) the imposition of conditions on the registration of the
23 registrable activity in respect of those premises on the
24 application being granted; or
- 25 (c) the variation of conditions of the registration of the
26 registrable activity in respect of those premises; or
- 27 (d) the suspension or cancellation of the registration of the
28 registrable activity in respect of those premises; or
- 29 (e) the refusal of an application to transfer the certificate of
30 registration to another person.

1 **67. Register of activities and premises to be maintained**

- 2 (1) An enforcement agency must prepare and maintain, in an
3 approved form, a register listing the registrable activities that
4 are registered by the agency under this Division and the
5 premises in respect of which those activities are registered.
- 6 (2) The register must contain any details prescribed by the
7 regulations in respect of the registrable activities and premises
8 listed in the register.
- 9 (3) The register must be made publicly available, without charge,
10 during normal business hours.
- 11 (4) Without limiting subsection (3), the register may be made
12 publicly available on a website maintained by or on behalf of
13 the enforcement agency.

14 **Division 3 — Licensing of individuals carrying on**
15 **licensable activities**

16 **68. Unlicensed persons carrying on licensable activities**

- 17 (1) In this section —
18 *exempt person* means a person, or a person within a class of
19 persons, prescribed by the regulations for the purposes of this
20 definition.
- 21 (2) A person, other than an exempt person, must not carry on a
22 licensable activity unless the person holds an activity licence
23 that authorises the person to carry on that activity.
- 24 Penalty for an offence under this subsection:
- 25 (a) for an individual — a fine of \$20 000;
- 26 (b) for a body corporate convicted under section 270 — a
27 fine of \$100 000.

1 **69. Activity licences**

- 2 (1) The appropriate enforcement agency may grant an activity
3 licence that authorises a person to carry on one or more
4 licensable activities.
- 5 (2) An activity licence —
6 (a) may be granted only to an individual; and
7 (b) is not transferable to another individual.
- 8 (3) A person may apply, in the approved form, to the appropriate
9 enforcement agency for an activity licence, specifying the
10 licensable activity or activities that the person proposes to carry
11 on.
- 12 (4) The application must be accompanied by —
13 (a) any documents or information that the appropriate
14 enforcement agency reasonably requires for a proper
15 consideration of the application; and
16 (b) either —
17 (i) if the appropriate enforcement agency is a local
18 government, the fee, if any, imposed by the
19 agency in accordance with section 283; or
20 (ii) in any other case, the fee, if any, prescribed by
21 the regulations.
- 22 (5) After considering an application for an activity licence, the
23 appropriate enforcement agency may —
24 (a) grant the application, with or without conditions; or
25 (b) refuse the application.
- 26 (6) In deciding whether to grant or refuse the application, the
27 appropriate enforcement agency must have regard to any
28 matters prescribed by the regulations for the purposes of this
29 subsection.

- 1 (7) If the appropriate enforcement agency grants an application for
2 an activity licence, the agency must issue the applicant with an
3 activity licence, in the approved form, that —
- 4 (a) specifies the name of the person to whom the licence is
5 issued; and
- 6 (b) specifies the licensable activity or activities authorised
7 to be carried on by the licence; and
- 8 (c) sets out any conditions to which the licence is subject;
9 and
- 10 (d) specifies the period for which the licence remains in
11 force.

- 12 (8) If the appropriate enforcement agency refuses an application for
13 an activity licence, the agency must give written notice of the
14 refusal to the applicant setting out the reasons for the refusal.

15 **70. Period an activity licence remains in force**

- 16 (1) Unless it is sooner cancelled, an activity licence remains in
17 force, except while it is suspended, for the period specified in
18 the licence.
- 19 (2) An activity licence may be renewed under section 71.

20 **71. Renewal of activity licence**

- 21 (1) A person who holds an activity licence may apply to the
22 appropriate enforcement agency to renew the licence.
- 23 (2) The application must be made before the activity licence
24 expires.
- 25 (3) Section 69(4) to (8) apply, with any necessary changes, to an
26 application under this section.
- 27 (4) A suspended activity licence may be renewed under this section,
28 but the renewal of the licence does not affect the period of
29 suspension.

- 1 (5) If an application for the renewal of an activity licence is made
2 but not dealt with before the licence expires —
- 3 (a) the licence continues in force until the application is
4 dealt with, but without affecting the period of
5 suspension of a suspended activity licence; and
- 6 (b) any renewal in that case is to be taken for all purposes to
7 have taken effect on the day immediately following the
8 day on which the licence would (but for the renewal)
9 have expired.

10 **72. Annual or other fee in relation to activity licence**

- 11 (1) The regulations may prescribe an annual or other fee in relation
12 to an activity licence, to be paid by the time the regulations
13 require the payment to be made.
- 14 (2) If the appropriate enforcement agency is a local government, the
15 agency may, in accordance with section 283, impose an annual
16 or other fee in relation to an activity licence, to be paid by the
17 time the agency requires the payment to be made.

18 **73. Variation of conditions, suspension or cancellation of**
19 **activity licence**

- 20 (1) The appropriate enforcement agency, either on its own initiative
21 or on the application of the holder of the activity licence, may
22 vary the conditions of, suspend or cancel an activity licence
23 issued by the agency.
- 24 (2) An activity licence may be suspended or cancelled on any
25 grounds prescribed by the regulations or on any of these
26 grounds —
- 27 (a) the licence has been obtained by fraud or
28 misrepresentation;
- 29 (b) the holder of the licence has been convicted of an
30 offence under this Act or a corresponding public health
31 law;

- 1 (c) the holder of the licence has failed to comply with a
2 code of practice prescribed by the regulations in respect
3 of a licensable activity authorised to be carried on by the
4 licence;
- 5 (d) if the appropriate enforcement agency is a local
6 government, any annual or other fee imposed by the
7 agency in relation to the licence has not been paid by the
8 time the agency requires the payment to be made;
- 9 (e) in a case where paragraph (d) does not apply, any annual
10 or other fee prescribed by the regulations in relation to
11 the licence has not been paid by the time the regulations
12 require the payment to be made;
- 13 (f) any condition to which the licence is subject has not
14 been complied with;
- 15 (g) the holder of the licence has ceased to carry on the
16 licensable activity or activities authorised to be carried
17 on by the licence;
- 18 (h) the holder of the licence has applied for the suspension
19 or cancellation.
- 20 (3) The appropriate enforcement agency may vary the conditions
21 of, suspend or cancel an activity licence only —
- 22 (a) after having given the holder of the licence —
- 23 (i) written reasons for the agency’s intention to
24 vary, suspend or cancel; and
- 25 (ii) an opportunity to make submissions;
- 26 and
- 27 (b) after having considered any submissions made by that
28 person.
- 29 (4) Subsection (3) does not apply to the variation of the conditions,
30 or the suspension or cancellation, of an activity licence in
31 accordance with an application by the holder of the licence for
32 the variation, suspension or cancellation.

- 1 (5) A variation of the conditions, or the suspension or cancellation,
2 of an activity licence —
- 3 (a) must be by written notice; and
- 4 (b) must be served on the holder of the licence; and
- 5 (c) takes effect on the day on which the notice is served or
6 on a later day specified in the notice.

7 **74. Further provisions relating to suspension of activity licence**

- 8 (1) Unless a longer period of suspension is requested by the holder
9 of the activity licence, an activity licence cannot be suspended
10 under section 73 for longer than 3 months.
- 11 (2) While an activity licence is suspended under section 73, the
12 holder of the licence is to be regarded as not authorised to carry
13 on the licensable activity to which the licence relates.
- 14 (3) If an activity licence is suspended under section 73 (other than
15 at the request of the holder of the licence), the appropriate
16 enforcement agency may, at any time before the suspension
17 ceases, extend the period of suspension for one further period of
18 not more than 3 months if the enforcement agency is satisfied
19 that the ground for the suspension is continuing.
- 20 (4) Section 73(5) applies with all necessary changes to the
21 extension of a period of suspension as if it were the imposition
22 of a period of suspension.
- 23 (5) If an activity licence is suspended under section 73 —
- 24 (a) in any case where the holder of the licence requested the
25 suspension, the appropriate enforcement agency must
26 immediately terminate the suspension if the holder
27 requests that the suspension be terminated;
- 28 (b) in any other case, the appropriate enforcement agency
29 may, by written notice served on the holder of the
30 licence, terminate the suspension if the enforcement
31 agency is satisfied at any time that it is no longer
32 necessary or appropriate for the suspension to continue.

1 **75. Notification of certain changes to licensable activities**

2 (1) A person who holds an activity licence must give written
3 notification, in the approved form, to the appropriate
4 enforcement agency of any of these changes in relation to the
5 licence —

6 (a) the person ceases to carry on a licensable activity
7 authorised to be carried on by the licence;

8 (b) any change is made to a licensable activity authorised to
9 be carried on by the licence that is likely to affect the
10 nature or extent of the public health risk from that
11 activity;

12 (c) any other change in relation to the licence that is
13 prescribed by the regulations.

14 (2) The person must give the notification required under
15 subsection (1) within 5 working days after the relevant change
16 takes place.

17 Penalty for an offence under this subsection:

18 (a) for an individual — a fine of \$10 000;

19 (b) for a body corporate convicted under section 270 — a
20 fine of \$50 000.

21 **76. Review of decisions relating to activity licences**

22 An applicant for, or for the renewal of, an activity licence, or the
23 holder of an activity licence, may apply to the State
24 Administrative Tribunal for a review of a decision of the
25 appropriate enforcement agency that relates to —

26 (a) the grant or refusal of the application for, or for the
27 renewal of, the licence; or

28 (b) the imposition of conditions on the licence on the
29 application being granted; or

30 (c) the variation of conditions of the licence; or

31 (d) the suspension or cancellation of the licence.

1 **77. Register of licence holders to be maintained**

- 2 (1) An enforcement agency must prepare and maintain, in an
3 approved form, a register listing the persons who hold an
4 activity licence issued by the agency.
- 5 (2) The register must contain any details prescribed by the
6 regulations in respect of each person listed in the register.
- 7 (3) The register may be prepared and maintained in conjunction
8 with a register prepared and maintained by the enforcement
9 agency under section 67.
- 10 (4) The register must be made publicly available, without charge,
11 during normal business hours.
- 12 (5) Without limiting subsection (4), the register may be made
13 publicly available on a website maintained by or on behalf of
14 the enforcement agency.

1 **Part 8 — Notifiable infectious diseases and**
2 **related conditions**

3 **Division 1 — Principles and declarations**

4 **78. Principles applying in relation to this Part**

- 5 (1) Section 79 sets out principles that apply for the purposes of the
6 application, operation and interpretation of this Part.
7 (2) This section and section 79 do not limit section 3(2).

8 **79. Principles listed**

- 9 (1) The spread of notifiable infectious diseases should be prevented
10 or limited without unnecessarily restricting personal liberty or
11 privacy, and in the application of this principle particular regard
12 should be had to the principle of proportionality set out in
13 section 3(2).
14 (2) A person who is at risk of contracting a notifiable infectious
15 disease must take all reasonable precautions to avoid
16 contracting the disease.
17 (3) A person who suspects that he or she may have a notifiable
18 infectious disease must ascertain —
19 (a) whether or not he or she has the disease; and
20 (b) what precautions should be taken to prevent others from
21 contracting the disease.
22 (4) A person who has a notifiable infectious disease must take all
23 reasonable precautions to ensure that others are not
24 unknowingly placed at risk of contracting the disease.
25 (5) To the extent to which the exercise of those rights does not
26 infringe on the wellbeing of others, a person who is at risk of
27 contracting, who suspects that he or she may have, or who has a
28 notifiable infectious disease or a notifiable infectious
29 disease-related condition has these rights —
30 (a) to be protected from unlawful discrimination;

- 1 (b) to have his or her privacy respected;
- 2 (c) to be given information about the medical and social
- 3 consequences of the disease or condition and about any
- 4 proposed medical treatment;
- 5 (d) in the case of a notifiable infectious disease —
- 6 (i) to have access to available and appropriate
- 7 examination and treatment; and
- 8 (ii) to have that examination and treatment provided
- 9 free of charge, but only if the requirements set
- 10 out in subsection (6) are met.
- 11 (6) The right to have an examination or treatment provided free of
- 12 charge under subsection (5)(d)(ii) applies —
- 13 (a) only if the examination or treatment is provided by a
- 14 public health official; and
- 15 (b) only to the extent that the examination or treatment is
- 16 necessary to prevent the transmission of the disease to
- 17 another person.

18 **80. Further provisions relating to application of principles**

- 19 (1) A failure to comply with the principles set out in section 79(2)
- 20 to (4) does not of itself —
- 21 (a) give rise to any right or remedy; or
- 22 (b) constitute an offence.
- 23 (2) However, a failure to comply with one or more of those
- 24 principles may constitute grounds for action to be taken under
- 25 this Act, including the issue of a test order or a public health
- 26 order.
- 27 (3) Section 79(5) does not confer on any person any legal right that
- 28 is enforceable in a court of law.
- 29 (4) Sections 78 and 79 do not limit the *Equal Opportunity Act 1984*
- 30 section 66U.

1 **81. Declaration of notifiable infectious diseases**

- 2 (1) The regulations may declare —
- 3 (a) a disease to be a notifiable infectious disease; or
- 4 (b) a notifiable infectious disease to be an urgently
- 5 notifiable infectious disease; or
- 6 (c) a notifiable infectious disease to be a vaccine
- 7 preventable notifiable infectious disease.
- 8 (2) The Minister may, if he or she considers it to be necessary in the
- 9 interests of public health because of urgent circumstances, by
- 10 order declare —
- 11 (a) a disease to be a notifiable infectious disease; or
- 12 (b) a notifiable infectious disease to be an urgently
- 13 notifiable infectious disease; or
- 14 (c) a notifiable infectious disease to be a vaccine
- 15 preventable notifiable infectious disease.
- 16 (3) A notifiable infectious disease that is declared to be —
- 17 (a) an urgently notifiable infectious disease may also be
- 18 declared to be a vaccine preventable notifiable infectious
- 19 disease; and
- 20 (b) a vaccine preventable notifiable infectious disease may
- 21 also be declared to be an urgently notifiable infectious
- 22 disease.
- 23 (4) If there is any conflict or inconsistency between a declaration by
- 24 the regulations under subsection (1) and a declaration by the
- 25 Minister under subsection (2), the Minister’s declaration
- 26 prevails.

27 **82. Declaration of notifiable infectious disease-related**

28 **conditions**

- 29 (1) The regulations may declare a medical condition, other than a
- 30 notifiable infectious disease, to be a notifiable infectious
- 31 disease-related condition.

- 1 (2) A medical condition cannot be declared to be a notifiable
2 infectious disease-related condition unless it is a medical
3 condition that —
4 (a) is or may be caused by an infectious disease; or
5 (b) is or may be a complication arising from an infectious
6 disease; or
7 (c) arises or may arise out of vaccination for an infectious
8 disease.

9 **83. Orders by Minister**

- 10 (1) In this section —
11 *order* means an order under section 81(2).
12 (2) An order is subsidiary legislation for the purposes of the
13 *Interpretation Act 1984*.
14 (3) The *Interpretation Act 1984* section 42 applies to an order as if
15 the order were regulations made under this Act.
16 (4) An order comes into operation —
17 (a) on the day on which it is made; or
18 (b) on any later day specified in the order.
19 (5) Despite subsection (2), the day on which an order comes into
20 operation may be earlier than the day on which the order is
21 published in the *Gazette*.
22 (6) Unless sooner repealed, an order has effect for the period of
23 6 months, or any lesser period specified in the order, and expires
24 at the end of that period.

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Division 2 — Notification

84. Term used: responsible pathologist

In this Division —

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

85. Notification of notifiable infectious diseases and notifiable infectious disease-related conditions

(1) If a medical practitioner or nurse practitioner forms the opinion that a patient of the practitioner has, or may have, a notifiable infectious disease or notifiable infectious disease-related condition, the practitioner must notify the Chief Health Officer.

(2) If a medical practitioner conducts a post mortem examination of a body and forms the opinion that the deceased person had, or may have had, a notifiable infectious disease or notifiable infectious disease-related condition at the time of death, the medical practitioner must notify the Chief Health Officer.

(3) If the analysis of a sample undertaken at a pathology laboratory indicates that the patient from whom the sample was taken has, or may have, a notifiable infectious disease or notifiable infectious disease-related condition, the responsible pathologist of that pathology laboratory must notify the Chief Health Officer.

(4) Notification under this section must be given —

(a) as soon as is practicable, and in any event —

(i) in the case of an urgently notifiable infectious disease, within 24 hours; or

(ii) in the case of any other notifiable infectious disease or a notifiable infectious disease-related condition, within 72 hours;

and

- 1 (b) in the approved form (if any).
- 2 (5) Notification under this section, to the extent to which the
3 medical practitioner, nurse practitioner or responsible
4 pathologist has the information —
- 5 (a) must include the name of the notifiable infectious
6 disease or notifiable infectious disease-related condition;
7 and
- 8 (b) must include the following information, unless the
9 regulations provide otherwise —
- 10 (i) the name, residential address, telephone
11 numbers, email address, date of birth and gender
12 of the patient;
- 13 (ii) the name, business address, telephone numbers
14 and email address of the patient's medical
15 practitioner or nurse practitioner;
- 16 and
- 17 (c) must include any other information prescribed by the
18 regulations.
- 19 (6) The information prescribed by the regulations for the purposes
20 of subsection (5) may vary in respect of different notifiable
21 infectious diseases or notifiable infectious disease-related
22 conditions.
- 23 **86. Offence of failing to notify Chief Health Officer**
- 24 (1) A person who fails to notify the Chief Health Officer in
25 accordance with section 85 commits an offence.
26 Penalty for an offence under this subsection: a fine of \$10 000.
- 27 (2) In any proceedings against a person for an offence under
28 subsection (1) of failing to notify the Chief Health Officer, it is
29 a defence to prove that the person believed on reasonable
30 grounds that another person had given the Chief Health Officer
31 the required notification.

1 **87. No liability for notifying Chief Health Officer**

2 If a medical practitioner, nurse practitioner or responsible
3 pathologist in good faith notifies the Chief Health Officer under
4 section 85 —

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

14 **Division 3 — Duty to inform**

15 **88. Practitioners to provide patients with information**

16 (1) If a medical practitioner or nurse practitioner forms the opinion
17 that a patient of the practitioner has a notifiable infectious
18 disease or notifiable infectious disease-related condition, the
19 practitioner, as well as complying with the notification
20 requirements under Division 2, must give the patient
21 information about the disease or condition.

22 (2) The information to be given to the patient under subsection (1)
23 is —

- 24 (a) in the case of a notifiable infectious disease, information
25 about —
26 (i) the patient’s obligations under section 79(2)
27 to (4); and
28 (ii) the patient’s rights under section 79(5); and
29 (iii) preventing the transmission of the disease to any
30 other person;
31 and

- 1 (b) in the case of a notifiable infectious disease-related
2 condition, information about the patient's rights under
3 section 79(5); and
- 4 (c) information about the medical practitioner's or nurse
5 practitioner's obligation under section 85 to notify the
6 Chief Health Officer about the notifiable infectious
7 disease or notifiable infectious disease-related condition;
8 and
- 9 (d) any information prescribed by the regulations.
- 10 (3) The information prescribed by the regulations for the purposes
11 of subsection (2)(d) may vary in respect of different notifiable
12 infectious diseases or notifiable infectious disease-related
13 conditions.

14 **89. Offence of failing to provide patient with information**

- 15 (1) A medical practitioner or nurse practitioner who, without
16 reasonable excuse, fails to comply with the requirement in
17 section 88 to give a patient of that practitioner the information
18 required by subsection (2)(a)(i) or (iii) of that section commits
19 an offence.

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

- 21 (2) In any proceedings against a person for an offence under
22 subsection (1) of failing to give a patient the information
23 required by section 88, it is a defence to prove that the person
24 believed on reasonable grounds that another person had given
25 the patient the required information.

26 **Division 4 — Test orders**

27 **90. Terms used**

28 In this Division —

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

- 1 **incapable person** means a person who is not a child and —
- 2 (a) who for any reason is unable to give consent to being
- 3 tested for a notifiable infectious disease; or
- 4 (b) who is unconscious or otherwise unable —
- 5 (i) to understand a request made to give consent to
- 6 being tested for a notifiable infectious disease; or
- 7 (ii) to communicate whether or not he or she
- 8 consents to being tested for a notifiable
- 9 infectious disease;
- 10 **protected person** means —
- 11 (a) a child; or
- 12 (b) an incapable person;
- 13 **relative**, in relation to an incapable person, means a person who
- 14 is —
- 15 (a) related, by blood or marriage, to the incapable person; or
- 16 (b) the incapable person’s de facto partner;
- 17 **relevant counselling**, in relation to a notifiable infectious
- 18 disease, means counselling —
- 19 (a) that is given by a person whom the Chief Health Officer
- 20 reasonably believes is suitably qualified and
- 21 experienced; and
- 22 (b) that provides information about —
- 23 (i) the risk of the transmission of the disease in the
- 24 particular circumstances; and
- 25 (ii) the medical and social consequences of the
- 26 transmission of the disease; and
- 27 (iii) how and where testing for the disease could be
- 28 carried out;
- 29 **responsible person** —
- 30 (a) in relation to a child, means any of the following
- 31 persons —
- 32 (i) a parent of the child;

- 1 (ii) a guardian of the child;
- 2 (iii) another person who has responsibility for the
- 3 day-to-day care of the child;
- 4 (iv) if no person mentioned in another subparagraph
- 5 of this paragraph is available, a person, or a
- 6 person in a class of persons, prescribed by the
- 7 regulations for the purposes of this subparagraph;
- 8 (b) in relation to an incapable person, means any of the
- 9 following persons —
- 10 (i) a relative of the incapable person;
- 11 (ii) if the incapable person is under 18 years of age, a
- 12 guardian of the incapable person or another
- 13 person who has responsibility for the day-to-day
- 14 care of the incapable person;
- 15 (iii) a person who is a guardian of the incapable
- 16 person under the *Guardianship and*
- 17 *Administration Act 1990*;
- 18 (iv) a person who is an enduring guardian of the
- 19 incapable person under the *Guardianship and*
- 20 *Administration Act 1990* and is authorised to
- 21 perform functions in relation to the incapable
- 22 person in the circumstances in which this
- 23 Division applies;
- 24 (v) a person recognised as the incapable person’s
- 25 advocate under the *Disability Services Act 1993*
- 26 section 32(2);
- 27 (vi) a person who is a carer (as defined in the *Carers*
- 28 *Recognition Act 2004* section 4) in relation to the
- 29 incapable person;
- 30 (vii) if no person mentioned in another subparagraph
- 31 of this paragraph is available, a person, or a
- 32 person in a class of persons, prescribed by the
- 33 regulations for the purposes of this subparagraph.

1 **91. Chief Health Officer may make test orders**

2 (1) The Chief Health Officer may make a test order in respect of a
3 person (the *relevant person*) if the Chief Health Officer
4 reasonably believes that —

5 (a) an incident has occurred or a circumstance has arisen
6 that could have resulted in —

7 (i) the relevant person, or biological material from
8 the relevant person, directly or indirectly
9 transmitting a notifiable infectious disease to
10 another person; or

11 (ii) a notifiable infectious disease being transmitted
12 to the relevant person;

13 and

14 (b) the relevant person —

15 (i) has been given relevant counselling; or

16 (ii) has been offered relevant counselling, but has
17 refused the offer or has failed to take up the offer
18 within a reasonable time; or

19 (iii) is a protected person;

20 and

21 (c) any of the following apply —

22 (i) if paragraph (b)(i) or (ii) applies, the relevant
23 person has refused to be tested for the disease or
24 has failed to be tested for the disease within a
25 reasonable time;

26 (ii) if paragraph (b)(iii) applies, a person entitled to
27 consent to the relevant person being tested for
28 the disease has refused that consent or has failed
29 to give that consent within a reasonable time,
30 after being given relevant counselling or, after
31 having been offered relevant counselling, having
32 refused or failed to take up the offer within a
33 reasonable time;

- 1 (iii) if paragraph (b)(iii) applies, it is not practicable
2 in the circumstances to obtain, from someone
3 else, consent to the relevant person being tested
4 for the disease;
- 5 and
- 6 (d) testing the relevant person for the disease is necessary
7 for the purposes of determining what steps (if any) need
8 to be taken with respect to the clinical or public health
9 management and, if appropriate, treatment of the
10 relevant person or another person.
- 11 (2) The Chief Health Officer may make a test order in respect of a
12 deceased person if the Chief Health Officer reasonably believes
13 that —
- 14 (a) either —
- 15 (i) before or after the person’s death, an incident has
16 occurred or a circumstance has arisen that could
17 have resulted in the deceased person, or
18 biological material from the deceased person,
19 directly or indirectly transmitting a notifiable
20 infectious disease to another person; or
- 21 (ii) before the person’s death, an incident has
22 occurred or a circumstance has arisen that could
23 have resulted in a notifiable infectious disease
24 being transmitted to the relevant person;
- 25 and
- 26 (b) testing the deceased person for the disease is necessary
27 for the purposes of determining what steps (if any) need
28 to be taken with respect to —
- 29 (i) the public health management of the deceased
30 person; or
- 31 (ii) the clinical or public health management and, if
32 appropriate, treatment of another person.

