

PUBLIC HEALTH BILL 2014

EXPLANATORY MEMORANDUM

Introduction

The purpose of the *Public Health Bill 2014* (“the Bill”) is to provide a modern, flexible and proactive risk based framework for the regulation of public health in Western Australia.

The Bill is supported by the Public Health (Consequential Provisions) Bill 2014 which provides for the consequential amendment of the *Health Act 1911* and a range of other Acts.

Together, the Bills facilitate the comprehensive reform of public health regulation in Western Australia.

Reasons for the Bill

The need to reform public health regulation in Western Australia has been widely acknowledged for many years. The *Health Act 1911* was passed more than a century ago and it has been extensively amended in an ad hoc fashion on more than one hundred occasions.

The *Health Act 1911* addresses the public health concerns that prevailed at the beginning of the last century. It was developed in the context of limited knowledge and understanding as to the causes of various illnesses and disease, and before modern treatments and means of prevention had been discovered or developed. The *Health Act 1911* is not capable of providing an adequate framework for the regulation of public health in 2014 or beyond.

Key Features of the Bill

The key features of the Bill are as follows:

- *A risk based framework*

The *Health Act 1911* is prescriptive in nature and provides regulation by way of specific known and often historical risks to public health. New and emerging risks to public health are not captured and this limits the capacity of the Department of Health and local governments to take immediate action to protect and promote public health.

In contrast, the Bill provides a flexible and generic framework that includes a set of regulatory tools that can be applied to regulate any given risk to public health. This ensures that the Bill can appropriately manage both known and emerging risks to public health.

- *Binding the Crown*

The Bill provides for the binding of the Crown, thereby giving effect to the principle that all persons are entitled to the same public health standards irrespective of whether the land or buildings that affect them are owned, managed or controlled by the Crown. In failing to bind the Crown, the *Health Act*

1911 has, at least in part, contributed to the variation in public health standards that exist across Western Australia.

However, it is recognised that the Crown and Crown authorities may not be capable of achieving immediate compliance with the Bill. This is because many of the required improvements to infrastructure and service delivery can only be achieved in the medium to long term. The Bill recognises that incremental measures may be required, and in appropriate circumstances the Minister for Health may exempt the Crown or a Crown authority from compliance with the Bill or the regulations.

The Bill does not authorise enforcement action to be taken in respect of the Crown. This means that the Crown cannot be prosecuted, or issued with an enforcement order under Part 13 of the Bill. Equivalent public health legislation in the Australian Capital Territory, New South Wales, Queensland and South Australia also excludes the Crown from prosecution.

- *Administrative framework*

The Bill provides for the continuation of long standing arrangements whereby responsibility for public health is shared between State and local governments.

On behalf of the State, the Minister for Health and the Chief Health Officer (a position equivalent to the existing Executive Director, Public Health) will perform a range of key functions under the Bill. The retention of a statutory officer for public health underscores the importance of public health within Government and within the community, and ensures that high level leadership and advocacy is available to protect and promote public health in Western Australia.

Consistent with the approach adopted in modern public health related legislation, the Bill provides for a range of functions to be performed by authorised officers. Unlike the *Health Act 1911*, the Bill provides local governments with the autonomy to designate as authorised officers persons with a range of qualifications and experience to perform relevant functions under the Bill. The Bill does, however, recognise the particular role of environmental health officers within local government. The Chief Health Officer will also designate as authorised officers persons with medical, nursing and other appropriate qualifications to perform various functions under the Bill, including those functions relating to notifiable infectious diseases.

- *A modern framework for infectious diseases*

The provisions of the *Health Act 1911* that regulate infectious disease are much the same as when they were first introduced over a century ago. Many of those provisions are no longer useful or appropriate as they reflect earlier perspectives and out of date models of disease control, being written at a time when many of the organisms that cause infectious diseases had not yet been identified and before modern treatments and means of prevention had been discovered or developed. The *Health Act 1911* also fails to provide an appropriate balance between the use of coercive powers and the rights of individuals.