1 (3) Before making a test order in respect of a deceased person, the
2 Chief Health Officer must consult with the senior next of kin of
3 the deceased, unless the Chief Health Officer reasonably
4 believes that it is not practical in the circumstances to undertake
5 that consultation.

6 **92. Process for making test order**

- 7 (1) A test order must be in writing and must include the
8 following —
- 9 (a) details of the incident or circumstance to which the
10 order relates;
 - 11 (b) the name of the person to be tested under the order;
 - 12 (c) if the person to be tested under the order is a protected
13 person or a deceased person —
 - 14 (i) in the case of a protected person, the name of a
15 responsible person; or
 - 16 (ii) in the case of a deceased person, the name of the
17 person who has lawful custody of the deceased
18 person's body;
 - 19 (d) the name of the notifiable infectious disease for which
20 the person is to be tested;
 - 21 (e) the kind of sample to be obtained under the order;
 - 22 (f) where and when the sample is to be obtained;
 - 23 (g) a statement that section 100 confers a right to apply to
24 the State Administrative Tribunal for a review of the
25 decision to make the order;
 - 26 (h) a statement that the person who is required to comply or
27 facilitate compliance with the order has the right to
28 obtain legal advice and to communicate with a lawyer;
 - 29 (i) a statement that force may be used to enforce the order;
 - 30 (j) a warning that failure to comply or, as the case requires,
31 facilitate compliance with the order is an offence.

- 1 (2) A test order must be served personally on —
- 2 (a) unless paragraph (b) or (c) applies, the person to be
- 3 tested under the order; or
- 4 (b) if the person to be tested under the order is a protected
- 5 person, the responsible person named in the order; or
- 6 (c) if the person to be tested under the order is a deceased
- 7 person, the person who has lawful custody of the
- 8 deceased person's body.
- 9 (3) A test order may be made subject to any reasonable conditions
- 10 that the Chief Health Officer considers appropriate and specifies
- 11 in the order.
- 12 (4) The Chief Health Officer may, by further order under
- 13 section 91, vary or revoke a test order, and the variation or
- 14 revocation of the order must be served personally on the person
- 15 on whom the original order was served.
- 16 (5) A test order, or a variation to a test order, does not take effect
- 17 until it is served personally in accordance with subsection (2)
- 18 or (4), as the case requires.

19 **93. Explanation of test order**

- 20 (1) The Chief Health Officer must ensure that a person to be tested
- 21 under a test order (other than a protected person or a deceased
- 22 person) is informed in language likely to be readily understood
- 23 by the person —
- 24 (a) of the person's obligations under section 79(2) to (4);
- 25 and
- 26 (b) of the person's rights under section 79(5); and
- 27 (c) of the person's right under section 100 to apply to the
- 28 State Administrative Tribunal for a review of the
- 29 decision to make the order; and
- 30 (d) that the person has a right to obtain legal advice and to
- 31 communicate with a lawyer; and
- 32 (e) about the purpose and effect of the order; and

- 1 (f) that force may be used to enforce the order; and
2 (g) that failure to comply with the order is an offence.
- 3 (2) If the person to be tested under a test order is a protected person
4 or a deceased person, the Chief Health Officer must ensure that
5 a suitably modified version of the explanation required by
6 subsection (1) is given to the person on whom the test order is
7 served in accordance with section 92(2).
- 8 (3) Subsections (1) and (2) apply with all necessary changes if a test
9 order is varied.
- 10 (4) Failure to comply with this section does not invalidate a test
11 order.
- 12 **94. Effect of test orders**
- 13 (1) A test order (other than an order that relates to a protected
14 person or a deceased person) —
- 15 (a) authorises a sample of the kind specified in the order to
16 be obtained from the person in accordance with the
17 order; and
- 18 (b) requires the person named in the order to give a sample
19 of the kind specified in the order, or to submit to the
20 taking of a sample of that kind, in accordance with the
21 order.
- 22 (2) A test order that relates to a protected person —
- 23 (a) authorises a sample of the kind specified in the order to
24 be obtained from the protected person in accordance
25 with the order; and
- 26 (b) requires the responsible person named in the order to
27 take all reasonable steps to enable that sample to be
28 obtained or taken in accordance with the order.
- 29 (3) A test order that relates to a deceased person —
- 30 (a) authorises a sample of the kind specified in the order to
31 be taken from the deceased person's body in accordance
32 with the order; and

1 (b) requires the person who has lawful custody of the
2 deceased person's body to take all reasonable steps to
3 enable that sample to be taken in accordance with the
4 order.

5 (4) A test order also authorises the sample to be tested for the
6 notifiable infectious disease named in the order.

7 **95. Offences of failing to comply with test order**

8 (1) A person named in a test order who, without reasonable excuse,
9 fails to comply with the requirement in section 94(1) to give a
10 sample of the kind specified in the order, or to submit to the
11 taking of a sample of that kind, in accordance with the order
12 commits an offence.

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

14 (2) A responsible person named in a test order who, without
15 reasonable excuse, fails to comply with the requirement in
16 section 94(2)(b) to take all reasonable steps to enable a sample
17 to be obtained or taken in accordance with the order commits an
18 offence.

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

20 (3) A person who is named in a test order as the person who has
21 lawful custody of a deceased person's body and who, without
22 reasonable excuse, fails to comply with the requirement in
23 section 94(3)(b) to take all reasonable steps to enable a sample
24 to be taken in accordance with the order commits an offence.

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

26 **96. No payment may be required in relation to testing under**
27 **test order**

28 Neither the Chief Health Officer nor any person acting on
29 behalf of the Chief Health Officer, nor any person who obtains
30 or takes a sample under a test order, may require any of the
31 following persons to make any payment (whether in money or

- 1 money's worth) for or in relation to the obtaining, taking or
2 testing of a sample under a test order —
- 3 (a) the person from whom the sample is obtained or taken;
- 4 (b) if section 91(1)(b)(iii) applies to the person, any
5 responsible person;
- 6 (c) if the person from whom the sample is taken is a
7 deceased person, the person who has lawful custody of
8 the deceased person's body or the deceased person's
9 estate.

10 **97. Enforcement of test orders**

- 11 (1) An authorised officer may enforce a test order.
- 12 (2) For the purposes of enforcing a test order, an authorised officer
13 may request the assistance of a police officer.
- 14 (3) An authorised officer or police officer may use reasonable force
15 to enforce a test order, including, if necessary —
- 16 (a) to apprehend the person to be tested under the order (the
17 **relevant person**) and detain the relevant person for as
18 long as is reasonably necessary to enable the test order
19 to be carried out; and
- 20 (b) to take the relevant person to the place where the test
21 order is to be carried out; and
- 22 (c) to restrain the relevant person to enable the sample that
23 is the subject of the test order to be obtained or taken in
24 accordance with section 101; and
- 25 (d) to remove anything (including underwear) that the
26 relevant person is wearing, if —
- 27 (i) the removal of the thing is reasonably necessary
28 to enable the sample that is the subject of the test
29 order to be obtained or taken; and
- 30 (ii) the relevant person is given a reasonable
31 opportunity to remove the thing himself or
32 herself, and refuses or fails to do so.

- 1 (4) Without limiting subsection (3), the force that an authorised
2 officer or police officer may use to enforce a test order includes
3 any force that it is reasonably necessary to use in the
4 circumstances to overcome any resistance to the enforcement of
5 the test order (including the obtaining or taking of the sample
6 that is the subject of the order) that is offered by the relevant
7 person, or that the authorised officer or police officer reasonably
8 suspects will be offered by the relevant person.
- 9 (5) If any action taken under subsection (3) involves the removal of
10 an item of clothing —
- 11 (a) it must be done with decency and sensitivity and in a
12 manner that gives to the relevant person the degree of
13 privacy and dignity that is consistent with carrying out
14 the test order; and
- 15 (b) the authorised officer or police officer taking the action
16 and any other person present while it is done (excluding
17 the person who is obtaining or taking the sample that is
18 the subject of the test order) must, if practicable, be of
19 the same gender as the relevant person; and
- 20 (c) the number of people present while it is done (excluding
21 a person who is present under paragraph (d)) must be no
22 more than is reasonably necessary to ensure that the test
23 order is carried out effectively and to ensure the safety
24 of all present; and
- 25 (d) if the relevant person is a protected person, it must, if
26 practicable, be done in the presence of a responsible
27 person or some other person who can provide the
28 protected person with support and represent his or her
29 interests.

- 1 **98. Warrant to enforce test order**
- 2 (1) If an authorised officer is satisfied that it is necessary to do so to
- 3 enforce a test order, the authorised officer may apply to a
- 4 magistrate —
- 5 (a) for a warrant for the apprehension of the person to be
- 6 tested under the order; or
- 7 (b) if the person named in the order is a deceased person,
- 8 for a warrant authorising entry to the place where the
- 9 deceased person’s body is reasonably believed to be.
- 10 (2) The application —
- 11 (a) must be made in accordance with sections 236 and 237,
- 12 and those sections apply with all necessary changes; and
- 13 (b) must be determined in private.
- 14 (3) If the magistrate is satisfied that there are reasonable grounds
- 15 for the application to have been made under subsection (1), the
- 16 magistrate must issue a warrant accordingly.
- 17 (4) The magistrate must cause a record to be made (on the warrant
- 18 or otherwise) of the matters of fact on which the magistrate has
- 19 relied to justify the issue of the warrant.
- 20 (5) The warrant authorises the person specified in the warrant (and
- 21 any police officer accompanying that person under
- 22 section 99(1)(a)) —
- 23 (a) to enter, at any time, any place where the person (or as
- 24 the case requires, the body of the deceased person) to be
- 25 tested under the test order is reasonably believed to be,
- 26 using any force that is reasonably necessary to do so;
- 27 and
- 28 (b) to search the place for the purpose of finding the person
- 29 or the person’s body, as the case requires; and

- 1 (c) if the person named in the order is not a deceased
2 person, to apprehend the person and —
3 (i) to detain the person for as long as is reasonably
4 necessary to enable the test order to be carried
5 out; and
6 (ii) if necessary, to take that person to the place
7 where the test order is to be carried out;
8 and
9 (d) if the person named in the order is a deceased person, to
10 take possession of the body of the person and (if
11 necessary) take it to a place to enable the test order to be
12 carried out.

13 **99. Further provisions relating to warrant**

- 14 (1) A person executing a warrant issued under section 98 who is not
15 a police officer —
16 (a) may be accompanied by a police officer if necessary for
17 the effective exercise of the powers conferred by the
18 warrant and that section; and
19 (b) must produce the warrant for inspection by a person
20 occupying the place concerned if asked by the person to
21 do so.
22 (2) The warrant remains in force —
23 (a) for the period (not exceeding 30 days) specified in the
24 warrant as the period during which it remains in force;
25 or
26 (b) if no period is so specified, for 30 days from the date of
27 its issue.
28 (3) However, the warrant ceases to be in force when it is executed.

1 **100. Review by State Administrative Tribunal**

2 (1) A person who is named in a test order as the person to be tested
3 under the order may apply to the State Administrative Tribunal
4 for a review of the decision to make the order.

5 (2) If a test order authorises a sample to be taken from a deceased
6 person's body, any of the following persons may apply to the
7 State Administrative Tribunal for a review of the decision to
8 make the order —

9 (a) the person who has lawful custody of the deceased
10 person's body;

11 (b) the senior next of kin of the deceased.

12 (3) The State Administrative Tribunal must hear and determine the
13 application as soon as is practicable.

14 **101. Obtaining or taking samples under test orders**

15 (1) A sample that is the subject of a test order —

16 (a) may be obtained or taken only by a medical practitioner,
17 nurse, midwife or other appropriately qualified person;
18 and

19 (b) must be obtained or taken in accordance with accepted
20 medical practice with respect to the obtaining or taking
21 of a sample of that kind.

22 (2) This section does not limit section 97.

23 **102. Test results to be reported**

24 (1) If a sample that is the subject of a test order is tested for a
25 notifiable infectious disease, the following persons must ensure
26 that the results of the test are reported to the Chief Health
27 Officer as soon as is practicable —

28 (a) if the sample is tested at a pathology laboratory, the
29 responsible pathologist (as defined in section 84);

- 1 (b) if paragraph (a) does not apply, the pathologist or other
2 person who tested the sample;
- 3 (c) if the results of the test are reported to the medical
4 practitioner, nurse, midwife or qualified person who
5 took the sample, that medical practitioner, nurse,
6 midwife or qualified person.
- 7 (2) As soon as is practicable after receiving the test results, the
8 Chief Health Officer must give notice of the test results to the
9 following persons —
- 10 (a) the person from whom the sample tested was obtained
11 or taken, unless that person is a protected person or a
12 deceased person;
- 13 (b) if the person from whom the sample tested was obtained
14 or taken is a protected person, the responsible person
15 named in the test order;
- 16 (c) if the person from whom the sample tested was taken is
17 a deceased person —
- 18 (i) the person named in the test order as the person
19 having lawful custody of the deceased person's
20 body; or
- 21 (ii) if the deceased person died after the sample was
22 taken, the senior next of kin of the deceased;
- 23 (d) any person to whom a notifiable infectious disease could
24 have been transmitted, as referred to in section 91(1)(a)
25 or (2)(a), but only if the information is necessary —
- 26 (i) for the clinical or public health management of
27 that person; or
- 28 (ii) to inform that person that the test results were
29 negative;
- 30 (e) any medical practitioner, nurse, midwife or other person
31 who requires or might require the information for the
32 purposes of —
- 33 (i) the clinical or public health management of the
34 person from whom the sample tested was

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

6 **103. Person tested not to be identified**

- 7 (1) When giving notice of test results to a person under
8 section 102(2)(d), the Chief Health Officer —
9 (a) must not include any information that would identify the
10 person from whom the sample tested was obtained or
11 taken; and
12 (b) must warn the person given notice of the test results —
13 (i) of the obligation imposed by subsection (2); and
14 (ii) that breach of that obligation is an offence.
15 (2) A person given notice of test results under section 102(2)(d)
16 must not disclose, communicate or make a record of anything in
17 those results that would identify the person from whom the
18 sample tested was obtained or taken.

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

20 **104. No liability for reporting test results**

- 21 If a responsible pathologist, pathologist, medical practitioner,
22 nurse, midwife, qualified person or other person in good faith
23 reports to the Chief Health Officer under section 102(1) the
24 results of a test —
25 (a) no civil or criminal liability is incurred as a result of
26 making that report; and
27 (b) making the report is not to be regarded as —
28 (i) a breach of any duty of confidentiality or secrecy
29 imposed by law; or
30 (ii) a breach of professional ethics or standards or
31 any principles of conduct applicable to the
32 person's employment; or

1 (iii) unprofessional conduct.

2 **105. Division not limited by *Mandatory Testing (Infectious***
3 ***Diseases) Act 2014***

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

6 **Division 5 — Public health orders**

7 **106. Terms used**

8 In this Division —

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

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

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

15 ***protected person*** means —

16 (a) a child; or

17 (b) an incapable person;

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

20 (a) related, by blood or marriage, to the incapable person; or

21 (b) the incapable person's de facto partner;

22 ***responsible person*** —

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

25 (i) a parent of the child;

26 (ii) a guardian of the child;

27 (iii) another person who has responsibility for the
28 day-to-day care of the child;

- 1 (iv) if no person mentioned in another subparagraph
2 of this paragraph is available, a person, or a
3 person in a class of persons, prescribed by the
4 regulations for the purposes of this subparagraph;
- 5 (b) in relation to an incapable person, means any of the
6 following persons —
- 7 (i) a relative of the incapable person;
- 8 (ii) a person who is a guardian of the incapable
9 person under the *Guardianship and*
10 *Administration Act 1990*;
- 11 (iii) a person who is an enduring guardian of the
12 incapable person under the *Guardianship and*
13 *Administration Act 1990* and is authorised to
14 perform functions in relation to the incapable
15 person in the circumstances in which this
16 Division applies;
- 17 (iv) a person recognised as the incapable person’s
18 advocate under the *Disability Services Act 1993*
19 section 32(2);
- 20 (v) a person who is a carer (as defined in the *Carers*
21 *Recognition Act 2004* section 4) in relation to the
22 incapable person;
- 23 (vi) if no person mentioned in another subparagraph
24 of this paragraph is available, a person, or a
25 person in a class of persons, prescribed by the
26 regulations for the purposes of this subparagraph.

27 **107. Chief Health Officer may make public health orders**

- 28 (1) The Chief Health Officer may make a public health order in
29 respect of a person if the Chief Health Officer reasonably
30 believes that —
- 31 (a) the person —
- 32 (i) has a notifiable infectious disease; or

- 1 (ii) has been exposed to a notifiable infectious
2 disease, and may develop that disease;
- 3 and
- 4 (b) the person is behaving, or may behave, in a way that (if
5 the person has or develops the disease) will transmit, or
6 is likely to transmit, the disease to another person; and
- 7 (c) there is a material public health risk; and
- 8 (d) any of the following applies —
- 9 (i) the person has been given counselling;
- 10 (ii) reasonable attempts have been made to give the
11 person counselling;
- 12 (iii) it is not practicable to give the person
13 counselling before making the order;
- 14 and
- 15 (e) making a public health order is necessary to prevent or
16 minimise the material public health risk posed by the
17 person.
- 18 (2) A public health order must —
- 19 (a) be in writing in the approved form; and
- 20 (b) name the person to whom it applies; and
- 21 (c) name the notifiable infectious disease the person is
22 believed to have or to which the person is believed to
23 have been exposed, as the case requires; and
- 24 (d) set out the details of what the order requires the person
25 to whom it applies to do or refrain from doing; and
- 26 (e) give details of the circumstances that the Chief Health
27 Officer considers justify making the order; and
- 28 (f) set out the following information —
- 29 (i) an explanation of the person's obligations under
30 section 79(2) to (4);
- 31 (ii) an explanation of the person's rights under
32 section 79(5);

- 1 (iii) a statement that the person has the right under
2 section 118 to apply to the State Administrative
3 Tribunal for a review of the decision to make the
4 order;
- 5 (iv) a statement that the person has the right to obtain
6 legal advice and to communicate with a lawyer;
- 7 and
- 8 (g) state that force may be used to enforce the order; and
- 9 (h) contain a warning that failure to comply with the order
10 is an offence; and
- 11 (i) include any matters prescribed by the regulations.
- 12 (3) When making a public health order, the Chief Health Officer
13 must take into account the principle that any requirement of the
14 order restricting the liberty of the person to whom the order
15 applies should be imposed only if it is the only effective way to
16 ensure that public health is not endangered or likely to be
17 endangered.
- 18 (4) A public health order may include ancillary or incidental
19 directions and may be made subject to any reasonable
20 conditions that the Chief Health Officer considers appropriate
21 and specifies in the order.
- 22 (5) The Chief Health Officer may, by further order under this
23 section, vary or revoke a public health order.

24 **108. Effect of public health orders**

- 25 (1) A public health order may require the person to whom it applies
26 to do one or more of these —
- 27 (a) to refrain from specified conduct, either absolutely or
28 unless specified conditions are satisfied;
- 29 (b) to refrain from carrying out specified activities (for
30 example, without limitation, employment, use of public
31 transport or participation in certain events), either
32 absolutely or unless specified conditions are satisfied;

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- 1 (c) to undergo counselling by a specified person or one or
2 more persons within a specified class of persons;
- 3 (d) to refrain from visiting a specified place, or a place
4 within a specified class of places, either absolutely or
5 unless specified conditions are satisfied;
- 6 (e) to refrain from associating with specified persons or
7 specified classes of persons, either absolutely or unless
8 specified conditions are satisfied;
- 9 (f) to submit to specified supervision;
- 10 (g) to undergo a specified medical examination, or specified
11 medical treatment, at a specified time and place;
- 12 (h) to take specified action to prevent or minimise the
13 public health risk posed by the person;
- 14 (i) to reside at a specified place and, if considered to be
15 appropriate by the Chief Health Officer, to remain
16 isolated at that place;
- 17 (j) to submit to being detained at a specified place for the
18 purpose of undergoing a medical examination or
19 medical treatment;
- 20 (k) to submit to being detained or isolated, or detained and
21 isolated, at a specified place.
- 22 (2) A public health order that requires a person to undergo a
23 medical examination authorises —
- 24 (a) the carrying out of that medical examination in
25 accordance with the order; and
- 26 (b) the testing of any sample obtained or taken in
27 connection with that medical examination.
- 28 (3) A public health order that requires a person to undergo medical
29 treatment authorises —
- 30 (a) the giving of medical treatment to that person in
31 accordance with the order; and

- 1 (b) the testing of any sample obtained or taken in
2 connection with that medical treatment.
- 3 (4) Subsections (2) and (3) do not limit what a person can do for the
4 purposes of, or in connection with, the enforcement or
5 administration of a public health order.

6 **109. Personal service of orders required**

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

17 **110. Explanation of public health order**

- 18 (1) The Chief Health Officer must ensure that a person to whom a
19 public health order applies is informed in language likely to be
20 readily understood by the person —
- 21 (a) of the person’s obligations under section 79(2) to (4);
22 and
- 23 (b) of the person’s rights under section 79(5); and
- 24 (c) of the person’s right under section 118 to apply to the
25 State Administrative Tribunal for a review of the
26 decision to make the order; and
- 27 (d) that the person has the right to obtain legal advice and to
28 communicate with a lawyer; and
- 29 (e) about the purpose and effect of the order; and
- 30 (f) that force may be used to enforce the order; and
- 31 (g) that failure to comply with the order is an offence.

- 1 (2) If the person to whom a public health order applies is a
2 protected person —
- 3 (a) a suitably modified version of the explanation required
4 by subsection (1) is also to be given to the responsible
5 person on whom the order is personally served in
6 accordance with section 109(2); and
- 7 (b) without limiting paragraph (a), the explanation must also
8 inform the responsible person of his or her obligations
9 under section 114.
- 10 (3) This section applies, with all necessary changes, to a variation
11 to a public health order.
- 12 (4) Failure to comply with this section does not invalidate a public
13 health order.
- 14 **111. Provisions applying if person detained under public health**
15 **order**
- 16 (1) If a person is detained under section 108(1)(j) or (k) —
- 17 (a) the Chief Health Officer must review the person’s
18 detention at intervals not greater than 28 days to
19 determine whether the detention of the person continues
20 to be required; and
- 21 (b) the person is entitled to obtain legal advice and to
22 communicate with a lawyer; and
- 23 (c) if the detained person is a protected person, the person is
24 entitled to be represented by a responsible person.
- 25 (2) The Chief Health Officer must ensure that a person who is
26 detained under section 108(1)(j) or (k) is immediately released
27 from that detention if —
- 28 (a) following a review under subsection (1)(a), the Chief
29 Health Officer determines that the detention of the
30 person is no longer required; or
- 31 (b) in the case of a person who is detained under
32 section 108(1)(j), the medical examination or medical

- 1 treatment for which the person was detained has been
2 completed; or
3 (c) for any other reason, the detention of the person under
4 the public health order is no longer required.

5 **112. Minister to be informed of detention or release from**
6 **detention under public health order**

- 7 (1) The Chief Health Officer must give written notice to the
8 Minister —
9 (a) that a person has been detained under section 108(1)(j)
10 or (k); or
11 (b) that following a review under section 111(1)(a), a
12 person is to continue to be detained under
13 section 108(1)(j) or (k); or
14 (c) that a person detained under section 108(1)(j) or (k) has
15 been released from detention.
16 (2) A notice under subsection (1) —
17 (a) must be given as soon as is practicable; and
18 (b) must include —
19 (i) an identifier (for example a number or code) that
20 uniquely identifies the person detained without
21 disclosing their identity; and
22 (ii) the reasons for the detention, continued detention
23 or release from detention, of the person.

24 **113. Offence to fail to comply with public health order**

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

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

1 **114. Responsible persons to facilitate compliance with public**
2 **health order**

3 (1) If a public health order is personally served on a responsible
4 person in accordance with section 109(2), the responsible
5 person must take all reasonable steps to ensure that the person in
6 relation to whom the public health order is in effect complies
7 with the order.

8 (2) A responsible person who, without reasonable excuse, fails to
9 comply with the requirement in subsection (1) commits an
10 offence.

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

12 **115. Enforcement of public health orders**

13 (1) An authorised officer may enforce a public health order.

14 (2) For the purposes of enforcing a public health order, an
15 authorised officer may request the assistance of a police officer.

16 (3) An authorised officer or police officer may use reasonable force
17 to enforce a public health order, including, if necessary —

18 (a) to apprehend and detain the person to whom the order
19 applies (the *relevant person*) and take the relevant
20 person to —

21 (i) a place where a medical examination or medical
22 treatment is to be carried out in accordance with
23 the order; or

24 (ii) the place where the relevant person is required
25 under the order to be;

26 and

27 (b) to detain the relevant person at the place where he or she
28 is required under the order to be; and

29 (c) to restrain the relevant person to enable a medical
30 examination or medical treatment to be carried out; and

- 1 (d) to remove anything (including underwear) that the
2 relevant person is wearing, if —
- 3 (i) the removal of the thing is reasonably necessary
4 to enable a medical examination or medical
5 treatment to be carried out; and
- 6 (ii) the relevant person is given a reasonable
7 opportunity to remove the thing himself or
8 herself, and refuses or fails to do so.
- 9 (4) Without limiting subsection (3), the force that an authorised
10 officer or police officer may use to enforce a public health order
11 includes any force that it is reasonably necessary to use in the
12 circumstances to overcome any resistance to the enforcement of
13 the public health order (including enabling a medical
14 examination or medical treatment to be carried out) that is
15 offered by the relevant person, or that the authorised officer or
16 police officer reasonably suspects will be offered by the relevant
17 person.
- 18 (5) If any action taken under subsection (3) involves the removal of
19 an item of clothing —
- 20 (a) it must be done with decency and sensitivity and in a
21 manner that gives to the relevant person the degree of
22 privacy and dignity that is consistent with carrying out
23 the public health order; and
- 24 (b) the authorised officer or police officer taking the action
25 and any other person present while it is done (excluding
26 any person who is carrying out any medical examination
27 or medical treatment) must, if practicable, be of the
28 same gender as the relevant person; and
- 29 (c) the number of people present while it is done (excluding
30 a person who is present under paragraph (d)) must be no
31 more than is reasonably necessary to ensure that the
32 public health order is carried out effectively and to
33 ensure the safety of all present; and

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

6 **116. Warrant to apprehend person to whom public health order**
7 **applies**

- 8 (1) If an authorised officer is satisfied that it is necessary to do so to
9 enforce a public health order, the authorised officer may apply
10 to a magistrate for a warrant for the apprehension of the person
11 to whom the order applies.
- 12 (2) The application —
- 13 (a) must be made in accordance with sections 236 and 237,
14 and those sections apply with all necessary changes; and
15 (b) must be determined in private.
- 16 (3) If the magistrate is satisfied that there are reasonable grounds
17 for the application to have been made under subsection (1), the
18 magistrate must issue a warrant for the apprehension of the
19 person to whom the public health order applies.
- 20 (4) The magistrate must cause a record to be made (on the warrant
21 or otherwise) of the matters of fact on which the magistrate has
22 relied to justify the issue of the warrant.
- 23 (5) The warrant authorises the person specified in the warrant (and
24 any police officer accompanying that person under
25 section 117(1)(a)) —
- 26 (a) to enter, at any time, any place where the person to
27 whom the public health order applies is reasonably
28 believed to be, using any force that is reasonably
29 necessary to do so; and
30 (b) to search the place for the purpose of finding the person;
31 and

1 (c) to apprehend the person and take the person to a place to
2 be dealt with in accordance with the public health order.

3 **117. Further provisions relating to warrant**

4 (1) A person executing a warrant issued under section 116 who is
5 not a police officer —

6 (a) may be accompanied by a police officer if necessary for
7 the effective exercise of the powers conferred by the
8 warrant and that section; and

9 (b) must produce the warrant for inspection by a person
10 occupying the place concerned if asked by the person to
11 do so.

12 (2) The warrant remains in force —

13 (a) for the period (not exceeding 30 days) specified in the
14 warrant as the period during which it remains in force;
15 or

16 (b) if no period is so specified, for 30 days from the date of
17 its issue.

18 (3) However, the warrant ceases to be in force when it is executed.

19 **118. Review by State Administrative Tribunal**

20 (1) A person to whom a public health order applies (the *applicant*)
21 may apply to the State Administrative Tribunal for a review
22 of —

23 (a) the decision to make the order; or

24 (b) if the order is varied under section 107(5), the decision
25 to vary the order.

26 (2) The State Administrative Tribunal must hear and determine the
27 application as a matter of priority and urgency.

- 1 (3) Without limiting the matters that the State Administrative
2 Tribunal may consider in determining the application, the State
3 Administrative Tribunal must consider —
- 4 (a) the method by which the notifiable infectious disease
5 named in the public health order is transmitted; and
- 6 (b) the seriousness of the risk that the applicant may
7 transmit that disease to other people; and
- 8 (c) the past behaviour and likely behaviour of the applicant;
9 and
- 10 (d) the extent of the restrictions imposed on the applicant.

11 **119. Restriction on making of further public health order**

- 12 (1) This section applies to a person in respect of whom a public
13 health order is made if the order ceases to have effect —
- 14 (a) as the result of being revoked by a further order made
15 under section 107; or
- 16 (b) as the result of —
- 17 (i) the decision of the State Administrative Tribunal
18 on a review under section 118; or
- 19 (ii) an appeal from that decision.
- 20 (2) A further public health order may be made in respect of a
21 person to whom this section applies only if the Chief Health
22 Officer reasonably believes that, since the earlier public health
23 order ceased to have effect, there has been a change in the
24 person's health or behaviour that increases the risk of the person
25 transmitting a notifiable infectious disease to another person.

26 **120. Recognition of interstate public health orders**

- 27 (1) In this section —
- 28 *corresponding law* means a provision of a law of another State,
29 a Territory or the Commonwealth that is prescribed by the
30 regulations to be a corresponding law for the purposes of this
31 section;

- 1 **order** includes a notice, requirement or direction.
- 2 (2) This section applies if —
- 3 (a) a person is subject to an order under a corresponding
- 4 law; and
- 5 (b) the terms of the order provide for matters that could be
- 6 the subject (wholly or substantially) of a public health
- 7 order under this Division; and
- 8 (c) the person enters this State.
- 9 (3) If this section applies, the order to which the person is subject
- 10 operates in this State, in accordance with this section, as if it
- 11 were a public health order made under this Division, but with
- 12 the following modifications —
- 13 (a) the order has the terms set out in the order or applying to
- 14 it under the law of the jurisdiction in which it was made,
- 15 with any variations made under subsection (5)(a) or
- 16 section 107(5);
- 17 (b) section 118(1)(a) does not apply.
- 18 (4) An order that operates in this State under subsection (3) has no
- 19 effect until a copy of the order (with or without any variations
- 20 made under subsection (5)(a)) is served personally in
- 21 accordance with section 109(1) or (2).
- 22 (5) If an order operates in this State under subsection (3) —
- 23 (a) the Chief Health Officer may, by written notice served
- 24 in accordance with section 121(2), vary the order as it
- 25 operates in this State, but only to the extent reasonably
- 26 necessary for its effective operation in this State; and
- 27 (b) the order ceases to operate in this State if —
- 28 (i) the order expires or is revoked under the
- 29 corresponding law; or
- 30 (ii) the Chief Health Officer revokes the order under
- 31 section 107(5).

- 1 **121. Further provisions applying to interstate public health**
2 **orders operating in this State**
- 3 (1) Section 110 applies, with all necessary changes, to an order to
4 which section 120 applies as if the order were a public health
5 order made under this Division.
- 6 (2) If a notice is given under section 120(5)(a) varying an order to
7 which section 120 applies —
- 8 (a) sections 109 and 110 apply, with all necessary changes,
9 to the notice; and
- 10 (b) the person who is subject to the order may apply to the
11 State Administrative Tribunal under section 118(1)(b) as
12 if the order had been varied under section 107(5).
- 13 (3) The variation, under section 120(5)(a), of an order to which
14 section 120 applies does not prevent the order being varied
15 under section 107(5).
- 16 (4) The fact that an order to which section 120 applies has ceased to
17 operate in this State does not prevent a public health order
18 subsequently being made under this Division in relation to the
19 same person.

20 **Division 6 — Reporting requirements**

- 21 **122. Annual report to include information about test orders and**
22 **public health orders**
- 23 (1) The accountable authority of the Department must include the
24 following information in each annual report submitted under the
25 *Financial Management Act 2006* Part 5 —
- 26 (a) information about the number and the types of orders
27 made by the Chief Health Officer under Division 4 or 5
28 in the financial year to which the annual report relates,
29 and the reasons for making those orders;
- 30 (b) information about the number of orders to which
31 section 120 applies that began to operate in this State as

1 public health orders in the financial year to which the
2 annual report relates, and the reasons for taking steps to
3 make the orders operational in this State.

4 (2) The information included in an annual report under
5 subsection (1) must not include any information that identifies,
6 or is likely to identify, any person in respect of whom an order
7 referred to in that subsection was made or relates.

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

9 **123. Terms used**

10 In this Division —

11 ***affected person*** —

12 (a) means a person who has, or who is reasonably believed
13 to have, a notifiable infectious disease; and

14 (b) includes a deceased person who had, or who is
15 reasonably believed to have had, a notifiable infectious
16 disease at the time of his or her death;

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

18 ***contact person*** —

19 (a) in relation to an affected person, means —

20 (i) a person (including a deceased person) who was,
21 or who may have been, a source of the affected
22 person’s notifiable infectious disease; or

23 (ii) a person (including a deceased person) who has
24 been, or who may have been, exposed to a
25 notifiable infectious disease by the affected
26 person;

27 (b) in relation to an exposed person, means —

28 (i) a person (including a deceased person) who
29 exposed, or who may have exposed, the exposed
30 person to a notifiable infectious disease; or

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

5 ***exposed person*** —

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

11 ***relative*** —

- 12 (a) in relation to an affected person or an exposed person,
13 means a person who is —
14 (i) related, by blood or marriage, to the affected
15 person or exposed person; or
16 (ii) the affected person's or exposed person's
17 de facto partner;

18 and

- 19 (b) in relation to an affected person or exposed person who
20 is deceased, includes a person who, immediately before
21 the affected person's or exposed person's death, was a
22 person referred to in paragraph (a)(i) or (ii);

23 ***required information*** means the information required by
24 section 124(1) or 125(1), as the case requires.

25 **124. Requiring information where person believed to have**
26 **notifiable infectious disease**

- 27 (1) If an authorised officer reasonably believes that a person has a
28 notifiable infectious disease, the authorised officer may require
29 the affected person to give the authorised officer the following
30 information —
31 (a) the affected person's name, residential address,
32 telephone numbers, email address, date of birth and
33 gender;

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

15 **125. Requiring information where person believed to have been**
16 **exposed to notifiable infectious disease**

- 17 (1) If an authorised officer reasonably believes that a person has
18 been, or may have been, exposed to a notifiable infectious
19 disease, the authorised officer may require the exposed person
20 to give the authorised officer the following information —
- 21 (a) the exposed person's name, residential address,
22 telephone numbers, email address, date of birth and
23 gender;
- 24 (b) information about any circumstances in which the
25 exposed person may have been exposed to the notifiable
26 infectious disease;
- 27 (c) information about any circumstances in which the
28 exposed person may have exposed another person to the
29 notifiable infectious disease;
- 30 (d) the name, residential address, telephone numbers, email
31 address, date of birth and gender of any person the
32 authorised officer reasonably believes is a contact
33 person in relation to the exposed person;

- 1 (e) any other information prescribed by the regulations.
- 2 (2) The information prescribed by the regulations for the purposes
3 of subsection (1)(e) may vary in respect of different notifiable
4 infectious diseases.
- 5 **126. Requiring other persons to give required information**
- 6 (1) This section applies if an authorised officer reasonably believes
7 that a person is an affected person or an exposed person, and —
- 8 (a) the affected person or exposed person, as the case
9 requires —
- 10 (i) is a child; or
11 (ii) is dead; or
12 (iii) for any other reason does not have the capacity
13 to provide the required information;
- 14 or
- 15 (b) the authorised officer, after making reasonable efforts,
16 has been unable to identify or contact the affected
17 person or exposed person.
- 18 (2) If this section applies, the authorised officer may require any of
19 the following persons to give the required information in
20 relation to the affected person or the exposed person, as the case
21 requires —
- 22 (a) if the affected person or exposed person is a child, a
23 parent or guardian of the child;
- 24 (b) if the affected person or exposed person is believed to be
25 attending, or to have attended, a school, university or
26 other educational institution, a teacher, lecturer, or other
27 member of staff of the school, university or institution;
- 28 (c) a relative of the affected person or exposed person;
- 29 (d) the affected person's or exposed person's employer or
30 former employer;

- 1 (e) any other person the authorised officer reasonably
2 believes may be able to provide the required
3 information.

4 **127. Authorised officer to produce evidence of authority**

- 5 (1) An authorised officer may exercise the power in
6 section 124, 125 or 126 in relation to another person only if —

- 7 (a) the authorised officer —
8 (i) first produces evidence of his or her designation
9 as an authorised officer; or
10 (ii) has evidence of his or her designation as an
11 authorised officer displayed so that it is clearly
12 visible to the other person;

13 and

- 14 (b) the authorised officer first explains to the person that the
15 required information is needed to attempt to prevent or
16 minimise the spread of the notifiable infectious disease.

- 17 (2) However, if for any reason it is not practicable for an authorised
18 officer to comply with a requirement specified in subsection (1)
19 before exercising the power, the authorised officer must comply
20 with that requirement as soon as it is practicable.

21 **128. Offence to fail to comply with requirement to provide**
22 **information**

- 23 (1) A person must not, without reasonable excuse, fail to comply
24 with a requirement made by an authorised officer under
25 section 124(1), 125(1) or 126(2).

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

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

1 **129. Protection from liability**

2 If a person is required under section 124(1), 125(1) or 126(2) to
3 give information to an authorised officer and gives that
4 information in good faith —

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

14 **130. Informing contact persons**

15 (1) This section applies if —

- 16 (a) the Chief Health Officer is notified under section 85 that
17 a contact person may be the source of, or may have been
18 exposed to, a notifiable infectious disease; or
19 (b) in response to a requirement made under
20 section 124(1), 125(1) or 126(2), an authorised officer
21 receives information that a contact person may be the
22 source of, or may have been exposed to, a notifiable
23 infectious disease.

24 (2) If this section applies, the Chief Health Officer or, as the case
25 requires, the authorised officer may take reasonable steps to
26 ensure —

- 27 (a) that the contact person is informed that he or she may be
28 the source of, or may have been exposed to, a notifiable
29 infectious disease; and

-
- 1 (b) that the contact person is provided with information
2 about the disease, including information about —
- 3 (i) the contact person’s obligations under
4 section 79(2) to (4); and
- 5 (ii) the contact person’s rights under section 79(5);
6 and
- 7 (iii) preventing the transmission of the disease to any
8 other person;
- 9 and
- 10 (c) that the contact person is tested and, if necessary, treated
11 for the disease.
- 12 (3) In determining whether or not to take steps under subsection (2)
13 and, if steps are to be taken, what steps, the Chief Health Officer
14 or, as the case requires, the authorised officer must have regard
15 to —
- 16 (a) the degree of the risk of the contact person having the
17 notifiable infectious disease or, as the case requires,
18 having contracted, or contracting, the disease; and
- 19 (b) any guidelines issued by the Chief Health Officer under
20 section 131; and
- 21 (c) any other relevant circumstances.
- 22 (4) Without limiting subsection (2), the steps that the Chief Health
23 Officer or authorised officer may take include requesting any of
24 the following persons to do one or more of the things referred to
25 in that subsection —
- 26 (a) a medical practitioner;
- 27 (b) a nurse practitioner;
- 28 (c) any other person whom the Chief Health Officer or
29 authorised officer considers appropriate in the
30 circumstances.
- 31 (5) If the contact person is a child or a person who for any other
32 reason does not have the capacity to understand the information

1 that would otherwise be provided to them under
2 subsection (2)(a) or (b), the Chief Health Officer or, as the case
3 requires, the authorised officer may take steps under
4 subsection (2) to ensure that the information is instead provided
5 to —

- 6 (a) if the contact person is a child, a parent or guardian of
7 the child; or
8 (b) in any other case, a person who is a carer (as defined in
9 the *Carers Recognition Act 2004* section 4) in relation to
10 the contact person.

11 **131. Chief Health Officer may issue guidelines**

12 (1) The Chief Health Officer may issue guidelines in relation to the
13 taking of steps under section 130 to do the things referred to in
14 subsection (2) of that section.

15 (2) Without limiting subsection (1), guidelines issued under this
16 section may provide guidance about —

- 17 (a) the circumstances in which it may or may not be
18 appropriate to request another person to do those things;
19 and
20 (b) any follow-up action that should be taken if another
21 person is requested to do those things.

22 **132. Protection from liability**

23 (1) This section applies if —

24 (a) the Chief Health Officer or an authorised officer is
25 authorised under section 130 to take steps to ensure that
26 a contact person (or if section 130(5) applies, some other
27 person) is informed that the contact person may be the
28 source of, or may have been exposed to, a notifiable
29 infectious disease, and either —

- 30 (i) himself or herself gives that information to the
31 contact person or other person; or

- 1 (ii) requests another person under section 130(4) to
2 inform the contact person or other person, and
3 gives the person so requested information about
4 the contact person;
- 5 or
- 6 (b) a medical practitioner, nurse practitioner or other person
7 is requested under section 130(4) to inform a contact
8 person or other person that the contact person may be
9 the source of, or may have been exposed to, a notifiable
10 infectious disease.
- 11 (2) If this section applies, and the Chief Health Officer, authorised
12 officer, medical practitioner, nurse practitioner or other person
13 gives the relevant information in good faith —
- 14 (a) no civil or criminal liability is incurred in respect of
15 giving the information; and
- 16 (b) giving the information is not to be regarded as —
- 17 (i) a breach of any duty of confidentiality or secrecy
18 imposed by law; or
- 19 (ii) a breach of professional ethics, professional
20 standards or any principles of conduct applicable
21 to the person’s employment; or
- 22 (iii) unprofessional conduct.

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

25 **133. Regulations relating to immunisation status of children**

- 26 (1) In this section —
- 27 *child* means a person who is under 18 years of age;
- 28 *immunisation status*, of a child, means the status of —
- 29 (a) having been immunised against, or having acquired
30 immunity by infection from, all or specified vaccine
31 preventable notifiable infectious diseases; or

- 1 (b) not having been immunised against, and not having
2 acquired immunity by infection from, all or specified
3 vaccine preventable notifiable infectious diseases;
- 4 ***person in charge***, of a school, means the person who has
5 responsibility for the day-to-day management and control of the
6 school.
- 7 (2) Without limiting section 293(1), regulations may be made under
8 that subsection —
- 9 (a) requiring information about a child’s immunisation
10 status to be given to the person in charge of a school at
11 which the child is to be enrolled or re-enrolled;
- 12 (b) requiring the person in charge of a school to retain for a
13 specified period information about the immunisation
14 status of a child enrolled at the school;
- 15 (c) requiring information given to the person in charge of a
16 school about a child’s immunisation status to be kept
17 confidential and stored securely;
- 18 (d) requiring the person in charge of a school, when directed
19 to do so by the Chief Health Officer, to give a report to
20 the Chief Health Officer in respect of information given
21 to the person about the immunisation status of —
- 22 (i) a child enrolled at the school; or
23 (ii) children enrolled at the school;
- 24 (e) requiring the person in charge of a school to give a
25 report to the Chief Health Officer in respect of any child
26 at the school who contracts a vaccine preventable
27 notifiable infectious disease;
- 28 (f) requiring the person in charge of a school, when directed
29 to do so by the Chief Health Officer, to ensure that a
30 child who has not been immunised against a vaccine
31 preventable notifiable infectious disease specified by the
32 Chief Health Officer is not permitted to attend the
33 school for the period specified by the Chief Health
34 Officer;

- 1 (g) requiring the person in charge of a school, when directed
2 to do so by the Chief Health Officer, to close the school
3 for the period specified by the Chief Health Officer to
4 limit or prevent the spread of a vaccine preventable
5 notifiable infectious disease.

6 **Division 9 — Advisory Panels**

7 **134. Term used: Advisory Panel**

8 In this Division —

9 *Advisory Panel* means a Case Management and Coordination
10 Advisory Panel established under section 135(1).

11 **135. Advisory Panels**

- 12 (1) The Chief Health Officer may establish one or more Case
13 Management and Coordination Advisory Panels.
- 14 (2) The function of an Advisory Panel is to advise the Chief Health
15 Officer on the management of a person who has, or a group of
16 persons who have, a notifiable infectious disease (whether or
17 not a public health order applies to the person or persons).
- 18 (3) An Advisory Panel is to consist of —
- 19 (a) a lawyer; and
- 20 (b) a person who is considered by the Chief Health Officer
21 to be an expert in infectious diseases; and
- 22 (c) a person who is considered by the Chief Health Officer
23 to have knowledge of, and experience in representing,
24 community or consumer interests; and
- 25 (d) any other person who is considered by the Chief Health
26 Officer to be an appropriate member of the Advisory
27 Panel.
- 28 (4) The members of an Advisory Panel are appointed by the Chief
29 Health Officer, on terms and conditions determined by the Chief
30 Health Officer.

- 1 (5) The Chief Health Officer may determine, after consultation with
2 the Minister for Public Sector Management, any remuneration
3 and allowances to be paid to members of an Advisory Panel.

4 **136. Performance of functions and procedures**

- 5 (1) An Advisory Panel must perform its functions —
6 (a) in accordance with any written direction given by the
7 Chief Health Officer as to the scope or performance of
8 its functions in the circumstances of the particular case;
9 and
10 (b) in accordance with any protocols determined under
11 section 137.
- 12 (2) Subject to this Division and the regulations (if any), an
13 Advisory Panel may regulate its own procedure in whatever
14 manner it thinks fit.

15 **137. Protocols**

- 16 (1) The Chief Health Officer may, in writing, determine protocols
17 that must be complied with by Advisory Panels in the
18 performance of their functions.
- 19 (2) The Chief Health Officer must make any protocols determined
20 under this section publicly available without charge.
- 21 (3) The Chief Health Officer may comply with subsection (2) in
22 any way the Chief Health Officer considers appropriate,
23 including (without limitation) by arranging for the protocols to
24 be made available on a website maintained by or on behalf of
25 the Department.

26 **138. Access to information**

- 27 (1) Information (including confidential information) may be
28 disclosed to an Advisory Panel in connection with the
29 performance of its functions.

- 1 (2) If a person discloses information to an Advisory Panel under
2 subsection (1) —
- 3 (a) no civil or criminal liability is incurred as a result of
4 disclosing the information; and
- 5 (b) disclosing the information is not to be regarded as —
- 6 (i) a breach of any duty of confidentiality or secrecy
7 imposed by law; or
- 8 (ii) a breach of professional ethics, professional
9 standards or any principles of conduct applicable
10 to the person’s employment; or
- 11 (iii) unprofessional conduct.
- 12 (3) A member of an Advisory Panel must not make use of or
13 disclose information gained as a result of, or in connection with,
14 the functions of the Advisory Panel except —
- 15 (a) to the extent necessary for the proper performance of
16 those functions; or
- 17 (b) as required or authorised under a written or other law; or
- 18 (c) to a court or tribunal in the course of legal proceedings;
19 or
- 20 (d) in accordance with an order made, or a subpoena issued,
21 by a court or tribunal; or
- 22 (e) to the extent allowed by the regulations.
- 23 Penalty for an offence under this subsection: a fine of \$20 000.

1 **Part 9 — Non-infectious diseases and physical or**
2 **functional abnormalities**

3 **139. Terms used**

4 In this Part —

5 *infectious disease-related condition* means a medical condition
6 that could be declared under section 82 to be a notifiable
7 infectious disease-related condition;

8 *prescribed condition of health* —

- 9 (a) means a disease process, or physical or functional
10 abnormality, that is prescribed by the regulations as a
11 condition of health to which this Part applies; but
12 (b) does not include —
13 (i) an infectious disease; or
14 (ii) an infectious disease-related condition.

15 **140. Objects of this Part**

16 The objects of this Part are to promote the prevention and
17 alleviation of those disease processes, and of those physical or
18 functional abnormalities, as are —

- 19 (a) not infectious and not infectious disease-related
20 conditions; and
21 (b) prescribed.