The Bill provides a broad and flexible framework for the management of infectious diseases and related conditions that is capable of responding to both known and emerging risks to public health. It does this by providing a generic framework that utilises four common public health tools to aid the prevention and

control the spread of infectious diseases and related conditions: obligations for medical practitioners, nurse practitioners and pathologists to make notifications to the Chief Health Officer; orders for compulsory testing (test orders); orders to require or prohibit specified matters (public health orders); and measures to identify and inform persons who have or may be affected by or exposed to a notifiable infectious disease.

Importantly, the Bill strikes a balance between the powers necessary to prevent the spread of infection and the rights of individuals. In addition to providing principles to be considered in the application, operation and interpretation of Part 8, the Bill provides a range of tangible rights and safeguards, including the right to receive specified information, to seek legal advice, and to seek a review of a test or public health order.

- *A modern framework for public health emergencies*

The *Health Act 1911* does not have the capacity to deal with emerging public health risks such as bioterrorism or rapidly spreading epidemics of serious infectious diseases such as SARS, pandemic influenza or Ebolavirus.

Parts 10 and 11 of the Bill provide a framework for the exercise of wide scale and sweeping powers where there is an overwhelming need to take action to protect public health. Although similar powers are already available under the *Emergency Management Act 2005* with respect to some public health related risks, Parts 10 and 11 of the Bill reflect the unique nature of health emergencies, which can typically be managed without the necessity to involve other agencies. However, where a co-ordinated inter-agency response is required the exercise of powers under the *Emergency Management Act 2005* may be appropriate.

- *Public health planning*

The Bill requires both State and local governments to prepare public health plans.

A long standing criticism of existing public health legislation is that it tends to be reactive. A problem is identified and a remedy is then sought to rectify the problem. Public health planning requires government to provide a strategic and forward-thinking approach that ensures that public health can be effectively promoted and protected.

In order to minimise the number of separate planning processes required of local government, local public health plans will be integrated with existing planning processes under the *Local Government Act 1995*.

- *Public health assessments*

There is considerable overlap between the issues of planning and development, environmental protection and public health. The Bill provides a framework for an assessment of the public health risks and benefits arising from particular proposals to be undertaken in conjunction with existing approvals processes, in a streamlined and efficient manner.

It is noted that the framework provided by the Bill will apply only to proposals that are prescribed by the regulations. Prior to putting forward any regulations the Department of Health will consult closely with all relevant agencies.

This framework implements the recommendations of the Economics and Industry Standing Committee in 2002 (Bellevue Hazardous Waste Fire Inquiry) and the Education and Health Standing Committee in 2007 (Inquiry into the Cause and Extent of Lead Pollution in the Esperance Area).

- *A streamlined and coordinated framework of regulation*

The regulatory framework provided by the *Health Act 1911*, including the 47 regulations and by-laws that are made under that Act, is in many respects outdated, incoherent and unclear. The sheer volume of regulation makes it difficult for the Department of Health and local government to administer and for business and the wider community to comply with the framework.

The transition to the new framework provided by the Bill will involve the review and substantive reform of the regulations and by-laws that currently exist under the *Health Act 1911*. Rather than the disparate and ad hoc nature of the present regulation, all regulation relating to broad policy areas will be consolidated and streamlined into single regulatory instruments. For example, the 14 regulations that presently relate to various aspects of the built environment will be consolidated into a single regulation for that entire subject matter.

It should also be noted that personal responsibility and self-regulation are core principles of the framework provided by the Bill. As such, regulations will only be made in circumstances where the nature of the public health risk is such that regulations are required, and those regulations will apply and build upon the regulatory framework provided by the Bill.

The Bill will also have the effect of streamlining the mechanisms for local governments to make local laws with respect to matters relating to public health. At present numerous separate provisions of the *Health Act 1911* authorise the making of local laws about a vast array of subject matters relevant to public health. These provisions reflect historical arrangements and pre-date the framework provided by the *Local Government Act 1995*. As the local law making power provided by the *Local Government Act 1995* is sufficiently broad to support local laws relevant to public health matters, a separate local law making power is not required and as such, is not provided by the Bill.