22 **141. Regulations for this Part**

- 23 (1) Without limiting section 293(1), regulations may be made under
24 that subsection for the purpose of achieving the objects of this
25 Part.
26 (2) Without limiting subsection (1), the regulations may —
27 (a) prescribe conditions of health to which this Part applies;
28 (b) prescribe how, when, by whom, and to whom, cases of
29 prescribed conditions of health must be notified;

- 1 (c) provide for the establishment and maintenance of
2 registers for the purposes of recording information
3 notified or provided under this Part, and (without
4 limitation) —
- 5 (i) regulate, restrict or prohibit access to, and the
6 release of information from, those registers;
- 7 (ii) provide for the removal of information from
8 those registers;
- 9 (d) prescribe functions, powers, and duties of any person or
10 class of person, whether the Minister, the Chief Health
11 Officer, a medical practitioner, a person having any
12 prescribed condition of health or any other person or
13 class of person.
- 14 (3) A regulation made under subsection (2)(d) is limited to
15 prescribing the functions, powers and duties necessary to
16 achieve the objects of this Part, and cannot require any person to
17 submit to treatment without the person's consent.

18 **142. Protection from liability**

- 19 (1) If a person is required under regulations made under section 141
20 to give any information and gives the information in good
21 faith —
- 22 (a) no civil or criminal liability is incurred in respect of
23 giving the information; and
- 24 (b) giving the information is not to be regarded as —
- 25 (i) a breach of any duty of confidentiality or secrecy
26 imposed by law; or
- 27 (ii) a breach of professional ethics, professional
28 standards or any principles of conduct applicable
29 to the person's employment; or
- 30 (iii) unprofessional conduct.
- 31 (2) This section does not limit section 141.

1 **Part 10 — Serious public health incident powers**

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

4 **143. Authorisation to exercise serious public health incident**
5 **powers**

6 (1) The Chief Health Officer may, for the purposes of preventing,
7 controlling or abating a serious public health risk, authorise an
8 authorised officer to exercise any of the serious public health
9 incident powers.

10 (2) The serious public health incident powers conferred on an
11 authorised officer by an authorisation under subsection (1) are
12 in addition to, and do not limit —

- 13 (a) the powers conferred on the person as an authorised
14 officer under Part 15; or
15 (b) the powers the person may have under another written
16 law or other law.

17 (3) The Chief Health Officer may vary or revoke an authorisation
18 under subsection (1).

19 **144. Authorisation to state certain matters**

20 An authorisation under section 143(1) must —

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

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

5 **145. Authorisation may be given orally or in writing**

- 6 (1) In this section —
7 **authorisation** means an authorisation under section 143(1) or
8 the variation or revocation of an authorisation under
9 section 143(3).
10 (2) An authorisation may be given orally or in writing.
11 (3) If the authorisation is given orally, the Chief Health Officer
12 must confirm it in writing as soon as is practicable.

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

14 **146. Terms used**

- 15 In this Division —
16 **child** means a person who is under 18 years of age;
17 **disability** has the meaning given in the *Disability Services*
18 *Act 1993* section 3;
19 **impaired person** means a person who has a disability that
20 impairs the person's capacity to make decisions;
21 **relative**, in relation to an impaired person, means a person who
22 is —
23 (a) related, by blood or marriage, to the impaired person; or
24 (b) the impaired person's de facto partner;
25 **responsible person**, in relation to an impaired person, means —
26 (a) a relative of the impaired person; or
27 (b) a person who is a guardian of the impaired person under
28 the *Guardianship and Administration Act 1990*; or

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

13 **147. Operation of this Division**

- 14 (1) A person may exercise a power conferred on an authorised
15 officer under this Division if the person is authorised by the
16 Chief Health Officer to exercise the power under section 143(1).
17 (2) However, the power can be exercised only —
18 (a) if the serious public health risk to which the
19 authorisation relates has arisen; and
20 (b) while that serious public health risk continues.
21 (3) Subsection (2) does not limit section 181(1)(p).

22 **148. Serious public health incident powers**

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

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

- 1 **149. Enforcement of requirement to undergo medical**
2 **observation, medical examination**
- 3 (1) If an authorised officer gives a direction to a person under
4 section 148(1)(j) to undergo medical observation, medical
5 examination or medical treatment or to be vaccinated, an
6 authorised officer or police officer may use reasonable force to
7 ensure that the direction is complied with, including, if
8 necessary —
- 9 (a) to apprehend and detain the person to whom the
10 direction applies (the *relevant person*) and take the
11 relevant person to a place where the person is required
12 to undergo medical observation, medical examination or
13 medical treatment or to be vaccinated in accordance
14 with the direction; and
- 15 (b) to detain the relevant person at the place where he or she
16 is required to undergo medical observation, medical
17 examination or medical treatment or to be vaccinated in
18 accordance with the direction; and
- 19 (c) to restrain the relevant person —
- 20 (i) to enable a medical observation, medical
21 examination or medical treatment to be carried
22 out; or
- 23 (ii) to enable the relevant person to be vaccinated;
- 24 and
- 25 (d) to remove anything (including underwear) that the
26 relevant person is wearing, if —
- 27 (i) the removal of the thing is reasonably necessary
28 to enable a medical examination or medical
29 treatment to be carried out or, as the case
30 requires, to enable the person to be vaccinated;
31 and
- 32 (ii) the relevant person is given a reasonable
33 opportunity to remove the thing himself or
34 herself, and refuses or fails to do so.

- 1 (2) A direction under section 148(1)(j) to undergo medical
2 examination or medical treatment or to be vaccinated
3 authorises —
- 4 (a) in the case of a direction to undergo medical
5 examination —
- 6 (i) the carrying out of that medical examination in
7 accordance with the direction; and
- 8 (ii) the testing of any sample obtained or taken in
9 connection with that medical examination;
- 10 and
- 11 (b) in the case of a direction to undergo medical
12 treatment —
- 13 (i) the giving of medical treatment to the relevant
14 person in accordance with the direction; and
- 15 (ii) the testing of any sample obtained or taken in
16 connection with that medical treatment;
- 17 and
- 18 (c) in the case of a direction to be vaccinated, the
19 vaccination of the relevant person.
- 20 (3) If any action taken under subsection (1) involves the removal of
21 an item of clothing —
- 22 (a) it must be done with decency and sensitivity and in a
23 manner that gives to the relevant person the degree of
24 privacy and dignity that is consistent with ensuring
25 compliance with the direction; and
- 26 (b) the authorised officer or police officer taking the action
27 and any other person present while it is done (excluding
28 any person who is carrying out any medical examination
29 or medical treatment or vaccinating the relevant person)
30 must, if practicable, be of the same gender as the
31 relevant person; and
- 32 (c) the number of people present while it is done (excluding
33 a person who is present under paragraph (d)) must be no

1 more than is reasonably necessary to ensure that the
2 direction is complied with effectively and to ensure the
3 safety of all present; and
4 (d) if the relevant person is a child or an impaired person, it
5 must, if practicable, be done in the presence of a
6 responsible person or some other person who can
7 provide the child or impaired person with support and
8 represent his or her interests.

9 (4) This section does not limit section 152.

10 **150. Provisions relating to requirement to remain at premises or**
11 **remain quarantined**

12 (1) Before an authorised officer gives a direction under
13 section 148(1)(c) or (i) to a person, or an authorised officer or a
14 police officer detains a person under section 149, the authorised
15 officer or police officer must briefly explain, in language likely
16 to be readily understood by the person —

17 (a) the reason why it is necessary for the person to remain at
18 the premises or, as the case requires, to remain
19 quarantined from other persons or to be detained; and

20 (b) that the person is entitled to obtain legal advice and to
21 communicate with a lawyer; and

22 (c) that the person has a right under section 154 to apply to
23 the State Administrative Tribunal for a review of the
24 decision to give the direction or, as the case requires, the
25 decision to detain the person.

26 (2) However, if in the particular circumstances in which the power
27 to give the direction or, as the case requires, to detain the person
28 is to be exercised, it is not practicable to give the explanation
29 required by subsection (1) before the power is exercised, the
30 authorised officer or police officer must do so as soon as is
31 practicable.

32 (3) If the person to whom a direction under section 148(1)(c) or (i)
33 relates or, as the case requires, the person who is to be detained,

1 or is being detained, under section 149 is a child or an impaired
2 person, the authorised officer or police officer must ensure that
3 a suitably modified version of the explanation required by
4 subsection (1) is given to —

5 (a) in the case of a child —

6 (i) a parent or guardian of the child; or

7 (ii) another person who has responsibility for the
8 day-to-day care of the child; or

9 (iii) if no person mentioned in another subparagraph
10 of this paragraph is available, a person, or a
11 person in a class of persons, prescribed by the
12 regulations for the purposes of this subparagraph;

13 (b) in the case of an impaired person, a responsible person.

14 (4) Failure to comply with this section does not invalidate a
15 direction given under section 148(1)(c) or (i) or the detention of
16 a person under section 149.

17 **151. Review of requirement to remain at premises or remain**
18 **quarantined**

19 (1) If a person is directed under section 148(1)(c) or (i) to remain at
20 any premises for more than 24 hours or, as the case requires, to
21 remain quarantined from other persons for more than 24 hours,
22 or a person is detained under section 149 for more than
23 24 hours —

24 (a) the Chief Health Officer must review the direction or, as
25 the case requires, the detention decision at intervals not
26 greater than 24 hours to determine whether or not it is
27 still necessary for the person to remain at the premises
28 or, as the case requires, to remain quarantined or be
29 detained; and

30 (b) the person is entitled to obtain legal advice and to
31 communicate with a lawyer; and

- 1 (c) if the person is a child, the child is entitled to be
2 represented by —
- 3 (i) a parent or guardian of the child; or
4 (ii) another person who has responsibility for the
5 day-to-day care of the child; or
6 (iii) if no person mentioned in another subparagraph
7 of this paragraph is available, a person, or a
8 person in a class of persons, prescribed by the
9 regulations for the purposes of this subparagraph;
- 10 and
- 11 (d) if the person is an impaired person, the impaired person
12 is entitled to be represented by a responsible person.
- 13 (2) A person to whom a direction under section 148(1)(c) or (i)
14 relates or who is detained under section 149 must be
15 immediately permitted to leave the premises at which the person
16 was directed to remain or, as the case requires, immediately
17 released from quarantine or detention if —
- 18 (a) following a review under subsection (1)(a), the Chief
19 Health Officer determines that it is no longer necessary
20 for the person to remain at the premises or, as the case
21 requires, to remain quarantined or detained; or
22 (b) for any other reason, it is no longer necessary for the
23 person to remain at the premises or, as the case requires,
24 to remain quarantined or detained.

25 **152. Authorised officer may be given assistance, and may use**
26 **force**

- 27 (1) An authorised officer exercising a serious public health incident
28 power may be assisted by a police officer or other person.
- 29 (2) An authorised officer exercising a serious public health incident
30 power conferred by section 148(1)(a), (b), (d) or (f), and any
31 police officer or other person who is assisting an authorised
32 officer to exercise that power, may use whatever force is
33 reasonably necessary to exercise the power.

- 1 (3) If a person does not comply with a requirement of, or a direction
2 given by, an authorised officer exercising a serious public health
3 incident power, an authorised officer and any police officer or
4 other person who is assisting an authorised officer to exercise
5 that power may do all things that are reasonably necessary to
6 enforce compliance with the requirement or direction, using any
7 force that is reasonable in the circumstances.
- 8 (4) Without limiting subsection (3), the force that an authorised
9 officer or police officer or person assisting may use includes
10 any force that it is reasonably necessary to use in the
11 circumstances to overcome any resistance to the enforcement of
12 compliance with the requirement or direction (including
13 enabling a medical examination or medical treatment to be
14 carried out or a vaccination to be given) that is offered by the
15 person to whom the requirement or direction applies, or that the
16 authorised officer or police officer or person assisting
17 reasonably suspects will be offered by that person.

18 **153. Failure to comply with requirements and directions**

- 19 (1) A person must not, without reasonable excuse, fail to comply
20 with a requirement of, or a direction given by, an authorised
21 officer exercising a serious public health incident power.
22 Penalty for an offence under this subsection: a fine of \$20 000.
- 23 (2) Subsection (1) does not apply unless, when the authorised
24 officer makes the requirement or gives the direction, the
25 authorised officer informs the person that a failure to comply
26 with the requirement or direction may constitute an offence.
- 27 (3) A person must comply with a requirement or direction referred
28 to in subsection (1) despite the provisions of any other written
29 law, and —
- 30 (a) no civil or criminal liability is incurred as a result of that
31 compliance; and

- 1 (b) complying with the requirement or direction is not to be
2 regarded as —
- 3 (i) a breach of any duty of confidentiality or secrecy
4 imposed by law; or
- 5 (ii) a breach of professional ethics, professional
6 standards or any principles of conduct applicable
7 to the person's employment; or
- 8 (iii) unprofessional conduct.

9 **154. Review by State Administrative Tribunal**

- 10 (1) This section applies to the following directions and decisions
11 (*reviewable decisions*) —
- 12 (a) a direction under section 148(1)(c) that a person remain
13 at any premises;
- 14 (b) a direction under section 148(1)(i) that a person remain
15 quarantined from other persons;
- 16 (c) a decision to detain a person under section 149.
- 17 (2) A person to whom a reviewable decision applies may apply to
18 the State Administrative Tribunal for a review of the decision.
- 19 (3) The State Administrative Tribunal must hear and determine the
20 application as a matter of priority and urgency.

1 **Part 11 — Public health emergencies**

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

3 **155. Relationship to *Emergency Management Act 2005***

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

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

13 **156. Public health emergency management plans**

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

1 (5) The Chief Health Officer may arrange for a public health
2 emergency management plan to be tested whenever the Chief
3 Health Officer considers it appropriate.

4 (6) For the purposes of subsection (2), the person holding office as
5 the chairman of the State Emergency Management Committee
6 under the *Emergency Management Act 2005* must ensure that
7 the Chief Health Officer is provided with copies of State
8 emergency management policies and State emergency
9 management plans.

10 **157. Directions to, and duties of, public authorities**

11 (1) If a public authority is given, or is to be given, a role and
12 responsibilities under a public health emergency management
13 plan, the Chief Health Officer may in writing direct the public
14 authority, in relation to that role and those responsibilities, to
15 assist the Chief Health Officer —

16 (a) in the preparation of the public health emergency
17 management plan; or

18 (b) in the review of the public health emergency
19 management plan; or

20 (c) in the amendment or replacement of the public health
21 management emergency plan; or

22 (d) in the testing of the public health emergency
23 management plan.

24 (2) The Chief Health Officer may issue guidelines to help public
25 authorities respond to a direction under subsection (1).

26 (3) A public authority must comply with a direction under
27 subsection (1) within the time and in the manner specified in the
28 direction.

29 (4) A public authority that is given a role and responsibilities under
30 a public health emergency management plan must comply with
31 the public health emergency management plan.

Division 3 — Public health state of emergency declarations

158. Minister may make public health state of emergency declaration

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

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

5 **159. Duration of public health state of emergency declaration**

6 A public health state of emergency declaration —

- 7 (a) has effect on and from the time it is made, or any later
8 time specified in the declaration; and
9 (b) if it is not extended under section 161 or sooner revoked
10 under section 162, remains in force until the end of the
11 6th day after the day on which it first has effect.

12 **160. Amendment of public health state of emergency declaration**

13 (1) The Minister may by written declaration amend a public health
14 state of emergency declaration by —

- 15 (a) limiting or further limiting the powers that may be
16 exercised during the remainder of the period for which
17 the declaration is in force;
18 (b) removing or reducing, for the remainder of the period
19 for which the declaration is in force, any limitation
20 previously imposed under paragraph (a) or
21 section 158(3)(b) or 161(3)(a);
22 (c) reducing or expanding the area or areas of the State to
23 which the declaration applies during the remainder of
24 the period for which the declaration is in force.

25 (2) Section 158(2) applies in relation to a declaration amending a
26 public health state of emergency declaration in the same way
27 that it applies to the original public health state of emergency
28 declaration.

29 (3) A declaration amending a public health state of emergency
30 declaration has effect on and from the time it is made.

- 1 **161. Extension of public health state of emergency declaration**
- 2 (1) The Minister may by written declaration extend, or from time to
3 time further extend, the duration of a public health state of
4 emergency declaration.
- 5 (2) Section 158(2) applies in relation to a declaration extending, or
6 further extending, the duration of a public health state of
7 emergency declaration in the same way that it applies to the
8 original public health state of emergency declaration.
- 9 (3) The declaration may —
- 10 (a) limit or further limit the powers that may be exercised
11 during the period by which the duration is extended;
- 12 (b) remove or reduce, during the period by which the
13 duration is extended, any limitation previously imposed
14 under paragraph (a) or section 158(3)(b) or 160(1)(a);
- 15 (c) reduce or expand the area or areas of the State to which
16 the declaration applies during the period by which the
17 duration is extended.
- 18 (4) A declaration extending, or further extending, the duration of a
19 public health state of emergency declaration —
- 20 (a) must state the period by which the duration of the public
21 health state of emergency declaration is extended; and
- 22 (b) remains in force until the end of the period stated under
23 paragraph (a) unless the public health state of
24 emergency declaration is sooner revoked under
25 section 162.
- 26 (5) Each extension, or further extension, of the duration of a public
27 health state of emergency declaration cannot exceed 14 days,
28 but there is no limit on the number of extensions as long as
29 subsection (2) is complied with.
- 30 (6) A declaration extending, or further extending, the duration of a
31 public health state of emergency declaration has effect on and
32 from the time it is made.

1 **162. Revocation of public health state of emergency declaration**

2 (1) The Minister may revoke a public health state of emergency
3 declaration at any time.

4 (2) The revocation must be made by written declaration and must
5 include the time when, and date on which, it is made.

6 (3) A declaration under this section has effect on and from the time
7 it is made, or any later time specified in the declaration.

8 (4) Despite any other written law, the revocation of a public health
9 state of emergency declaration does not affect —

10 (a) any penalty or punishment incurred or imposed, or liable
11 to be incurred or imposed, before the revocation; or

12 (b) any investigation or legal proceedings in respect of a
13 penalty or punishment of that kind.

14 **163. Notice of declaration**

15 (1) Notice of a declaration made under section 158, 160, 161 or 162
16 must be —

17 (a) published for general information as soon as is
18 practicable after the declaration is made in any manner
19 that the Minister considers to be appropriate having
20 regard to the circumstances and what is practicable; and

21 (b) published in the *Gazette* as soon as is practicable after
22 the declaration is made.

23 (2) A failure to publish notice of the declaration does not affect the
24 validity of the declaration.

25 **164. Limitation of stay of operation of public health state of**
26 **emergency declaration**

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

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

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

4 **165. Authorisation to exercise emergency powers during public**
5 **health state of emergency**

- 6 (1) In this section —
7 **health professional** —
8 (a) has the meaning given in the *Civil Liability Act 2002*
9 section 5PA; and
10 (b) includes a person registered under the law of another
11 place that is substantially similar to the *Health*
12 *Practitioner Regulation National Law (Western*
13 *Australia)*.
- 14 (2) For the purposes of emergency management during a public
15 health state of emergency, the Chief Health Officer may
16 authorise all or any of the following to exercise any of the
17 emergency powers while the public health state of emergency
18 declaration is in force —
19 (a) an authorised officer or an authorised officer within a
20 specified class of authorised officers;
21 (b) a health professional or a health professional within a
22 specified class of health professionals.
- 23 (3) An authorisation under subsection (2) is subject to any
24 limitation in a declaration under section 158(3)(b) or 160
25 or 161.
- 26 (4) The emergency powers conferred on an authorised officer by an
27 authorisation under subsection (2) are in addition to, and do not
28 limit —
29 (a) the powers conferred on the person as an authorised
30 officer under Part 15; or

1 (b) the powers the person may have under another written
2 law or other law.

3 (5) Each enforcement agency must prepare and maintain a list of
4 authorised officers designated by the agency who are
5 emergency officers as the result of being authorised under
6 subsection (2).

7 (6) The Chief Health Officer may vary or revoke an authorisation
8 under subsection (2).

9 **166. Authorisation to state certain matters**

10 An authorisation under section 165(2) must —

11 (a) state that the authorisation is given under this Division;
12 and

13 (b) generally describe the public health state of emergency
14 to which it relates; and

15 (c) if the public health emergency has occurred, name or
16 describe the place at which the emergency has occurred;
17 and

18 (d) specify the time at which the authorisation is given; and

19 (e) specify the emergency powers that may be exercised
20 under the authorisation; and

21 (f) specify the period during which the authorisation
22 continues in force.

23 **167. Authorisation may be given orally or in writing**

24 (1) In this section —

25 **authorisation** means an authorisation under section 165(2) or
26 the variation or revocation of an authorisation under
27 section 165(6).

28 (2) An authorisation may be given orally or in writing.

29 (3) If the authorisation is given orally, the Chief Health Officer
30 must confirm it in writing as soon as is practicable.

Division 5 — Emergency powers

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168. Terms used

In this Division —

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

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

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

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

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

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

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

- (a) a relative of the impaired person; or
- (b) a person who is a guardian of the impaired person under the *Guardianship and Administration Act 1990*; or
- (c) a person who is an enduring guardian of the impaired person under the *Guardianship and Administration Act 1990* and is authorised to perform functions in relation to the impaired person in the circumstances in which section 178(1) or 183(1) applies; or
- (d) a person recognised as the impaired person’s advocate under the *Disability Services Act 1993* section 32(2); or
- (e) a person who is a carer (as defined in the *Carers Recognition Act 2004* section 4) in relation to the impaired person; or
- (f) a person, or a person in a class of persons, prescribed by the regulations for the purposes of this definition.

1 **169. Operation of this Division**

2 A person may exercise a power conferred on an emergency
3 officer under this Division if the person is authorised by the
4 Chief Health Officer to exercise the power under section 165(2).

5 **170. Powers to obtain identifying particulars**

6 (1) For the purposes of the *Criminal Investigation (Identifying*
7 *People) Act 2002* —

8 (a) the office of emergency officer is prescribed for the
9 purposes of section 5 of that Act; and

10 (b) a holder of that office may exercise the powers in Part 3
11 of that Act in relation to an offence or suspected offence
12 under this Act during a public health state of emergency.

13 (2) Without limiting subsection (1), an emergency officer may,
14 where reasonably required for emergency management
15 purposes, require a person to give the emergency officer any or
16 all of the person's personal details.

17 (3) If an emergency officer reasonably suspects that a personal
18 detail given by a person in response to a requirement under
19 subsection (2) is false, the emergency officer may require the
20 person to produce evidence of the correctness of the detail.

21 **171. Powers relating to movement and evacuation**

22 For emergency management purposes, an emergency officer
23 may —

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

28 (b) direct the evacuation and removal of persons, animals
29 and vehicles from the emergency area or any part of the
30 emergency area; or

- 1 (c) close any road, access route or area of water in or
2 leading to the emergency area.

3 **172. Powers to use vehicles**

- 4 (1) In this section —

5 *authorisation* includes a licence, registration, approval, permit,
6 exemption, certificate or other form of authority.

- 7 (2) For emergency management purposes, an emergency officer
8 may use a vehicle in any place and in any circumstance despite
9 any provision of any written law that requires —

10 (a) the emergency officer to have an authorisation to use
11 that vehicle or to use that vehicle in that place or in that
12 circumstance; or

13 (b) an authorisation for the use of that vehicle or for the use
14 of that vehicle in that place or in that circumstance.

15 **173. Powers to control or use premises or property**

- 16 (1) For emergency management purposes, an emergency officer
17 may take control of, or make use of, any premises or property.

18 (2) The premises or property may be in, or outside, the emergency
19 area.

- 20 (3) For the purpose of exercising a power under this section, an
21 emergency officer may do all or any of these —

22 (a) enter or, if necessary, break into and enter, any
23 premises;

24 (b) search any premises and anything found in or on the
25 premises;

26 (c) open a container or other thing in the premises;

27 (d) seize anything found in or on the premises, or any other
28 property;

29 (e) direct the owner or occupier or the person apparently in
30 charge of the premises or, as the case requires, the
31 person apparently in charge of the property, to give the

- 1 emergency officer reasonable assistance to exercise the
2 emergency officer's powers under this section.
- 3 (4) Subsection (3) does not limit section 181 or Division 7.
- 4 (5) If an emergency officer takes control of or makes use of any
5 premises or property under this section, the emergency officer
6 must ensure that, as soon as is reasonably practicable in the
7 circumstances, and no later than 7 days after the premises or
8 property are taken control of or made use of, a written notice is
9 given to the owner, occupier or person formerly in charge of the
10 premises or property stating —
- 11 (a) that the premises or property have been taken control of
12 or made use of under this section; and
- 13 (b) the name of the emergency officer who has taken
14 control of or made use of the premises or property.

15 **174. Powers in relation to drugs and vaccines**

- 16 (1) For emergency management purposes, an emergency officer
17 may take control of, or make use of, any vaccine or drug.
- 18 (2) The vaccine or drug may be in, or outside, the emergency area.
- 19 (3) For the purpose of exercising a power under this section, an
20 emergency officer may exercise any of the powers conferred by
21 section 173.
- 22 (4) Without limiting subsection (1) or (3), for the purpose of
23 exercising a power under this section, an emergency officer may
24 direct the manufacturer, importer, distributor, supplier,
25 wholesaler or retailer of any vaccine or drug, or other person
26 who has possession or control of any vaccine or drug —
- 27 (a) not to sell, distribute or otherwise dispose of the vaccine
28 or drug except in accordance with conditions (if any)
29 specified by the emergency officer; or
- 30 (b) to store the vaccine or drug in any premises specified by
31 the emergency officer; or

- 1 (c) to deliver the vaccine or drug to any person or premises
- 2 specified by the emergency officer; or
- 3 (d) to do or refrain from doing, in relation to the vaccine or
- 4 drug, anything specified by the emergency officer; or
- 5 (e) to give the emergency officer reasonable assistance to
- 6 exercise the emergency officer's powers under this
- 7 section.

8 (5) This section does not limit section 173 or 181 or Division 7.

9 **175. Powers in relation to quarantine and medical or other**
10 **procedures**

11 (1) For emergency management purposes, an emergency officer
12 may direct a person to do all or any of these —

- 13 (a) to remain in an area specified by the officer for any
- 14 period specified by the officer;
- 15 (b) to remain quarantined from other persons for any period,
- 16 and in any reasonable manner, specified by the officer;
- 17 (c) to undergo medical observation, medical examination or
- 18 medical treatment or to be vaccinated, as specified by
- 19 the officer;
- 20 (d) to undergo decontamination procedures within any
- 21 reasonable period, and in any reasonable manner,
- 22 specified by the officer.

23 (2) The period specified under subsection (1)(a) or (b) must not be
24 more than 24 hours unless the Chief Health Officer has
25 authorised a longer period to be specified in relation to the
26 person.

27 **176. Enforcement of requirement to undergo medical**
28 **observation or medical or other procedure**

29 (1) If an emergency officer gives a direction to a person under
30 section 175(1)(c) to undergo medical observation, medical
31 examination or medical treatment or to be vaccinated, an

- 1 emergency officer or police officer may use reasonable force to
2 ensure that the direction is complied with, including, if
3 necessary —
- 4 (a) to apprehend and detain the person to whom the
5 direction applies (the *relevant person*) and take the
6 relevant person to a place where the person is required
7 to undergo medical observation, medical examination or
8 medical treatment or to be vaccinated in accordance
9 with the direction; and
- 10 (b) to detain the relevant person at the place where he or she
11 is required to undergo medical observation, medical
12 examination or medical treatment or to be vaccinated in
13 accordance with the direction; and
- 14 (c) to restrain the relevant person —
- 15 (i) to enable a medical observation, medical
16 examination or medical treatment to be carried
17 out; or
- 18 (ii) to enable the relevant person to be vaccinated;
19 and
- 20 (d) to remove anything (including underwear) that the
21 relevant person is wearing, if —
- 22 (i) the removal of the thing is reasonably necessary
23 to enable a medical examination or medical
24 treatment to be carried out or, as the case
25 requires, to enable the person to be vaccinated;
26 and
- 27 (ii) the relevant person is given a reasonable
28 opportunity to remove the thing himself or
29 herself, and refuses or fails to do so.

- 1 (2) A direction under section 175(1)(c) to undergo medical
2 examination or medical treatment or to be vaccinated
3 authorises —
- 4 (a) in the case of a direction to undergo medical
5 examination —
- 6 (i) the carrying out of that medical examination in
7 accordance with the direction; and
- 8 (ii) the testing of any sample obtained or taken in
9 connection with that medical examination;
- 10 and
- 11 (b) in the case of a direction to undergo medical
12 treatment —
- 13 (i) the giving of medical treatment to the relevant
14 person in accordance with the direction; and
- 15 (ii) the testing of any sample obtained or taken in
16 connection with that medical treatment;
- 17 and
- 18 (c) in the case of a direction to be vaccinated, the
19 vaccination of the relevant person.
- 20 (3) If any action taken under subsection (1) involves the removal of
21 an item of clothing —
- 22 (a) it must be done with decency and sensitivity and in a
23 manner that gives to the relevant person the degree of
24 privacy and dignity that is consistent with ensuring
25 compliance with the direction; and
- 26 (b) the emergency officer or police officer taking the action
27 and any other person present while it is done (excluding
28 any person who is carrying out any medical examination
29 or medical treatment or vaccinating the relevant person)
30 must, if practicable, be of the same gender as the
31 relevant person; and

- 1 (c) the number of people present while it is done (excluding
2 a person who is present under paragraph (d)) must be no
3 more than is reasonably necessary to ensure that the
4 direction is complied with effectively and to ensure the
5 safety of all present; and
- 6 (d) if the relevant person is a child or an impaired person, it
7 must, if practicable, be done in the presence of a
8 responsible person or some other person who can
9 provide the child or impaired person with support and
10 represent his or her interests.
- 11 (4) This section does not limit section 188.

12 **177. Further provisions relating to requirement to remain in**
13 **area or remain quarantined**

- 14 (1) Before an emergency officer gives a direction under
15 section 175(1)(a) or (b) to a person, the emergency officer must
16 briefly explain, in language likely to be readily understood by
17 the person —
- 18 (a) the reason why it is necessary for the person to remain
19 in the area or, as the case requires, to remain quarantined
20 from other persons; and
- 21 (b) that the person is entitled to obtain legal advice and to
22 communicate with a lawyer; and
- 23 (c) that the person has a right under section 185 to apply to
24 the State Administrative Tribunal for a review of the
25 decision to give the direction.
- 26 (2) However, if in the particular circumstances in which the power
27 to give the direction is to be exercised, it is not practicable to
28 give the explanation required by subsection (1) before the power
29 is exercised, the emergency officer must do so as soon as is
30 practicable.
- 31 (3) If the person to whom a direction under section 175(1)(a) or (b)
32 relates is a child or an impaired person, the emergency officer

- 1 must ensure that a suitably modified version of the explanation
2 required by subsection (1) is given to —
- 3 (a) in the case of a child —
- 4 (i) a parent or guardian of the child; or
- 5 (ii) another person who has responsibility for the
6 day-to-day care of the child; or
- 7 (iii) if no person mentioned in another subparagraph
8 of this paragraph is available, a person, or a
9 person in a class of persons, prescribed by the
10 regulations for the purposes of this subparagraph;
- 11 (b) in the case of an impaired person, a responsible person.
- 12 (4) Failure to comply with this section does not invalidate a
13 direction given under section 175(1)(a) or (b).

14 **178. Review of requirement to remain in area or remain**
15 **quarantined**

- 16 (1) If a person is directed under section 175(1)(a) or (b) to remain
17 in an area for more than 24 hours or, as the case requires, to
18 remain quarantined from other persons for more than
19 24 hours —
- 20 (a) the Chief Health Officer must review the direction at
21 intervals not greater than 24 hours to determine whether
22 or not it is still necessary for the person to remain in the
23 area or, as the case requires, to remain quarantined; and
- 24 (b) the person is entitled to obtain legal advice and to
25 communicate with a lawyer; and
- 26 (c) if the person is a child, the child is entitled to be
27 represented by —
- 28 (i) a parent or guardian of the child; or
- 29 (ii) another person who has responsibility for the
30 day-to-day care of the child; or
- 31 (iii) if no person mentioned in another subparagraph
32 of this paragraph is available, a person, or a

- 1 person in a class of persons, prescribed by the
2 regulations for the purposes of this subparagraph;
- 3 and
- 4 (d) if the person is an impaired person, the impaired person
5 is entitled to be represented by a responsible person.
- 6 (2) A person to whom a direction under section 175(1)(a) or (b)
7 relates must be immediately permitted to leave the area in which
8 the person was directed to remain or, as the case requires,
9 immediately released from quarantine if —
- 10 (a) following a review under subsection (1)(a), the Chief
11 Health Officer determines that it is no longer necessary
12 for the person to remain in the area or, as the case
13 requires, to remain quarantined; or
- 14 (b) for any other reason, it is no longer necessary for the
15 person to remain in the area or, as the case requires, to
16 remain quarantined.

17 **179. Information sharing**

- 18 (1) In this section —
- 19 **relevant information** means —
- 20 (a) the personal details of a person; or
21 (b) information about the whereabouts of a person; or
22 (c) information about the state of health of a person; or
23 (d) information of a kind prescribed by the regulations;
- 24 **welfare services** means the provision for persons affected by a
25 public health emergency of any of these —
- 26 (a) accommodation;
27 (b) catering;
28 (c) clothing and personal items;
29 (d) registration and inquiry services for the purpose of
30 enabling individuals to be traced, families to be reunited
31 and inquiries answered;

- 1 (e) financial assistance.
- 2 (2) For emergency management purposes, an emergency officer
3 may disclose relevant information —
- 4 (a) to a public authority; and
- 5 (b) if the regulations so provide —
- 6 (i) to a person or body engaged by a public
7 authority to provide welfare services; and
- 8 (ii) in accordance with those regulations.
- 9 (3) For emergency management purposes, if the regulations so
10 provide, a public authority, person or body to which or whom
11 relevant information is disclosed under subsection (2) may
12 further disclose the information in accordance with those
13 regulations.
- 14 (4) For emergency management purposes, an emergency officer
15 may request a public authority that holds relevant information to
16 disclose the information to the emergency officer.
- 17 (5) If information is disclosed, in good faith, under subsection (2)
18 or (3) or in compliance with a request under subsection (4) —
- 19 (a) no civil or criminal liability is incurred in respect of the
20 disclosure; and
- 21 (b) the disclosure is not to be regarded as —
- 22 (i) a breach of any duty of confidentiality or secrecy
23 imposed by law; or
- 24 (ii) a breach of professional ethics or standards or
25 any principles of conduct applicable to a
26 person's employment; or
- 27 (iii) unprofessional conduct.
- 28 (6) The Chief Health Officer must establish procedures for the
29 disclosure of information under subsection (2)(a).

1 **180. Regulations about information sharing for purposes of**
2 **section 179**

3 The regulations may include provisions about —

- 4 (a) the circumstances in which information may be
5 disclosed under section 179; and
6 (b) the public authorities, persons and bodies to which or
7 whom information may be disclosed under that section;
8 and
9 (c) the conditions subject to which information may be
10 disclosed under that section; and
11 (d) the receipt, use and storage of information disclosed
12 under that section; and
13 (e) the restriction of access to information disclosed under
14 that section.

15 **181. Other emergency powers**

- 16 (1) For emergency management purposes, an emergency officer
17 may do all or any of these —
18 (a) enter or, if necessary, break into and enter, any premises
19 in the emergency area;
20 (b) search any premises in the emergency area and anything
21 found in or on the premises;
22 (c) take into any premises in the emergency area the
23 persons, machinery, equipment or materials the
24 emergency officer reasonably requires for exercising a
25 power under this Division;
26 (d) authorise the transportation, storage and disposal of
27 bodies of deceased persons anywhere (whether inside or
28 outside the emergency area);
29 (e) contain an animal, substance or thing in the emergency
30 area;
31 (f) remove or destroy any animal, vegetation, substance or
32 thing in the emergency area;

- 1 (g) remove, dismantle, demolish or destroy any premises in
2 the emergency area;
- 3 (h) disconnect or shut off any electricity, gas, water or fuel
4 supply, or any drainage facility, or any other service, in
5 the emergency area;
- 6 (i) take and use fuel, gas, electricity or water in the
7 emergency area;
- 8 (j) direct the owner or occupier or the person apparently in
9 charge of any place in the emergency area to close that
10 place to the public for the period specified in the
11 direction;
- 12 (k) turn off, disconnect, dismantle or shut down any
13 machinery, equipment or other thing in the emergency
14 area;
- 15 (l) open a container or other thing in the emergency area;
- 16 (m) excavate land or form tunnels in the emergency area;
- 17 (n) build earthworks or temporary structures, or erect
18 barriers, in the emergency area;
- 19 (o) remove to, or, subject to section 182, detain in, any
20 place or premises that the emergency officer thinks
21 proper any person who obstructs or threatens to obstruct
22 emergency management activities;
- 23 (p) without limiting any other emergency power, exercise
24 any serious public health incident power;
- 25 (q) direct a person to give the emergency officer reasonable
26 assistance to exercise the emergency officer's powers
27 under this Division.
- 28 (2) An emergency officer may enter any premises in the emergency
29 area without a warrant or the consent of the occupier of the
30 premises or, in the case of a vehicle, the owner of the vehicle.
- 31 (3) Without limiting subsection (1)(q), an emergency officer
32 exercising an emergency power under this Division may be
33 assisted by a police officer or other person.

1 (4) Subsection (1)(d) overrides —

2 (a) the *Cemeteries Act 1986* section 11; and

3 (b) the *Cremation Act 1929*.

4 **182. Further provisions relating to power to detain under**
5 **section 176(1) or 181(1)(o)**

6 (1) Before an emergency officer or police officer detains a person
7 under section 176(1) or 181(1)(o), the emergency officer or
8 police officer must briefly explain, in language likely to be
9 readily understood by the person —

10 (a) the reason why it is necessary to detain the person; and

11 (b) that the person is entitled to obtain legal advice and to
12 communicate with a lawyer; and

13 (c) that the person has a right under section 185 to apply to
14 the State Administrative Tribunal for a review of the
15 decision to detain the person.

16 (2) However, if in the particular circumstances in which the power
17 to detain the person is to be exercised, it is not practicable to
18 give the explanation required by subsection (1) before the power
19 is exercised, the emergency officer or police officer must do so
20 as soon as is practicable.

21 (3) If the person who is to be detained, or is being detained, under
22 section 176(1) or 181(1)(o) is a child or an impaired person, the
23 emergency officer or police officer must ensure that a suitably
24 modified version of the explanation required by subsection (1)
25 is given to —

26 (a) in the case of a child —

27 (i) a parent or guardian of the child; or

28 (ii) another person who has responsibility for the
29 day-to-day care of the child; or

30 (iii) if no person mentioned in another subparagraph
31 of this paragraph is available, a person, or a

- 1 person in a class of persons, prescribed by the
- 2 regulations for the purposes of this subparagraph;
- 3 (b) in the case of an impaired person, a responsible person.
- 4 (4) Failure to comply with this section does not invalidate the
- 5 detention of a person under section 176(1) or 181(1)(o).
- 6 **183. Review of detention**
- 7 (1) If a person is detained under section 176(1) or 181(1)(o) —
- 8 (a) the Chief Health Officer must review the person’s
- 9 detention at intervals not greater than 24 hours to
- 10 determine whether the detention of the person continues
- 11 to be required; and
- 12 (b) the person is entitled to obtain legal advice and to
- 13 communicate with a lawyer; and
- 14 (c) if the detained person is a child, the child is entitled to
- 15 be represented by —
- 16 (i) a parent or guardian of the child; or
- 17 (ii) another person who has responsibility for the
- 18 day-to-day care of the child; or
- 19 (iii) if no person mentioned in another subparagraph
- 20 of this paragraph is available, a person, or a
- 21 person in a class of persons, prescribed by the
- 22 regulations for the purposes of this subparagraph;
- 23 and
- 24 (d) if the detained person is an impaired person, the
- 25 impaired person is entitled to be represented by a
- 26 responsible person.
- 27 (2) A person who is detained under section 176(1) or 181(1)(o)
- 28 must be immediately released from that detention if —
- 29 (a) following a review under subsection (1)(a), the Chief
- 30 Health Officer determines that the detention of the
- 31 person is no longer required; or

- 1 (b) for any other reason, the detention of the person is no
2 longer required.

3 **184. Minister to be informed of detention or release from**
4 **detention**

- 5 (1) The Chief Health Officer must give written notice to the
6 Minister —
- 7 (a) that a person has been detained under section 176(1)
8 or 181(1)(o); or
- 9 (b) that following a review under section 183(1)(a) a person
10 is to continue to be detained under section 176(1)
11 or 181(1)(o); or
- 12 (c) that a person detained under section 176(1) or 181(1)(o)
13 has been released from detention.
- 14 (2) A notice under subsection (1) —
- 15 (a) must be given as soon as is practicable; and
- 16 (b) must include —
- 17 (i) an identifier (for example a number or code) that
18 uniquely identifies the person detained without
19 disclosing their identity; and
- 20 (ii) the reasons for the detention, continued detention
21 or release from detention, of the person.

22 **185. Review by State Administrative Tribunal**

- 23 (1) This section applies to the following directions and decisions
24 (***reviewable decisions***) —
- 25 (a) a direction under section 175(1)(a) that a person remain
26 in an area specified by an emergency officer;
- 27 (b) a direction under section 175(1)(b) that a person remain
28 quarantined from other persons;
- 29 (c) a decision to detain a person under section 176(1)
30 or 181(1)(o).

- 1 (2) A person to whom a reviewable decision applies may apply to
2 the State Administrative Tribunal for a review of the decision.
- 3 (3) The State Administrative Tribunal must hear and determine the
4 application as a matter of priority and urgency.

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

7 **186. Powers of police relating to closure of places, movement and**
8 **evacuation**

- 9 (1) For the purposes of emergency management during a public
10 health state of emergency, any police officer present in the
11 emergency area may direct the owner, occupier or the person
12 apparently in charge of any place in the emergency area to close
13 that place to the public for the period specified in the direction.
- 14 (2) During a public health state of emergency, any police officer
15 present in the emergency area may exercise any of the powers
16 of an emergency officer under section 171.
- 17 (3) A police officer must not exercise a power under subsection (1)
18 or (2) in a manner that is contrary to or in conflict with the
19 exercise of a power by an emergency officer under section 171
20 or 181(1)(j).

21 **187. Power of Chief Health Officer to direct public authorities**
22 **during public health state of emergency**

- 23 (1) During a public health state of emergency, the Chief Health
24 Officer is responsible for coordinating any activities of public
25 authorities that the Chief Health Officer considers necessary or
26 desirable to coordinate for responding to the public health
27 emergency.
- 28 (2) For the purposes of that coordination, the Chief Health Officer
29 may —
- 30 (a) direct any public authority to do or not to do any act, or
31 to perform or not to perform any function; and

- 1 (b) appoint an officer of a public authority to have overall
2 control of particular activities carried out by public
3 authorities in response to the public health emergency,
4 where a number of public authorities are involved.
- 5 (3) If a direction is given to a public authority under
6 subsection (2)(a) —
- 7 (a) the public authority must comply with the direction
8 within the time and in the manner, if any, specified in
9 the direction; and
- 10 (b) the direction prevails to the extent of any conflict or
11 inconsistency with any written law or other law, but
12 subject to section 155(3).
- 13 (4) This section does not authorise the Chief Health Officer —
- 14 (a) to direct the Police Force of Western Australia, or any
15 police officer, to do or not to do any act, or to perform
16 or not to perform any function; or
- 17 (b) to appoint a police officer to have control of particular
18 activities under subsection (2)(b), except with the
19 agreement of the Commissioner of Police or a senior
20 police officer.

21 **Division 7 — General provisions**

22 **188. General provisions regarding powers**

- 23 (1) In this section —
- 24 *emergency officer* includes a police officer assisting in the
25 exercise of an emergency power under section 181(3) or
26 exercising a power under section 186.
- 27 (2) If a person does not comply with a direction given under this
28 Part, an emergency officer may do all things that are reasonably
29 necessary to ensure compliance with the direction, using any
30 force that is reasonable in the circumstances.

1 (3) An emergency officer may exercise a power under this Part with
2 the help, and using the force, that is reasonable in the
3 circumstances.

4 (4) The powers of an emergency officer under this Part are in
5 addition to, and do not limit, the powers the person may have
6 under another written law or other law.

7 **189. General provisions regarding directions**

8 (1) A direction may be given under this Part orally or in writing.

9 (2) A direction given orally must be confirmed in writing within
10 2 working days after it is given, unless within that period it is
11 complied with or cancelled.

12 (3) Failure to comply with subsection (2) does not invalidate the
13 direction.

14 **190. Direction under *Emergency Management Act 2005* prevails
15 over inconsistent direction under this Part**

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

21 **191. Failure to comply with directions**

22 (1) A person must not, without reasonable excuse, fail to comply
23 with a direction given by an emergency officer or police
24 officer —

25 (a) under section 171, 173, 174, 175, 181 or 186; or

26 (b) otherwise in connection with the exercise of any power
27 conferred on the officer under Division 5 or 6.

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

29 (2) Subsection (1) does not apply unless, when the emergency
30 officer or police officer gives the direction, the officer informs

- 1 the person that a failure to comply with the direction may
2 constitute an offence.
- 3 (3) A person must comply with a direction referred to in
4 subsection (1) despite the provisions of any other written law,
5 and —
- 6 (a) no civil or criminal liability is incurred as a result of that
7 compliance; and
- 8 (b) complying with the direction is not to be regarded as —
- 9 (i) a breach of any duty of confidentiality or secrecy
10 imposed by law; or
- 11 (ii) a breach of professional ethics or standards or
12 any principles of conduct applicable to the
13 person's employment; or
- 14 (iii) unprofessional conduct.

1 **Part 12 — Compensation and insurance**

2 **Division 1 — Compensation**

3 **192. Entitlement to compensation**

4 (1) Subject to this Division, a person is entitled to be paid just and
5 reasonable compensation by the State for any loss or damage
6 suffered by the person because of the exercise, or purported
7 exercise, of —

- 8 (a) a serious public health incident power; or
9 (b) an emergency power; or
10 (c) a power under Part 11 Division 6 or section 188.

11 (2) Compensation is not payable to the person for loss or damage to
12 the extent to which —

- 13 (a) an amount for the loss or damage is recovered or
14 recoverable by the person under a policy of insurance;
15 or
16 (b) any act or omission of the person contributed to the loss
17 or damage.

18 (3) Compensation is not payable to the person for loss or damage if
19 the loss or damage would have happened in any event
20 irrespective of the exercise, or purported exercise, of the power.

21 **193. Applying for compensation**

22 (1) A person may apply to the Minister for compensation for any
23 loss or damage suffered by the person as described in
24 section 192(1).

25 (2) The application must be made in writing within 90 days after
26 the person suffers the loss or damage.

27 (3) The application must —

- 28 (a) state details of the person’s loss or damage; and

- 1 (b) state the amount of compensation claimed and the
2 grounds for the amount claimed; and
- 3 (c) be accompanied by any further information required by
4 the regulations.
- 5 (4) The applicant must provide any other relevant information
6 required by notice given under section 194 to decide the
7 application.
- 8 (5) Despite subsection (2), the Minister may accept a person's
9 application for compensation made more than 90 days after the
10 person suffers the loss or damage if the Minister is satisfied that
11 it would be reasonable in all the circumstances to accept the
12 application.
- 13 **194. Lapsing of application**
- 14 (1) In this section —
15 *information* includes a record relating to information.
- 16 (2) If an application for compensation is made under this Division,
17 the Minister may direct the applicant to provide information to
18 decide the application by giving the applicant a notice stating —
- 19 (a) the required information; and
20 (b) the time by which the information must be given to the
21 Minister; and
22 (c) that, if the information is not given to the Minister by
23 the stated time, the application will lapse.
- 24 (3) The stated time must be reasonable and, in any case, at least
25 21 days after the notice is given.
- 26 (4) The Minister may give the applicant a further notice extending
27 or further extending the time if the Minister is satisfied that it
28 would be reasonable in all the circumstances to give the
29 extension.
- 30 (5) A notice may be given under subsection (4) even if the time to
31 which it relates has passed.

1 (6) If the applicant does not provide the information required under
2 subsection (2) within the stated time or any extension of it, the
3 application lapses.

4 **195. Notice of decision**

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

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

15 and

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

19 **196. Review of decision as to payment of compensation**

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

24 **197. False compensation claim**

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

- 27 (a) make a statement that the person knows to be false or
28 misleading in a material particular to the Minister or any
29 other person; or
30 (b) otherwise mislead the Minister or any other person.

31 Penalty: a fine of \$10 000.

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Division 2 — Insurance

198. Extension of policy of insurance

- (1) This section applies to a policy of insurance for loss of or damage to property if —
 - (a) the property is lost or, as the case requires, damage is caused to the property because of the exercise by a person in good faith of a serious public health incident power, an emergency power or a power under Part 11 Division 6 or section 188; and
 - (b) the power is exercised for the purpose of protecting —
 - (i) the property from loss or damage; or
 - (ii) a person or an animal from death or injury.
- (2) For the purposes of the policy of insurance —
 - (a) the loss or damage is, by the operation of this section, to be taken to be loss or damage caused by the happening of an event for which the policy provides insurance cover; and
 - (b) in determining the amount that the insurer is obliged to apply or pay in repairing, replacing or reinstating the property —
 - (i) the provisions of the policy are to be applied so that they produce the result most favourable to the insured; and
 - (ii) any exclusions or limitations on the liability of the insurer to indemnify the insured (other than any excess for which the insurer is not liable on a claim under the policy) otherwise applying under the policy are to be disregarded.
- (3) A term of a policy of insurance that purports to vary or exclude the operation of subsection (2) is void.

**Part 13 — Improvement notices and
enforcement orders**

Division 1 — Preliminary

199. Terms used

In this Part —

assessment includes inspection;

occupier, of premises, includes —

- (a) the owner of the premises; and
- (b) the person in charge of the premises; and
- (c) a person authorised to be present at the premises as an agent of the owner, or of the person in charge, of the premises.

200. Proceedings for offences: how affected

- (1) The issue of an improvement notice or an enforcement order does not prevent proceedings for an offence under this Act or any other written law being commenced or continued in connection with any matter in respect of which the notice or order was issued.
- (2) However, criminal proceedings (including proceedings under *The Criminal Code* section 177 or 178) do not lie against a person by reason only that the person has not complied with an improvement notice.

Division 2 — Improvement notices

201. Issue of improvement notice

An authorised officer may give an improvement notice to a person if the officer reasonably believes that —

- (a) the person —
 - (i) is carrying on a public health risk activity that contravenes, or is likely to contravene, any provision of this Act; or

- 1 (ii) is carrying on a public health risk activity in a
2 manner that contravenes, or is likely to
3 contravene, any provision of this Act; or
- 4 (iii) has carried on a public health risk activity that
5 contravened, or in a manner that contravened,
6 any provision of this Act in circumstances that
7 make it likely that the contravention will
8 continue or be repeated;
- 9 or
- 10 (b) the person —
- 11 (i) is carrying on an activity that poses a public
12 health risk or that is carried on in a manner that
13 poses a public health risk; and
- 14 (ii) has failed to take reasonable and practicable
15 steps to prevent or minimise any harm to public
16 health;
- 17 or
- 18 (c) the person is failing, or has failed, to comply with the
19 general public health duty; or
- 20 (d) the person is the occupier of premises where —
- 21 (i) a public health risk activity is being carried on
22 that contravenes, or is likely to contravene, any
23 provision of this Act; or
- 24 (ii) a public health risk activity is being carried on in
25 a manner that contravenes, or is likely to
26 contravene, any provision of this Act; or
- 27 (iii) a public health risk activity has been carried on,
28 or carried on in a manner, that contravened any
29 provision of this Act in circumstances that make
30 it likely that the contravention will continue or be
31 repeated;
- 32 or

- 1 (e) the person is the occupier of premises where —
2 (i) an activity is being carried on that poses a public
3 health risk or that is carried on in a manner that
4 poses a public health risk; and
5 (ii) reasonable and practicable steps to prevent or
6 minimise any harm to public health have not
7 been taken;
8 or
9 (f) the person is the occupier of premises where there is or
10 has been a failure to comply with the general public
11 health duty.

12 **202. Contents of improvement notice**

- 13 (1) An improvement notice must take the form of an order requiring
14 the person given the notice to take specified action, which may
15 consist of —
16 (a) steps the person given the notice is required to take; or
17 (b) action the person given the notice is required to stop; or
18 (c) both of those things.
19 (2) An improvement notice must —
20 (a) be in an approved form; and
21 (b) state the authorised officer's belief in terms of
22 section 201(a), (b), (c), (d), (e) or (f); and
23 (c) state the reasonable grounds for that belief; and
24 (d) specify any provision of this Act in respect of which that
25 belief is held; and
26 (e) specify the action that the person given the notice is
27 required to take in order to comply with the notice and
28 the period within which the person must take that action;
29 and
30 (f) state that the person has the right to apply for a review
31 under section 215(1); and

- 1 (g) state the date the notice was given and the name and
2 contact details of the authorised officer who gave it.
- 3 (3) Without limiting subsection (2)(e), an improvement notice may
4 require the preparation and implementation of a risk
5 management plan that —
- 6 (a) identifies public health risks associated with the
7 activities specified in the notice; and
- 8 (b) sets out the steps to be taken —
- 9 (i) to manage those risks; and
10 (ii) to ensure compliance with any requirements of
11 this Act that relate to those activities.
- 12 (4) When specifying under subsection (2)(e) the action that the
13 person given the improvement notice is required to take, the
14 authorised officer must have regard to —
- 15 (a) the degree, or the potential degree, of the risk or the
16 damage to public health from any activity in relation to
17 which the notice is issued; and
- 18 (b) any measures that were taken, or that have not been
19 taken, to avoid, or to minimise the consequences or
20 potential consequences of, that risk or damage to public
21 health; and
- 22 (c) the principles set out in the Table to section 3(2); and
23 (d) any other matter prescribed by the regulations.
- 24 (5) An improvement notice must state that it is issued under
25 section 201.
- 26 (6) An improvement notice may include ancillary or incidental
27 directions.
- 28 **203. Extension of period of compliance with improvement notice**
- 29 Before the end of the period specified in the improvement
30 notice under section 202(2)(e), an authorised officer may, on his
31 or her own initiative or on the application of the person given

1 the notice, extend by written notice given to the person the
 2 period within which the person must take action in accordance
 3 with the improvement notice.

4 **204. Compliance with improvement notice**

- 5 (1) If an authorised officer is satisfied, after carrying out an
 6 appropriate assessment, that an improvement notice has been
 7 complied with, the officer must give the person given the
 8 improvement notice a notice of compliance in the approved
 9 form.
- 10 (2) If an authorised officer is not satisfied, after carrying out an
 11 appropriate assessment, that the improvement notice has been
 12 complied with, the officer must give the person given the
 13 improvement notice a notice in the approved form setting out
 14 the reasons why the officer is not satisfied.
- 15 (3) An assessment for the purposes of subsection (1) or (2) may be
 16 carried out on the application of the person given the
 17 improvement notice or on the initiative of the authorised officer.
- 18 (4) An improvement notice in respect of which a notice of
 19 compliance is given under subsection (1) is to be taken to have
 20 been revoked.

21 **Division 3 — Enforcement orders**

22 **205. Issue of enforcement orders**

- 23 (1) An enforcement agency may give an enforcement order to a
 24 person if the agency reasonably believes that —
- 25 (a) the person has not complied with an improvement notice
 26 given to the person within the period specified in the
 27 notice under section 202(2)(e) or any extension of that
 28 period under section 203; or
- 29 (b) the issue of the order is necessary to prevent or mitigate
 30 a serious public health risk.

- 1 (2) An enforcement agency may give an enforcement order to a
2 person under subsection (1)(a) whether the authorised officer
3 who gave the improvement notice to the person was designated
4 as an authorised officer by that or another enforcement agency.

5 **206. Contents of enforcement order**

- 6 (1) An enforcement order must take the form of an order that the
7 person given the order is —
8 (a) required to take specified action; or
9 (b) prohibited from carrying on a specified activity; or
10 (c) prohibited from causing or permitting a specified
11 activity to be carried on at specified premises; or
12 (d) prohibited from using any specified machinery,
13 equipment or other thing; or
14 (e) prohibited from entering specified premises.
- 15 (2) A prohibition imposed by an enforcement order may, without
16 limitation —
17 (a) be limited, for example the prohibition might relate only
18 to the manner in which something is done;
19 (b) be absolute or conditional.
- 20 (3) An enforcement order must —
21 (a) be in an approved form; and
22 (b) state that it is issued under section 205; and
23 (c) state the grounds on which the order is given; and
24 (d) state the period, if applicable, within which the person is
25 required to comply with the order; and
26 (e) state the date, if applicable, on which the order ceases to
27 have effect; and
28 (f) state that the person has the right to apply for a review
29 under section 215(2); and
30 (g) state the date the notice was given and the name and
31 contact details of the enforcement agency that gave it.

- 1 (4) When specifying in an enforcement order anything that the
2 person given the order is required to do or prohibited from
3 doing, the enforcement agency must have regard to —
- 4 (a) the degree, or the potential degree, of the risk or the
5 damage to public health from any activity in relation to
6 which the order is issued; and
- 7 (b) any measures that were taken, or that have not been
8 taken, to avoid, or to minimise the consequences or
9 potential consequences of, that risk or damage to public
10 health; and
- 11 (c) the principles set out in the Table to section 3(2); and
12 (d) any other matter prescribed by the regulations.
- 13 (5) An enforcement order may include ancillary or incidental
14 directions, including a direction that a copy of the order be
15 displayed in a specified manner at any premises to which the
16 order applies.

17 **207. Extension of period of compliance with enforcement order**

18 If an enforcement order specifies the period under
19 section 206(3)(d) within which the person given the order is
20 required to comply with it, the enforcement agency may, on the
21 agency's own initiative or on the application of the person given
22 the order, extend the period within which the person must
23 comply with the order.

24 **208. Enforcement agency may implement enforcement order**

- 25 (1) This section applies if a person given an enforcement order has
26 not complied with the order —
- 27 (a) within the period specified in the order under
28 section 206(3)(d) or any extension of that period under
29 section 207; or
- 30 (b) if no period for compliance is specified, within the
31 period that the enforcement agency reasonably believes

- 1 to be sufficient for the order to have been complied
2 with.
- 3 (2) If this section applies, the enforcement agency may take any
4 action the agency reasonably believes to be necessary to ensure
5 that the order is complied with.
- 6 (3) Without limiting subsection (2), for the purposes of that
7 subsection an authorised officer designated by the enforcement
8 agency may —
- 9 (a) with any police officer or other person the enforcement
10 agency considers necessary, enter any premises to which
11 the enforcement order relates, using any force that is
12 reasonably necessary to do so —
- 13 (i) at any reasonable time; or
14 (ii) at any time, if the enforcement agency
15 reasonably believes that the circumstances are
16 sufficiently serious or urgent that immediate
17 entry is required;
- 18 or
- 19 (b) arrange to be disconnected or turned off, or to be
20 reconnected or turned on, any electricity, gas, water or
21 fuel supply, or any drainage facility, or any other
22 service, in any premises to which the enforcement order
23 relates; or
- 24 (c) seize, detain, dispose of or isolate anything to which the
25 enforcement order relates.
- 26 (4) The regulations may make provision in respect of things
27 detained, disposed of or isolated under subsection (3)(c).

28 **209. Application of *Criminal and Found Property Disposal***
29 ***Act 2006***

- 30 (1) The *Criminal and Found Property Disposal Act 2006* applies to
31 and in relation to anything that is seized under section 208(3)(c).

1 (2) For the purposes of the *Criminal and Found Property Disposal*
2 *Act 2006* as applied by subsection (1), each enforcement agency
3 is a prescribed agency.

4 **210. Recovery of costs incurred by or on behalf of enforcement**
5 **agency**

6 (1) The amount of any costs incurred by or on behalf of the
7 enforcement agency in taking action under section 208 —

8 (a) is to be taken to be a debt due to the enforcement
9 agency, or to the State if the enforcement agency is the
10 Chief Health Officer, from the person who has not
11 complied with the enforcement order; and

12 (b) is recoverable in a court of competent jurisdiction.

13 (2) In any proceedings for the recovery of the debt, a certificate
14 signed by the enforcement agency stating the amount of any
15 costs and the manner in which they were incurred is evidence of
16 the matters certified.

17 **211. Criminal liability not affected**

18 Nothing in section 208 affects the liability of a person to be
19 proceeded against for an offence under this Act or any other
20 written law or the recovery of a penalty in proceedings of that
21 kind.

22 **212. Certificate of clearance to be given in certain circumstances**

23 (1) The enforcement agency that gave an enforcement order to a
24 person must give a certificate of clearance to the person if the
25 enforcement agency finds, by the enforcement agency's own
26 assessment or the report of an authorised officer's assessment,
27 that —

28 (a) the person has complied with the order; and

29 (b) if applicable, there is no longer a serious public health
30 risk to be prevented or mitigated.

31 (2) A certificate of clearance must be in the approved form.

- 1 (3) An enforcement order in respect of which a certificate of
2 clearance is given is to be taken to have been revoked.

3 **213. Request for assessment**

- 4 (1) A person may, at any time after an enforcement order has been
5 given to the person, make a written request to the enforcement
6 agency that gave the order to make an assessment, or to cause
7 an authorised officer to make an assessment, for the purposes of
8 section 212.

- 9 (2) A certificate of clearance is to be taken to have been given to
10 the person under section 212 if —

11 (a) a request for an assessment is made under
12 subsection (1); and

13 (b) through no fault of the person who made the request, the
14 assessment is not made within the period of 5 working
15 days after the receipt of the request by the enforcement
16 agency.

- 17 (3) The enforcement agency must give written notice in the
18 approved form to the person given an enforcement order of the
19 decision not to give a certificate of clearance after an
20 assessment under this section or section 212 and the reasons for
21 that decision.

22 **214. Contravention of enforcement order**

23 A person must not, without reasonable excuse, contravene or
24 fail to comply with an enforcement order given to the person
25 under this Division.

26 Penalty: a fine of \$50 000.

27 Daily penalty: a fine of \$10 000.

1 **Division 4 — Review by State Administrative Tribunal**

2 **215. Review of decisions relating to improvement notices and**
3 **enforcement orders**

- 4 (1) A person given an improvement notice may apply to the State
5 Administrative Tribunal for a review of —
- 6 (a) the decision to give the improvement notice; or
7 (b) a decision of an authorised officer not to give a notice of
8 compliance to the person under section 204.
- 9 (2) A person given an enforcement order may apply to the State
10 Administrative Tribunal for a review of —
- 11 (a) the decision to give the enforcement order; or
12 (b) a decision of the enforcement agency that gave the order
13 not to give a certificate of clearance to the person under
14 section 212.

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Part 14 — Inquiries

216. Terms used

In this Part —

inquirer means a person conducting an inquiry;

inquiry means an inquiry conducted under section 217.

217. Chief Health Officer may conduct inquiry

(1) The Chief Health Officer may, on the Chief Health Officer's own initiative or at the request of the Minister, conduct an inquiry into any matter relating to public health.

(2) An inquiry may be conducted by the Chief Health Officer personally, or by a person appointed in writing by the Chief Health Officer for the purpose.

(3) A person appointed by the Chief Health Officer to conduct an inquiry —

(a) is to be paid the remuneration and allowances (if any) that are prescribed by the regulations; and

(b) must conduct the inquiry in accordance with any directions given in writing by the Chief Health Officer.

218. Preliminary matters

(1) Before conducting an inquiry, the Chief Health Officer must —

(a) inform the Minister in writing of the Chief Health Officer's intention to do so; and

(b) state in writing the terms of reference of the inquiry; and

(c) if the inquiry is to be conducted by someone other than the Chief Health Officer, state in writing which (if any) of the powers set out in section 221 the inquirer is to have for the purposes of the inquiry.

(2) The Chief Health Officer may at any time, in writing —

(a) amend the terms of reference of an inquiry; or

- 1 (b) amend the statement of powers required by
2 subsection (1)(c).
- 3 (3) If the Chief Health Officer does either of the things mentioned
4 in subsection (2), the Chief Health Officer must inform the
5 Minister in writing what the Chief Health Officer has done.

6 **219. Procedure**

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

18 **220. Hearings**

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

s. 221

1 **221. Inquirer’s powers in relation to inquiry**

- 2 (1) For the purposes of an inquiry, the inquirer (if the Chief Health
3 Officer) —
- 4 (a) may, by written notice, require the attendance of a
5 person at a place and time specified in the notice; and
- 6 (b) may, by written notice, require a person to produce at a
7 place and time specified in the notice a document that is
8 in the possession or under the control of that person; and
- 9 (c) may inspect any document produced and retain it for
10 any reasonable period that the inquirer thinks fit, and
11 may make copies of it or any of its contents; and
- 12 (d) may require a person to take an oath or make an
13 affirmation and may administer an oath or affirmation to
14 a person; and
- 15 (e) may require a person to answer any question put to that
16 person.
- 17 (2) For the purposes of an inquiry, the inquirer (if not the Chief
18 Health Officer) has whichever of the powers set out in
19 subsection (1) that the statement in writing required by
20 section 218(1)(c) states that the inquirer is to have for that
21 purpose.
- 22 (3) A person required by a notice under this section to attend or to
23 produce a document is entitled to be paid the allowances (if any)
24 for the person’s travelling and other expenses that are prescribed
25 by the regulations.

26 **222. Failure to comply with requirements of notice**

- 27 (1) A person must not, without lawful excuse, refuse or fail —
- 28 (a) to attend as required by a notice under section 221; or
- 29 (b) to produce a document as required by a notice under
30 section 221.
- 31 Penalty for an offence under this subsection: a fine of \$10 000.

- 1 (2) A person must not, without lawful excuse, refuse or fail —
2 (a) to be sworn or make an affirmation when required to do
3 so under section 221; or
4 (b) to answer a question when required to do so under
5 section 221.
6 Penalty for an offence under this subsection: a fine of \$10 000.

7 **223. Incriminating answers or documents**

- 8 (1) It is not a lawful excuse for the purposes of section 222 for an
9 individual to refuse to answer a question or produce a document
10 on the ground that the answer or the document might tend to
11 incriminate the individual or make the individual liable to a
12 penalty.
13 (2) However, an answer given or a document produced by an
14 individual in compliance with a requirement under section 221
15 is not admissible in evidence in any proceedings, other than
16 proceedings for an offence under section 225.

17 **224. Disruption of inquiry**

- 18 A person must not —
19 (a) wilfully insult an inquirer when the inquirer is
20 conducting an inquiry; or
21 (b) wilfully interrupt or wilfully obstruct the conduct of an
22 inquiry.
23 Penalty: a fine of \$10 000.

24 **225. False information**

- 25 During an inquiry a person must not give an answer or other
26 information to the inquirer if the person knows that the answer
27 or information is false or misleading in a material particular.
28 Penalty: a fine of \$10 000.

s. 226

1 **226. Protection for certain purposes**

- 2 (1) A person (the *informant*) is not liable in any way for any loss or
3 damage suffered by another person because the informant has
4 given information or produced a document, in good faith, to an
5 inquirer for the purposes of an inquiry.
- 6 (2) An action in tort does not lie against an inquirer, or any person
7 acting under the direction of an inquirer, for anything the
8 inquirer or person has done or omitted to do, in good faith, for
9 the purposes of an inquiry or an inquirer's report under
10 section 227.
- 11 (3) Nothing in this section limits section 286.

12 **227. Reports**

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

1 **Part 15 — Powers of entry, inspection and seizure**

2 **Division 1 — Entry, inspection and seizure**

3 **228. Term used: reasonably suspects**

4 In this Division —

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

7 **229. Powers of authorised officers**

8 (1) For the purposes of this Act, an authorised officer may, at any
9 reasonable time, do any one or more of these —

10 (a) enter and inspect any premises —

11 (i) in respect of which a registrable activity is
12 registered under Part 7 Division 2; or

13 (ii) at which a licensable activity is carried on that is
14 authorised by an activity licence granted under
15 Part 7 Division 3; or

16 (iii) to which an improvement notice or an
17 enforcement order relates;

18 (b) enter and inspect any premises at which the authorised
19 officer reasonably suspects an offence under this Act has
20 been or is being committed;

21 (c) enter and inspect any premises that the authorised
22 officer reasonably suspects are used in connection with a
23 public health risk;

24 (d) enter and inspect any premises in which the authorised
25 officer reasonably suspects there are any documents that
26 relate to a public health risk or to an offence under this
27 Act;

28 (e) open and examine any equipment;

29 (f) take samples of anything that the authorised officer
30 reasonably suspects may be connected with a public

- 1 health risk or may be used as evidence that an offence
2 under this Act has been or is being committed, and for
3 that purpose operate any machinery, equipment or other
4 thing or facilities situated on the premises or brought
5 into the premises by the authorised officer;
- 6 (g) examine any documents referred to in paragraph (d),
7 make copies of those documents or any part of them
8 and, for that purpose, take away and retain any of those
9 documents or any part of them for any time that may be
10 reasonably necessary;
- 11 (h) analyse, examine or test any samples taken under
12 paragraph (f);
- 13 (i) stop any vehicle that the authorised officer is authorised
14 by this subsection to enter, or require that a person in
15 charge of the vehicle —
- 16 (i) stop the vehicle; or
17 (ii) not move the vehicle; or
18 (iii) move the vehicle a reasonable distance to a place
19 specified by the authorised officer;
- 20 (j) open, or require to be opened, any container or other
21 thing that the authorised officer reasonably suspects to
22 contain anything connected with a public health risk;
- 23 (k) make any recording (by whatever means) of images or
24 sounds, or both, that the authorised officer considers
25 necessary;
- 26 (l) take any readings or other measurements, and make
27 sketches or drawings or any other type of record;
- 28 (m) require a person to provide information or answer
29 questions in connection with the authorised officer's
30 functions under this Act or to produce any document or
31 thing that an authorised officer is authorised to examine
32 under this Act;
- 33 (n) require a person to give the authorised officer any or all
34 of the person's personal details, and, if the authorised

- 1 officer reasonably suspects that a personal detail given
2 by the person is false, require the person to produce
3 evidence of the correctness of the detail;
- 4 (o) generally make any investigations or inquiries that may
5 be necessary to ascertain whether a public health risk
6 exists or an offence under this Act has been or is being
7 committed.
- 8 (2) An authorised officer may at any time enter and inspect any
9 premises if the authorised officer reasonably suspects —
- 10 (a) there is an immediate public health risk connected with
11 those premises; and
- 12 (b) the entry is necessary to enable the authorised officer to
13 investigate, prevent, control or abate the risk.
- 14 (3) This section does not authorise entry into any premises, or any
15 part of any premises, being used solely for residential purposes,
16 except —
- 17 (a) where subsection (2) applies; or
- 18 (b) with the informed consent of the occupier of the
19 premises; or
- 20 (c) under the authority of a warrant issued under
21 section 238.
- 22 (4) For the purposes of subsection (3)(a), an occupier of premises
23 gives informed consent if the occupier consents after being
24 informed by the authorised officer —
- 25 (a) of the powers that the authorised officer wants to
26 exercise in respect of the premises; and
- 27 (b) of the reason why the authorised officer wants to
28 exercise those powers; and
- 29 (c) that the occupier can refuse to consent to the authorised
30 officer doing so.
- 31 (5) An authorised officer exercising a power under this section may
32 be assisted by a police officer or other person.

1 **230. Stopping of vehicles**

2 (1) For the purpose of stopping a vehicle under section 229(1)(i), an
3 authorised officer may use any means that are reasonably
4 necessary in the circumstances to do so, including means that
5 hinder or obstruct the passage of other vehicles.

6 (2) Subsection (1) does not authorise the use of means that are
7 intended or are likely to cause death or serious bodily harm to
8 any person, whether or not in a vehicle.

9 (3) An authorised officer who stops a vehicle in order to exercise a
10 power in respect of the vehicle —

11 (a) may detain the vehicle for a reasonable period in order
12 to exercise the power; and

13 (b) may move the vehicle to a place suitable to exercise the
14 power.

15 **231. Incriminating information or answers**

16 (1) An individual is not excused from complying with a
17 requirement under section 229 to provide information or answer
18 questions, or to produce any document or thing, on the ground
19 that the information, answer, document or thing might
20 incriminate the individual or make the individual liable to a
21 penalty.

22 (2) However, any information or answer provided, or document or
23 thing produced, by an individual in compliance with a
24 requirement under section 229 is not admissible in evidence in
25 any proceedings, other than proceedings for an offence under
26 section 242, 243 or 244.

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

29 A person must comply with a requirement under section 229 to
30 provide information or answer questions, or to produce any

- 1 document or thing, despite the provisions of any other written
2 law, and —
- 3 (a) no civil or criminal liability is incurred as a result of that
4 compliance; and
- 5 (b) complying with the direction is not to be regarded as —
- 6 (i) a breach of any duty of confidentiality or secrecy
7 imposed by law; or
- 8 (ii) a breach of professional ethics or standards or
9 any principles of conduct applicable to the
10 person's employment; or
- 11 (iii) unprofessional conduct.

12 **233. Power of seizure**

13 (1) In this section —
14 **record** —

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

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

27 **thing** includes —

- 28 (a) any vehicle, plant or machinery; and
29 (b) any record; and
30 (c) any substance; and
31 (d) anything in, on or connected to a thing.

- 1 (2) This section applies —
2 (a) if an authorised officer has entered any premises under
3 section 229; or
4 (b) in any other circumstances in which an authorised
5 officer is performing functions under this Act.
- 6 (3) An authorised officer may seize any thing relevant to an offence
7 under this Act if the officer reasonably suspects —
8 (a) the thing may be forfeited under Division 2; or
9 (b) it is necessary to seize the thing for one or more of these
10 purposes —
11 (i) to prevent it from being concealed, disturbed or
12 lost;
13 (ii) to preserve its evidentiary value;
14 (iii) to prevent it from being used in the commission
15 of another offence under this Act.

16 **234. Application of *Criminal Investigation Act 2006***

- 17 (1) For the purposes of the *Criminal Investigation Act 2006* —
18 (a) the office of authorised officer is a public officer; and
19 (b) a holder of that office may exercise the powers in
20 Parts 6 and 13 of that Act.
- 21 (2) For the purposes of subsection (1), the *Criminal Investigation*
22 *Act 2006* Part 13 applies as if the power to seize a thing under
23 section 233 were a power to seize the thing under that Act.

24 **235. Application for warrant to enter premises**

- 25 (1) An authorised officer may apply to a judicial officer for a
26 warrant in respect of any premises —
27 (a) if the authorised officer reasonably suspects that there is,
28 or may be within the next 72 hours, a particular thing
29 (including a document) that may provide evidence that

- 1 an offence under this Act has been committed or is
2 being committed; or
3 (b) otherwise for the purposes of exercising powers under
4 section 229.
- 5 (2) An authorised officer may apply for a warrant in respect of any
6 premises even if the authorised officer has power to enter the
7 premises without a warrant.

8 **236. How application made**

- 9 (1) A reference in this section to making an application includes a
10 reference to giving information in support of the application.
- 11 (2) An application under section 235 must be made by the
12 authorised officer in person unless —
13 (a) the warrant is needed urgently; and
14 (b) the applicant reasonably believes that a judicial officer is
15 not available within a reasonable distance of the
16 applicant.
- 17 (3) If subsection (2)(a) and (b) apply —
18 (a) the application may be made to a judicial officer by
19 remote communication; and
20 (b) the judicial officer may grant the application only if
21 satisfied about the matters in subsection (2)(a) and (b).
- 22 (4) An application under section 235 must be made in writing
23 unless —
24 (a) the application is made by remote communication; and
25 (b) it is not practicable to send the judicial officer written
26 material.
- 27 (5) If subsection (4)(a) and (b) apply —
28 (a) the application may be made orally; and
29 (b) the judicial officer must make a written record of the
30 application and any information given in support of it.

- 1 (6) An application under section 235 must be made on oath
2 unless —
- 3 (a) the application is made by remote communication; and
4 (b) it is not practicable for the judicial officer to administer
5 an oath to the applicant.
- 6 (7) If subsection (6)(a) and (b) apply —
- 7 (a) the application may be made in an unsworn form; and
8 (b) if the judicial officer issues a warrant, the applicant is as
9 soon as is practicable to send the judicial officer an
10 affidavit verifying the application and any information
11 given in support of it.
- 12 **237. Further provisions relating to application for warrant**
- 13 (1) If, on an application made by remote communication under
14 section 236, a judicial officer issues a warrant, the judicial
15 officer must, if practicable, send a copy of the original warrant
16 to the applicant by remote communication, but otherwise —
- 17 (a) the judicial officer must send the applicant by remote
18 communication any information that must be set out in
19 the warrant; and
- 20 (b) the applicant must complete a form of a warrant with
21 that information and give the judicial officer a copy of
22 the form as soon as is practicable after doing so; and
- 23 (c) the judicial officer must attach the copy of the form to
24 the original warrant and any affidavit received from the
25 applicant and make them available for collection by the
26 applicant.
- 27 (2) The copy of the original warrant sent, or the form of the warrant
28 completed, as the case may be, under subsection (1) has the
29 same force and effect as the original warrant.
- 30 (3) If an applicant contravenes section 236(7)(b) or
31 subsection (1)(b), any evidence obtained under the warrant is
32 not admissible in proceedings in a court.

1 **238. Issue of warrant**

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

7 **239. Duration of warrant**

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

15 **240. Execution of warrant**

- 16 (1) A warrant may be executed by —
17 (a) the authorised officer to whom it was issued; or
18 (b) any other person who the enforcement agency concerned
19 has designated as an authorised officer.
- 20 (2) A warrant authorises an authorised officer —
21 (a) to enter the premises concerned, using any force against
22 any person or thing that it is reasonably necessary to use
23 in the circumstances —
24 (i) to execute the warrant; and
25 (ii) to overcome any resistance to executing the
26 warrant that is offered, or that the authorised
27 officer reasonably suspects will be offered, by
28 any person;
29 and

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Part 15 Powers of entry, inspection and seizure

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- 1 (b) to search those premises for the thing (including the
2 document), or to exercise powers in relation to those
3 premises for the purposes, in respect of which the
4 warrant was issued.
- 5 (3) An authorised officer executing a warrant —
- 6 (a) may be accompanied by a police officer if necessary for
7 the effective exercise of the powers conferred by the
8 warrant and this section; and
- 9 (b) must produce the warrant for inspection by a person
10 occupying the premises concerned if asked by the
11 person to do so.
- 12 (4) This section does not limit the powers conferred on an
13 authorised officer under any other provision of this Part.

14 **241. Use of force**

- 15 (1) If under section 240(2) an authorised officer uses force, the
16 force may be such as causes damage to the property of another
17 person.
- 18 (2) Any use of force under section 240(2) against a person is
19 subject to *The Criminal Code* Chapter XXVI.

20 **242. Failure to comply with requirements of authorised officers**

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

28 **243. False information**

- 29 A person must not, in connection with a requirement made or
30 direction given by an authorised officer under this Act, provide

1 any information or produce any document that the person knows
2 is false or misleading in a material particular.

3 Penalty: a fine of \$10 000.

4 **244. Obstructing, impersonating or threatening authorised**
5 **officers**

6 (1) A person must not resist, obstruct or attempt to obstruct an
7 authorised officer in the performance of the authorised officer's
8 functions under this Act.

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

10 (2) A person must not falsely represent, by words or conduct, that
11 the person is an authorised officer.

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

13 (3) A person must not threaten or intimidate an authorised officer in
14 the performance of the authorised officer's functions under this
15 Act.

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

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

18 **245. Application of *Criminal and Found Property Disposal***
19 **Act 2006**

20 (1) The *Criminal and Found Property Disposal Act 2006* applies to
21 and in relation to —

22 (a) anything that is seized under section 233; and

23 (b) anything that is forfeited to the State or a local
24 government under section 250.

25 (2) For the purposes of the *Criminal and Found Property Disposal*
26 *Act 2006* as applied by subsection (1), each enforcement agency
27 is a prescribed agency.

1 **246. Seized items**

2 (1) Any item seized under this Part may, at the option of the
3 authorised officer who seized the item or of any authorised
4 officer acting in his or her place, be detained in the premises
5 where it was found or be removed to another place and detained
6 there.

7 (2) If the item is to be detained in the premises where it was found,
8 the authorised officer —

- 9 (a) may place it in a room, compartment or cabinet in those
10 premises; and
11 (b) may mark, fasten and seal the door or opening providing
12 access to that room, compartment or cabinet; and
13 (c) must ensure that the item is marked in a way that
14 indicates that it has been seized under this Act.

15 **247. Notification of seizure**

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

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

1 **248. Immediate destruction or disposal of things seized**

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

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

12 **249. Return of seized item**

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

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

21 **250. Forfeiture of item**

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

- 25 (a) on the expiry of the period of 10 days after the day on
26 which the seizure took place, if the item has not been
27 dealt with under section 249 and no application under
28 the *Criminal and Found Property Disposal Act 2006*
29 section 11 for an order for the release of the item has
30 been made within that period; or
31 (b) if an application for an order for the release of the item
32 has been made under the *Criminal and Found Property*

1 *Disposal Act 2006* section 11 within that period but the
2 application has been refused or has been withdrawn
3 before a decision on the application has been made, on
4 the date on which the application is refused or
5 withdrawn.

6 **251. Cost of destruction or disposal of forfeited item**

7 (1) A person who was the owner of an item immediately before its
8 forfeiture under this Division is liable for any costs incurred by
9 or on behalf of the enforcement agency concerned in connection
10 with the lawful destruction or disposal of the item, including
11 any transport or storage costs.

12 (2) The amount of those costs is to be taken to be a debt due to the
13 enforcement agency, or to the State if the enforcement agency is
14 the Chief Health Officer, from that person and is recoverable in
15 a court of competent jurisdiction.

16 (3) In any proceedings for the recovery of the debt, a certificate
17 signed by the enforcement agency stating the amount of any
18 costs and the manner in which they were incurred is evidence of
19 the matters certified.

20 **252. Return of forfeited item**

21 (1) This section applies if —

22 (a) an item seized under this Part —

23 (i) is forfeited under this Division; but

24 (ii) has not been destroyed or otherwise disposed of
25 in a manner that would prevent its return;

26 and

27 (b) the enforcement agency becomes satisfied that no
28 contravention of this Act has been committed in relation
29 to the item.

30 (2) If this section applies, the item must, as soon as is practicable,
31 be delivered to the person from whom it was seized, or any

1 other person who appears to the enforcement agency concerned
2 to be entitled to it.

3 (3) On the item being so delivered, any proprietary and other
4 interests in the item that existed immediately before its
5 forfeiture are restored.

6 **253. Compensation**

7 (1) A person may apply to the enforcement agency concerned for
8 compensation for an item seized under this Part, but only if —
9 (a) the period allowed by section 250(a) for lodging an
10 application under the *Criminal and Found Property*
11 *Disposal Act 2006* section 11 for an order for the release
12 of the item has expired and no application has been
13 lodged; or
14 (b) any application for such an order lodged within that
15 period has been refused or has been withdrawn before a
16 decision on the application has been made.

17 (2) On an application made under this section, the enforcement
18 agency concerned must pay the compensation that is just and
19 reasonable in relation to any item seized under this Part if —
20 (a) no contravention of this Act has been committed in
21 relation to the item; and
22 (b) the item cannot be returned or has in consequence of the
23 seizure depreciated in value.

24 (3) The enforcement agency must give to the person from whom
25 the item was seized and any person seeking compensation under
26 this section written notification of —
27 (a) the decision to pay or to refuse to pay compensation
28 under this section; and
29 (b) if compensation is to be paid, the decision as to the
30 amount of compensation that is just and reasonable.

31 (4) If the enforcement agency has not decided an application for
32 compensation under this section within 30 working days after

1 receiving the application, the enforcement agency is to be taken,
2 on the expiry of that period, to have refused to pay any
3 compensation.

4 (5) If an enforcement agency decides to pay compensation under
5 this section in relation to an item, the compensation must be
6 paid to the person from whom the item was seized or any other
7 person who appears to the enforcement agency to be entitled to
8 it.

9 **254. Review of decisions relating to compensation**

10 A person from whom an item was seized under this Part, or any
11 other person who has sought compensation under section 253,
12 who is dissatisfied with a decision by an enforcement agency
13 under that section as to the refusal to pay compensation or as to
14 the amount of compensation may apply to the State
15 Administrative Tribunal for a review of the decision.

Part 16 — Crown exemptions

Division 1 — Preliminary

255. Terms used

In this Part —

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

compliance plan means a plan of the kind described in section 262(2);

Crown means —

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

Crown authority means

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

exemption means an exemption issued under section 256;

exemption-holder means —

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

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

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

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

3 **256. Minister may exempt Crown or Crown authority from**
4 **certain provisions**

5 (1) The Minister may, by notice published in the *Gazette*, exempt
6 the Crown or a Crown authority from the application of —

7 (a) one or more provisions of this Act; or

8 (b) one or more provisions of the regulations; or

9 (c) a combination of those things.

10 (2) An exemption cannot exempt the Crown or a Crown authority
11 from the application of any of the following —

12 (a) Part 8, which relates to notifiable infectious diseases and
13 related conditions;

14 (b) Part 10, which relates to serious public health incident
15 powers;

16 (c) Part 11, which relates to public health emergencies;

17 (d) Part 14, which relates to inquiries;

18 (e) Part 15, which relates to powers of entry, inspection and
19 seizure;

20 (f) Part 17, which relates to liability, evidentiary and
21 procedural matters;

22 (g) Part 18, which relates to miscellaneous matters.

23 (3) The Minister can exempt the Crown or a Crown authority from
24 the application of a provision of this Act or of the regulations
25 only if the Minister is satisfied that the Crown or, as the case
26 requires, the Crown authority is unable to take the steps
27 necessary to comply with the provision, whether because of a
28 lack of financial or other resources or for any other reason.

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

10 **257. Duration of exemption**

- 11 (1) An exemption takes effect as follows —
- 12 (a) if the exemption does not state when it takes effect, on
13 the day after the day on which notice of it is published in
14 the *Gazette*;
- 15 (b) on a later day specified by the Minister in the
16 exemption.
- 17 (2) An exemption can be issued for any period of not more than
18 10 years.
- 19 (3) An exemption expires at the end of the period for which it is
20 issued, unless it is sooner revoked.
- 21 (4) An exemption cannot be amended to extend its duration, but
22 that does not prevent the issue of a new exemption with the
23 same terms or different terms.

24 **258. Content of exemption**

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

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

6 **259. Effect of exemption**

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

19 **260. Minister to consult before amending or revoking exemption**

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

1 **261. Application of *Interpretation Act 1984* to exemptions**

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

7 **Division 3 — Compliance plans**

8 **262. Exemption may require compliance plan**

- 9 (1) The Minister may attach a condition to an exemption requiring
10 the exemption-holder to develop a compliance plan within a
11 period specified in the exemption.
- 12 (2) A compliance plan sets out the steps that the exemption-holder
13 will take, by the time the exemption expires, to achieve full or
14 partial compliance with the provisions of this Act or the
15 regulations to which the exemption applies.
- 16 (3) A failure to implement a compliance plan, whether in whole or
17 in part, does not of itself give rise to any right or remedy.
- 18 (4) This section does not limit section 256(5) or 259.

19 **263. Development and approval of compliance plan**

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

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

10 **264. Annual review of compliance plan**

- 11 (1) An exemption-holder that has a compliance plan must review it
12 at least annually.
- 13 (2) The report required by section 267(1)(b) must include
14 information about the results of the most recent review of the
15 compliance plan carried out under this section.

16 **265. Amendment or replacement of compliance plan**

- 17 (1) An exemption-holder may at any time —
18 (a) amend a compliance plan; or
19 (b) replace a compliance plan with a new compliance plan.
- 20 (2) Section 263 applies with all necessary changes in relation to the
21 amendment or replacement of a compliance plan as if it were
22 the development of a compliance plan.

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

24 **266. Exemption-holder to make exemption and compliance plan**
25 **publicly available**

- 26 (1) An exemption-holder must ensure that the following are readily
27 available to the public, without charge —
28 (a) all current exemptions held by the exemption-holder;

- 1 (b) an up-to-date version of all current compliance plans
2 developed by the exemption-holder and approved by the
3 Minister.
- 4 (2) An exemption-holder —
- 5 (a) must make those documents publicly available by means
6 of a website maintained by or on behalf of the
7 exemption-holder; and
- 8 (b) may make those documents publicly available by any
9 other means the exemption-holder considers appropriate.

10 **267. Annual report to include information about exemption and**
11 **compliance plan**

- 12 (1) The annual report submitted by the accountable authority of a
13 Crown authority under the *Financial Management Act 2006*
14 Part 5 must include —
- 15 (a) the details of each exemption held by the Crown
16 authority during any part of the year to which the report
17 relates; and
- 18 (b) if a compliance plan developed by the Crown authority
19 and approved by the Minister was in place during any
20 part of the year to which the report relates, a report
21 about progress on the implementation of the plan during
22 that year.
- 23 (2) If an exemption-holder does not have an accountable authority
24 that can comply with subsection (1) in relation to that
25 exemption-holder, the annual report submitted by the
26 accountable authority of the Department under the *Financial*
27 *Management Act 2006* Part 5 must include, in relation to that
28 exemption-holder, the information set out in subsection (1).
- 29 (3) To enable the accountable authority of the Department to
30 comply with subsection (2) in relation to an exemption-holder,
31 the exemption-holder must provide the accountable authority
32 with all the information necessary for that purpose.

1 **Part 17 — Liability, evidentiary and**
2 **procedural provisions**

3 **Division 1 — Civil liability**

4 **268. Contraventions not breach of statutory duty**

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

7 **Division 2 — Criminal liability**

8 **269. Commencing proceedings**

9 Proceedings for an offence under this Act may be
10 commenced —

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

15 **270. Offences by employees — liability of employer**

16 (1) If an employee contravenes any provision of this Act, the
17 employer is to be taken to have contravened the same provision
18 whether or not the employee contravened the provision —

- 19 (a) without the employer's authority; or
20 (b) contrary to the employer's orders or instructions.

21 (2) In proceedings against an employer for such a contravention, it
22 is a defence to prove that the employer —

- 23 (a) had no knowledge of the contravention; and
24 (b) could not, by the exercise of due diligence, have
25 prevented the contravention.

26 (3) An employer may be proceeded against and convicted under a
27 provision in accordance with this section whether or not the

1 employee has been proceeded against or convicted under that
2 provision.

3 **271. Liability of officers of body corporate for offence by body**
4 **corporate**

5 (1) In this section —

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

8 (2) This section applies to —

9 (a) sections 37 and 38; and

10 (b) a provision of the regulations that is prescribed for the
11 purposes of this section.

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

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

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

22 (a) what the officer knew, or ought to have known, about
23 the commission of the offence by the body corporate;
24 and

25 (b) whether the officer was in a position to influence the
26 conduct of the body corporate in relation to the
27 commission of the offence; and

28 (c) any other relevant matter.

1 **272. Further provisions relating to liability of officers of body**
2 **corporate**

3 (1) Section 271 does not affect the liability of a body corporate for
4 any offence.

5 (2) Section 271 does not affect the operation of *The Criminal Code*
6 chapters II, LVII, LVIII and LIX in relation to an officer or any
7 other person.

8 (3) An officer of a body corporate may be charged with, and
9 convicted of, an offence in accordance with section 271 whether
10 or not the body corporate is charged with, or convicted of, the
11 principal offence committed by the body corporate.

12 (4) If an officer of a body corporate who is charged with an offence
13 in accordance with section 271 claims that the body corporate
14 would have a defence if it were charged with the offence —

15 (a) the onus of proving the defence is on the officer; and

16 (b) the standard of proof required is the standard that would
17 apply to the body corporate in relation to the defence.

18 (5) Subsection (4) does not limit any other defence available to the
19 officer.

20 **273. Liability of employees and agents**

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

24 **274. Disclosure by witnesses**

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

1 (2) An authorised officer appearing as a witness in any proceedings
2 is not compelled to produce any document containing any
3 confidential matter made or received in his or her capacity as an
4 authorised officer.

5 (3) Despite subsections (1) and (2), a court hearing proceedings for
6 an offence under this Act may order the disclosure of any
7 matter, or the production of a document, referred to in those
8 subsections if the court considers that it is necessary in the
9 interests of justice.

10 **275. Documentary evidence of certain matters**

11 (1) In this section —

12 *relevant officer* means —

- 13 (a) the Chief Health Officer; or
14 (b) the chief executive officer of a local government; or
15 (c) for an enforcement agency other than the Chief Health
16 Officer or a local government, the person prescribed by
17 the regulations in respect of the enforcement agency.

18 (2) In any proceedings for an offence under this Act —

- 19 (a) production of a copy of a code or other document that
20 has been adopted by the regulations, purporting to be
21 signed by the Chief Health Officer certifying that the
22 copy is a true copy as at a specified date or during a
23 specified period, is evidence of the contents of the code
24 or other document as at that date or during that period;
25 and
26 (b) a document purporting to be a copy of any licence,
27 registration, approval, order, direction, notice or
28 authority under this Act is evidence of that licence,
29 registration, approval, order, direction, notice or
30 authority; and

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

19 **276. Court may order costs and expenses**

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

26 **277. Court may order forfeiture**

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

1 **278. Court’s powers in relation to registration and licences**

- 2 (1) If the holder of a certificate of registration is convicted by any
3 court of an offence under this Act, the court may by order, in
4 addition to any penalty imposed or order made in respect of the
5 conviction, do one or more of the following —
- 6 (a) impose any condition on the registration of the relevant
7 registrable activity, for any period specified in the order;
 - 8 (b) suspend the registration of the relevant registrable
9 activity for whatever period, not exceeding 3 months,
10 the court thinks fit;
 - 11 (c) cancel the registration of the relevant registrable
12 activity;
 - 13 (d) disqualify the holder of the certificate of registration
14 from holding a certificate of registration for whatever
15 period the court thinks fit or permanently.
- 16 (2) If the holder of an activity licence is convicted by any court of
17 an offence under this Act, the court may by order, in addition to
18 any penalty imposed or order made in respect of the conviction,
19 do one or more of the following —
- 20 (a) impose any condition on the licence, for any period
21 specified in the order;
 - 22 (b) suspend the licence for whatever period, not exceeding
23 3 months, the court thinks fit;
 - 24 (c) cancel the licence;
 - 25 (d) disqualify the holder of the licence from holding an
26 activity licence for whatever period the court thinks fit
27 or permanently.
- 28 (3) When making an order under this section, a court may, if it
29 thinks fit, defer the operation of the order pending an appeal.

30 **279. Further provisions relating to orders under section 278**

- 31 (1) If, under section 278, a court makes an order imposing a
32 condition on the registration of a registrable activity or an

- 1 activity licence, or suspending or cancelling the registration of a
2 registrable activity or an activity licence —
- 3 (a) the order has the same effect as if the condition had been
4 imposed, or the registration or activity licence had been
5 suspended or cancelled, under Part 7; but
- 6 (b) nothing in section 66 or 76 applies in relation to the
7 imposition of the condition or, as the case requires, the
8 suspension or cancellation of the registration or licence.
- 9 (2) A person who is disqualified under section 278 from holding a
10 certificate of registration cannot during the period of
11 disqualification apply for, or be issued with, a certificate of
12 registration.
- 13 (3) A person who is disqualified under section 278 from holding an
14 activity licence cannot during the period of disqualification
15 apply for, or be issued with, an activity licence.

16 **Division 3 — Enforcement action against Crown**

17 **280. Term used: responsible agency**

18 In this Division —

19 *responsible agency*, in relation to an improvement notice, is the
20 agency of the Crown the acts or omissions of which are alleged
21 to form the basis for the giving of the notice.

22 **281. Improvement notices may be given to Crown**

- 23 (1) An improvement notice may be given under this Act to the
24 Crown in any of its capacities.
- 25 (2) An improvement notice to be given to the Crown under this Act
26 may be given to the responsible agency.

27 **282. Enforcement orders cannot be given to Crown**

28 An enforcement order cannot be given under this Act to the
29 Crown in any of its capacities.

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Part 18 — Miscellaneous

Division 1 — Provisions relating to local governments

283. Fees and charges may be fixed and recovered by enforcement agencies that are local governments

An enforcement agency that is a local government may impose and recover under the *Local Government Act 1995* Part 6 Division 5 Subdivision 2 a fee or charge for the performance of a function as an enforcement agency under this Act, including a fee or charge for the provision of information.

284. Exercise of functions of local government outside its district

(1) This section applies if —

- (a) a local government (the *affected local government*) reasonably considers that —
 - (i) there is a material public health risk in its local government district; and
 - (ii) the risk is wholly or partly caused by some act or default in the local government district of another local government (the *other local government*); and
 - (iii) it is necessary for either or both of those local governments to take measures to control or abate that risk;

and

- (b) those local governments are unable to reach agreement as to the measures to be taken by either or both of them to control or abate that risk.

(2) If this section applies —

- (a) the Chief Health Officer may, in writing, authorise the affected local government to take, within the local government district of the other local government, the measures that the Chief Health Officer considers

- 1 necessary to control or abate the material public health
2 risk and specifies in the authorisation; and
- 3 (b) an authorisation under paragraph (a) is sufficient
4 authority for the affected local government to perform,
5 within the local government district of the other local
6 government, those functions that are conferred on local
7 governments by or under this Act and that are necessary
8 to control or abate the material public health risk; and
- 9 (c) the amount of any costs incurred by the affected local
10 government in performing functions under
11 paragraph (b) —
- 12 (i) is to be taken to be a debt due to the affected
13 local government by the other local government;
14 and
- 15 (ii) is recoverable in a court of competent
16 jurisdiction.
- 17 (3) In any proceedings for the recovery of the debt, a certificate
18 signed by the chief executive officer of the affected local
19 government stating the amount of any costs and the manner in
20 which they were incurred is evidence of the matters certified.
- 21 (4) Nothing in this section limits —
- 22 (a) sections 7 and 8; or
23 (b) the *Local Government Act 1995* section 3.19.
- 24 **285. Chief Health Officer may act where no local government**
- 25 (1) The Chief Health Officer may perform all the functions of a
26 local government in any place that is not within the boundaries
27 of a local government district.
- 28 (2) Subsection (1) does not limit or affect any other provision of
29 this Act that confers functions on the Chief Health Officer.

Division 2 — General

286. Protection from liability for wrongdoing

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

Division 3 — Provisions relating to information

287. Disclosure and use of information provided under Part 8 or 9

- (1) In this section —
specified information means —
 - (a) information relating to a notifiable infectious disease or notifiable infectious disease-related condition that is notified or given under Part 8; or
 - (b) information relating to a prescribed condition of health that is notified or given under Part 9.

- 1 (2) Specified information may be disclosed or used in accordance
2 with the regulations —
- 3 (a) for the purpose of monitoring, preventing, controlling or
4 abating a public health risk; or
- 5 (b) for the general protection, promotion or improvement of
6 public health; or
- 7 (c) for the purpose of monitoring or evaluating the
8 effectiveness of measures taken to prevent, control or
9 abate a public health risk; or
- 10 (d) for medical or epidemiological research, whether that
11 research is conducted by persons who are public health
12 officials or other persons; or
- 13 (e) for any purpose relating to funding, managing, planning,
14 monitoring or evaluating public health services; or
- 15 (f) for any purpose relating to reporting, at the State or
16 Commonwealth level, on public health services; or
- 17 (g) for any other purpose relating to public health that is
18 prescribed by the regulations.
- 19 (3) If specified information is disclosed or used, in good faith, in
20 accordance with the regulations —
- 21 (a) no civil or criminal liability is incurred in respect of the
22 disclosure or use; and
- 23 (b) the disclosure or use is not to be regarded as —
- 24 (i) a breach of any duty of confidentiality or secrecy
25 imposed by law; or
- 26 (ii) a breach of professional ethics or standards or
27 any principles of conduct applicable to a
28 person's employment; or
- 29 (iii) unprofessional conduct.

1 **288. Information sharing**

2 (1) In this section —

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

5 *designated officer* means —

6 (a) a public health official designated under subsection (2);
7 or

8 (b) an officer of an enforcement agency (other than the
9 Chief Health Officer) authorised by the agency for the
10 purposes of this section;

11 *guidelines* means guidelines issued under section 289;

12 *information sharing agency* means any of these —

13 (a) a public authority;

14 (b) a department or agency (however described) of the
15 government of the Commonwealth, of another State, of
16 a Territory or of another country;

17 (c) a body, corporate or unincorporate, that is established or
18 continued for a public purpose under a law of the
19 Commonwealth, another State or a Territory;

20 (d) the World Health Organization;

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

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

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

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

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

30 (2) The Chief Health Officer may designate a public health official
31 as a designated officer for the purposes of this section.

- 1 (3) A public health official may, in accordance with the guidelines,
2 disclose relevant information —
- 3 (a) to another public health official; or
4 (b) to an officer of an enforcement agency (other than the
5 Chief Health Officer); or
6 (c) to an officer of an information sharing agency.
- 7 (4) An officer of an enforcement agency (other than the Chief
8 Health Officer) may, in accordance with the guidelines, disclose
9 relevant information —
- 10 (a) to a public health official; or
11 (b) to an officer of another enforcement agency (other than
12 the Chief Health Officer); or
13 (c) to an officer of an information sharing agency.
- 14 (5) A designated officer may, in accordance with the guidelines,
15 request any of the following to disclose relevant information to
16 the designated officer —
- 17 (a) an enforcement agency;
18 (b) a public authority;
19 (c) a department or agency (however described) of the
20 government of the Commonwealth, of another State, of
21 a Territory or of another country;
22 (d) a body, corporate or unincorporate, that is established or
23 continued for a public purpose under a law of the
24 Commonwealth, another State or a Territory;
25 (e) the World Health Organization.
- 26 (6) If information is disclosed, in good faith, under subsection (3)
27 or (4), or by an enforcement agency or a public authority in
28 compliance with a request under subsection (5) —
- 29 (a) no civil or criminal liability is incurred in respect of the
30 disclosure; and

- 1 (b) the disclosure is not to be regarded as —
2 (i) a breach of any duty of confidentiality or secrecy
3 imposed by law; or
4 (ii) a breach of professional ethics or standards or
5 any principles of conduct applicable to a
6 person’s employment; or
7 (iii) unprofessional conduct.

8 **289. Guidelines relating to information sharing**

9 The Chief Health Officer must issue guidelines as to the
10 disclosure of information under section 288(3) or (4) and the
11 requesting of information under section 288(5).

12 **290. Regulations relating to information sharing**

13 The regulations may include provisions about —

- 14 (a) the circumstances in which information may be
15 disclosed under section 288; and
16 (b) the conditions subject to which information may be
17 disclosed under that section; and
18 (c) the receipt, use and storage of information disclosed
19 under that section; and
20 (d) the restriction of access to information disclosed under
21 that section; and
22 (e) the maximum period for which information disclosed
23 under that section may be retained; and
24 (f) the circumstances in which information disclosed under
25 that section must be destroyed.

26 **291. Confidential information officially obtained**

- 27 (1) In this section —
28 ***confidential information*** includes information that the person
29 has a duty to keep confidential, regardless of how the duty of
30 confidentiality arises.

- 1 notifiable infectious diseases or notifiable infectious
2 disease-related conditions;
- 3 (b) public health planning;
- 4 (c) the analysis or testing of samples obtained or taken
5 under this Act, including —
- 6 (i) the persons who may analyse or test samples;
7 and
- 8 (ii) the places where samples may be analysed or
9 tested; and
- 10 (iii) the reporting of the results of the analysis or
11 testing of samples;
- 12 (d) needle and syringe programmes, including conditions
13 and requirements relating to the approval and conduct of
14 those programmes;
- 15 (e) the procedure to be followed at, or in connection with,
16 an inquiry conducted under section 217;
- 17 (f) the seizure or forfeiture of items under this Act;
- 18 (g) the designation of authorised officers;
- 19 (h) applications under this Act;
- 20 (i) fees and charges payable under this Act and the recovery
21 of those fees and charges.
- 22 (3) Without limiting subsection (1), the regulations may —
- 23 (a) without limiting section 34(1), declare that doing, or
24 omitting to do, a specified thing, or a thing within a
25 specified class of things —
- 26 (i) constitutes a breach of the general public health
27 duty; or
- 28 (ii) does not constitute a breach of the general public
29 health duty;
- 30 (b) specify or provide for guidelines for complying with the
31 general public health duty;

- 1 (c) declare a specified activity, or an activity within a
2 specified class of activities, to be a public health risk
3 activity or not to be a public health risk activity;
- 4 (d) declare a specified public health risk, or a public health
5 risk within a specified class of public health risks —
- 6 (i) to be a material public health risk or a serious
7 public health risk; or
- 8 (ii) not to be a material public health risk or a serious
9 public health risk;
- 10 (e) require things to be done in relation to the prevention,
11 assessment or management of public health risks;
- 12 (f) without limiting paragraph (e), require the preparation,
13 implementation and monitoring of, and reporting on,
14 risk management plans in relation to public health risks;
- 15 (g) regulate or prohibit the manufacture, transport, storage,
16 supply, use or disposal of anything that is a public health
17 risk;
- 18 (h) without limiting paragraph (g), provide that any activity
19 or thing, or the supply of any goods or services, is
20 required to meet a specified standard, or comply with
21 specified conditions, to prevent a public health risk;
- 22 (i) regulate or prohibit the advertising of —
- 23 (i) any public health risk activity; or
- 24 (ii) the supply or use of anything that is a public
25 health risk;
- 26 (j) require specified information to be provided to an
27 appropriate enforcement agency by a specified person in
28 relation to —
- 29 (i) any public health risk activity carried on or
30 proposed to be carried on; or
- 31 (ii) the supply or use of anything that is a public
32 health risk;

- 1 (k) specify the criteria and parameters that are to be applied
2 in monitoring compliance with this Act;
- 3 (l) provide that a failure to comply with the regulations
4 constitutes grounds for the issue of an improvement
5 notice or enforcement order.
- 6 (4) Without limiting subsection (1), the regulations may —
- 7 (a) provide for offences against the regulations and
8 prescribe penalties —
- 9 (i) for an individual — not exceeding a fine of
10 \$50 000;
- 11 (ii) for a body corporate — not exceeding a fine of
12 \$200 000;
- 13 (b) prescribe daily penalties for offences against the
14 regulations —
- 15 (i) for an individual — not exceeding a fine of
16 \$10 000;
- 17 (ii) for a body corporate — not exceeding a fine of
18 \$50 000.

19 **294. Regulations may adopt codes or legislation**

- 20 (1) In this section —
- 21 *code* means a code, standard, rule, specification or other
22 document, published in or outside Australia, that does not by
23 itself have legislative effect in this State;
- 24 *subsidiary legislation* includes rules, regulations, instructions,
25 local laws and by-laws.
- 26 (2) Regulations may adopt, either wholly or in part or with
27 modifications —
- 28 (a) any code; or
- 29 (b) any subsidiary legislation made, determined or issued
30 under any other Act or under any Act of the
31 Commonwealth, another State or a Territory.

- 1 (3) The adoption may be by —
- 2 (a) incorporating the code or subsidiary legislation in the
- 3 regulations; or
- 4 (b) incorporating the code or subsidiary legislation by
- 5 reference.
- 6 (4) If regulations adopt a code or subsidiary legislation by
- 7 reference, then, unless the regulations specify that a particular
- 8 text is adopted —
- 9 (a) the code or subsidiary legislation is adopted as existing
- 10 or in force when the regulations are made; and
- 11 (b) any amendments made to the code or subsidiary
- 12 legislation after the regulations are made have no legal
- 13 effect as part of the regulations unless they are
- 14 specifically adopted by later regulations or a later
- 15 amendment to the regulations.
- 16 (5) If regulations adopt a code or subsidiary legislation by
- 17 reference, the Chief Health Officer must —
- 18 (a) ensure that a copy of the code or subsidiary legislation,
- 19 including any amendments made to it from time to time
- 20 that have been adopted, is available, without charge, for
- 21 public inspection; and
- 22 (b) if the code or subsidiary legislation, or any part of the
- 23 code or subsidiary legislation, is in a language other than
- 24 English, ensure that an accurate English translation of
- 25 the code or subsidiary legislation, or of the relevant part,
- 26 is also available, without charge, for public inspection;
- 27 and
- 28 (c) publish a notice in the *Gazette* giving details of where
- 29 those documents may be inspected or obtained.

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Division 6 — Review of Act

295. Review of Act

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

1 **Part 19 — Transitional and savings provisions**

2 **296. Terms used**

3 (1) In this Part —

4 **Health Act** means the Act that —

5 (a) before its renaming by the *Public Health (Consequential*
6 *Provisions) Act 2014*, is known as the *Health Act 1911*;
7 and

8 (b) after its renaming by the *Public Health (Consequential*
9 *Provisions) Act 2014*, is known as the *Health*
10 *(Miscellaneous Provisions) Act 1911*.

11 (2) If a term has or, before the deletion of the relevant provision by
12 the *Public Health (Consequential Provisions) Act 2014*, had a
13 meaning in the Health Act, it has the same meaning in this Part
14 unless the contrary intention appears.

15 **297. Application of *Interpretation Act 1984***

16 The provisions of this Part do not prejudice or affect the
17 application of the *Interpretation Act 1984* to and in relation to
18 the deletions of provisions of the Health Act effected by the
19 *Public Health (Consequential Provisions) Act 2014*.

20 **298. References to *Health Act 1911* and *Health (Miscellaneous***
21 ***Provisions) Act 1911***

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

25 **299. Reference to Chief Health Officer to be temporarily read as**
26 **Executive Director, Public Health for purposes of Part 16**

27 Until section 300 comes into operation, the reference to the
28 Chief Health Officer in section 256(4)(a) is to be taken to be a
29 reference to the Executive Director, Public Health in the
30 Department.

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- 1 **300. Executive Director, Public Health to hold office as Chief**
2 **Health Officer**
- 3 (1) The person (the *incumbent*) who, immediately before the day
4 on which this section comes into operation (the *commencement*
5 *day*), holds the office of Executive Director, Public Health in
6 the Department —
- 7 (a) is to be taken to be designated under section 11 as the
8 Chief Health Officer; and
- 9 (b) is to be taken to be designated for a term of office
10 beginning on the commencement day that is the balance
11 of the incumbent’s term of office (the *residual term*) as
12 Executive Director, Public Health remaining
13 immediately before the commencement day.
- 14 (2) Subsection (1)(b) does not prevent the incumbent from again
15 being designated as Chief Health Officer when the residual term
16 expires.
- 17 (3) Regardless of section 12(3), if the remuneration that the
18 incumbent would have been entitled to receive as Executive
19 Director, Public Health during the residual term is greater than
20 the remuneration determined for the position of Chief Health
21 Officer by the Salaries and Allowances Tribunal, the incumbent
22 is entitled to receive that greater remuneration during the
23 residual term.
- 24 **301. Environmental health officers to be authorised officers for**
25 **certain purposes**
- 26 (1) If, immediately before this section comes into operation, a
27 person holds an appointment as an environmental health officer
28 under the Health Act, then, on this section coming into
29 operation, the person is to be taken —
- 30 (a) to have been designated as an authorised officer under
31 section 24(1) by the local government that appointed the
32 person as an environmental health officer; and

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- 1 (b) to have been so designated for the purposes of—
- 2 (i) Parts 7, 8, 13 and 15; and
- 3 (ii) the Health Act sections 145(1), 157(2), 173
- 4 (paragraph (a) of the definition of **authorised**
- 5 **person**), 181, 183, 184(1), 227(1), 228(1),
- 6 234(1), 257, 262(3), 265(1), 267(1)(c), 268(a),
- 7 277(1)(b) and (3), 280(2), 349(1), 351(1), (2) and
- 8 (5), 352(1) and (2), 358(2) and 375; and
- 9 (iii) the *Dog Act 1976*; and
- 10 (iv) the *Tobacco Products Control Act 2006*; and
- 11 (v) the *Food Act 2008*; and
- 12 (vi) the *Cat Act 2011*.
- 13 (2) If, under the Health Act section 30(1), the local governments of
- 14 2 or more districts have joined in the appointment of a person to
- 15 whom subsection (1) applies, the person is to be taken to have
- 16 been designated as an authorised officer, for the purposes
- 17 referred to in subsection (1)(b), by those local governments
- 18 acting jointly under section 24(4).
- 19 (3) This section does not limit or affect the power of a local
- 20 government, or local governments acting jointly, to revoke or
- 21 vary the designation, as an authorised officer, of a person to
- 22 whom subsection (1) applies.

23 **302. Unpaid rates levied under Health Act Part III remain**

24 **recoverable**

25 If any health rate, sanitary rate, supplementary rate or special

26 loan rate made and levied under the Health Act Part III remains

27 unpaid immediately before the deletion of that Part effected by

28 the *Public Health (Consequential Provisions) Act 2014*, the rate

29 remains due and payable and may be recovered under the *Local*

30 *Government Act 1995*, and all the provisions of the *Local*

31 *Government Act 1995* relating to the payment and recovery of

32 general rates apply accordingly.

1 **303. Transitional provisions relating to deletion of Health Act**
2 **Part IV**

3 If any disagreement of the kind referred to in the Health Act
4 section 61 remains undecided immediately before the deletion
5 of that section effected by the *Public Health (Consequential*
6 *Provisions) Act 2014*, the Governor may decide the amount to
7 be paid by each local government towards the cost or
8 maintenance of the joint scheme that is the subject of the
9 disagreement.

10 **304. Transitional provisions relating to notices and orders issued**
11 **under Health Act Part V Division 1 or 2**

12 (1) A notice given by a local government under the Health Act
13 section 135 or 137 or 139 and in force immediately before the
14 deletion of Part V Division 1 of that Act effected by the *Public*
15 *Health (Consequential Provisions) Act 2014* is to be taken to be
16 an improvement notice issued under this Act in the same terms
17 as the original notice, and to continue in force.

18 (2) An order given under the Health Act section 145 and in force
19 immediately before the deletion of Part V Division 1 of that Act
20 effected by the *Public Health (Consequential Provisions)*
21 *Act 2014* is to be taken to be an improvement notice issued
22 under this Act in the same terms as the order, and to continue in
23 force.

24 (3) A notice given by a local government under the Health Act
25 section 150 and in force immediately before the deletion of
26 Part V Division 2 of that Act effected by the *Public Health*
27 *(Consequential Provisions) Act 2014* is to be taken to be an
28 improvement notice issued under this Act in the same terms as
29 the original notice, and to continue in force.

30 **305. Transitional provisions relating to deletion of Health Act**
31 **Part VII**

32 (1) A requisition issued under the Health Act section 181 or 184
33 and in force immediately before the deletion of the relevant

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1 section by the *Public Health (Consequential Provisions)*
2 *Act 2014* is to be taken to be an improvement notice issued
3 under this Act in the same terms as the original notice, and to
4 continue in force.

5 (2) A notice given by a local government under the Health Act
6 section 196 and in force immediately before the deletion of that
7 section effected by the *Public Health (Consequential*
8 *Provisions) Act 2014* is to be taken to be an improvement notice
9 issued under this Act in the same terms as the original notice,
10 and to continue in force.

11 **306. Transitional provisions relating to deletion of Health Act**
12 **Part IX**

13 A requisition issued under the Health Act section 260 and in
14 force immediately before the deletion of that section by the
15 *Public Health (Consequential Provisions) Act 2014* is to be
16 taken to be an improvement notice issued under this Act in the
17 same terms as the original notice, and to continue in force.

18 **307. Transitional provisions relating to recovery for work done**
19 **by local government, and charges on land or premises**

20 (1) If a local government has carried out work on any land or
21 premises under a provision of the Health Act (the *first*
22 *provision*), or under an agreement entered into under the first
23 provision, and, immediately before the deletion of the first
24 provision effected by the *Public Health (Consequential*
25 *Provisions) Act 2014*, the Health Act section 371 or
26 subsection (2) applied to and in relation to the amount due to the
27 local government in respect of the work, the Health Act
28 section 371 or, as the case requires, subsection (2) continues to
29 apply to and in relation to that amount.

30 (2) Any amount that, under the Health Act section 371, is
31 recoverable by a local government from the owner of any land
32 immediately before the deletion of that section effected by the
33 *Public Health (Consequential Provisions) Act 2014* continues to

- 1 be recoverable by that local government from that owner in any
2 court of competent jurisdiction, and until paid is a charge on
3 that land.
- 4 (3) If any amount payable to a local government under a provision
5 of the Health Act (the *first provision*), or under an agreement
6 entered into under the first provision, remains unpaid
7 immediately before the deletion of the first provision effected
8 by the *Public Health (Consequential Provisions) Act 2014*, and,
9 under the first provision, or another provision of the Health Act
10 (whether or not that other provision is deleted at the same time
11 or subsequently), the amount is a charge on any premises or
12 land immediately before the deletion of the first provision, that
13 amount continues to be a charge on those premises or that land
14 until the amount is paid.
- 15 (4) The Health Act section 372 applies or, as the case requires,
16 continues to apply to and in relation to any charge on land or
17 premises in any case where the charge arises or is continued
18 under this section.
- 19 (5) Subsections (1) and (2) are subject to the *Limitation Act 1935*
20 and the *Limitation Act 2005*.

21 **308. Pesticides Advisory Committee**

- 22 (1) The Pesticides Advisory Committee (the *Committee*) that,
23 immediately before the day on which this section comes into
24 operation (the *commencement day*), was preserved and
25 continued in existence by the Health Act section 246B continues
26 in existence as if it had been established by the Chief Health
27 Officer as an advisory committee under section 33.
- 28 (2) Until the Chief Health Officer determines otherwise under
29 section 33 —
- 30 (a) the Committee continues to have the members
31 (including co-opted members) that it had immediately
32 before the commencement day; and

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- 1 (b) the Chief Health Officer is the Chairperson of the
2 Committee, unless a person nominated by the Chief
3 Health Officer is a member in place of the Chief Health
4 Officer, in which case that person is the Chairperson;
5 and
- 6 (c) any person who, immediately before the commencement
7 day, was a deputy for a member of the Committee
8 continues to be deputy for that member; and
- 9 (d) the Chief Health Officer may appoint a deputy for any
10 member of the Committee who does not have a deputy;
11 and
- 12 (e) at any meeting of the Committee at which a member
13 (other than a co-opted member) is not present, that
14 member's deputy has all the functions of that member;
15 and
- 16 (f) the person who, immediately before the commencement
17 day, held the office of Secretary of the Pesticides
18 Advisory Committee continues to hold that office; and
- 19 (g) the procedure of the Committee is to be as set out in the
20 Health Act section 246B(6), as that provision existed
21 immediately before the commencement day, except that
22 in the application of that provision the references to a
23 regular member are to be taken to be references to any
24 member who is not a co-opted member; and
- 25 (h) each co-opted member of the Committee may be paid
26 the attendance fee (if any) that, immediately before the
27 commencement day, was prescribed for the purposes of
28 the Health Act section 246B(8) (as that provision existed
29 immediately before the commencement day), but not if
30 the co-opted member belongs to a class of co-opted
31 members to whom an attendance fee was not payable
32 immediately before the commencement day; and
- 33 (i) the Committee's function is to advise the Chief Health
34 Officer on any matter whatsoever concerning pesticides,

1 whether that matter is referred to it by the Chief Health
2 Officer or not.

3 **309. Transitional provisions for Health Act Part IXA**

4 (1) The *Interpretation Act 1984* section 36 applies as if the Health
5 Act Part IXA had been repealed and re-enacted by Part 9 of this
6 Act.

7 (2) However, the following regulations, and no other regulations,
8 continue in force under this section as if those regulations were
9 regulations made under section 141 —

10 (a) the *Health (Cervical Screening Register)*
11 *Regulations 1991*;

12 (b) the *Health (Notification of Lead Poisoning)*
13 *Regulations 1985*;

14 (c) the *Health (Notification of Stimulant Induced Psychosis)*
15 *Regulations 2010*;

16 (d) the *Health (Western Australian Cancer Register)*
17 *Regulations 2011*;

18 (e) the *Health (Western Australian Register of*
19 *Developmental Anomalies) Regulations 2010*.

20 **310. Transitional provisions for *Blood and Tissue (Transmissible***
21 ***Diseases) Regulations 1985***

22 The *Blood and Tissue (Transmissible Diseases)*
23 *Regulations 1985* continue in force after this section comes into
24 operation as if those regulations were regulations made under
25 section 293.

26 **311. Transitional regulations**

27 (1) In this section —

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

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- 1 ***transitional matter*** —
- 2 (a) means a matter or issue of a transitional nature that
- 3 arises as a result of —
- 4 (i) the enactment of this Act; or
- 5 (ii) the amendments and repeals effected by the
- 6 *Public Health (Consequential Provisions)*
- 7 *Act 2014;*
- 8 and
- 9 (b) includes a saving or application matter.
- 10 (2) If there is not sufficient provision in this Act for dealing with a
- 11 transitional matter, regulations under this Act may prescribe all
- 12 matters that are required or necessary or convenient to be
- 13 prescribed for dealing with the matter.
- 14 (3) Regulations made under subsection (2) may provide that
- 15 specified provisions of a written law —
- 16 (a) do not apply to or in relation to any matter; or
- 17 (b) apply with specified modifications to or in relation to
- 18 any matter.
- 19 (4) If regulations made under subsection (2) provide that a specified
- 20 state of affairs is taken to have existed, or not to have existed,
- 21 on and from a day that is earlier than the day on which the
- 22 regulations are published in the *Gazette* but not earlier than the
- 23 day this section comes into operation, the regulations have
- 24 effect according to their terms.
- 25 (5) If regulations made under subsection (2) contain a provision
- 26 referred to in subsection (4), the provision does not operate so
- 27 as —
- 28 (a) to affect in a manner prejudicial to any person (other
- 29 than the State or an authority of the State) the rights of
- 30 that person existing before the day of publication of
- 31 those regulations; or

1 (b) to impose liabilities on any person (other than the State
2 or an authority of the State) in respect of anything done
3 or omitted to be done before the day of publication of
4 those regulations.

5 (6) Regulations made under subsection (2) in relation to a matter
6 referred to in subsection (3) must be made within such period as
7 is reasonably and practicably necessary to deal with a
8 transitional matter.

9

Defined terms

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

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