Existing local laws that are made under the *Health Act 1911* will require review and, where necessary, will be re-made under the *Local Government Act 1995*. This provides an important opportunity for local government to reform local laws that have been in effect for many years and that may be as outdated and inappropriate as the present *Health Act 1911*. This work will be supported by the development of model local laws by the Local Laws Working Group, which includes representatives from the Department of Health, Department of Local Government and Communities and the WA Local Government Association.

- *Appropriate penalties*

The penalties provided by the *Health Act 1911* are inadequate, and this is of particular concern in the context of environmental health risks and the management of persons with serious infectious diseases.

The Bill provides a modern and appropriate penalty framework that will deter unlawful conduct and thereby prevent or minimise harm to public health.

Part 1 – Preliminary

This part provides the short title of the Bill, commencement provisions, objects and principles to be considered in the administration of the Bill and definitions of relevant terms.

Clause 1: Short title

This clause provides the short title of the Bill.

Clause 2: Commencement

This clause provides for the commencement of the Bill.

The Bill is designed to come into operation in conjunction with the Public Health (Consequential Provisions) Bill 2014, which provides for the amendment and repeal of the *Health Act 1911* and various other Acts.

Clause 3: Objects and principles

This clause provides the objects of the Bill and the principles to be considered in the pursuit of those objects.

Persons exercising functions under the Bill must have due regard to the objects and principles.

The Bill provides a set of generic tools that may be utilised to manage any given risk to public health. The objects and principles are embedded into the decision making process to ensure that the Bill is administered in a manner that maximises the protection, promotion and improvement of public health and the reduction of preventable illness.

Clause 4: Terms used

This clause defines the terms used in the Bill.

Importantly, a definition of public health is provided. The definition is adapted from the definition utilised by the World Health Organisation. It moves away from the historical focus on sanitation and the containment of disease towards a broader notion of public health that includes the promotion of health and wellbeing.

Clause 5: Crown bound

This clause provides that the Crown is bound by the Bill. This means that the Crown is required to comply with the provisions of the Bill.

However, the Crown cannot be prosecuted or issued with an enforcement order under Part 13 of the Bill. Equivalent public health legislation in the Australian Capital Territory, New South Wales, Queensland and South Australia also excludes the Crown from prosecution.

This clause is subject to Part 16 under which exemptions may be issued to the Crown.

Part 2 – Administration

This part provides for the continuation of long standing arrangements whereby responsibility for public health is shared between the State and local governments.

On behalf of the State, the Minister for Health and the Chief Health Officer (a position equivalent to the existing Executive Director, Public Health) will perform a range of key functions under the Bill. The retention of a statutory officer for public health underscores the importance of public health within Government and within the community, and ensures that high level leadership and advocacy is available to protect and promote public health in Western Australia.

Consistent with the approach adopted in modern public health related legislation, the Bill provides for a range of functions to be performed by authorised officers. Unlike the *Health Act 1911*, the Bill provides local governments with the autonomy to designate as authorised officers persons with a range of qualifications and experience to perform relevant functions under the Bill. The Bill does, however, recognise the particular role of environmental health officers within local government. The Chief Health Officer will also designate as authorised officers persons with medical, nursing and other appropriate qualifications to perform various functions under the Bill, including those functions relating to notifiable infectious diseases.

This part will come into operation in conjunction with relevant provisions in Part 19 of the Bill and with Parts 2 and 3 of the Public Health (Consequential Provisions) Bill 2014, and will occur as one of the first stages of implementation.

Division 1 – Chief Health Officer

This division provides for the functions of the Chief Health Officer and for the designation of that officer.

Subdivision 1 – Functions of Chief Health Officer

This subdivision provides for the functions of the Chief Health Officer.

Clause 6: Functions of the Chief Health Officer

This clause sets out the functions of the Chief Health Officer in the administration of the Bill.

Clause 7: Chief Health Officer may give directions to local governments

This clause authorises the Chief Health Officer to give directions to local government and to take action to prevent, control or abate a material public health risk within a local government district.

Clause 8: Chief Health Officer may act without seeking local government agreement in urgent circumstances

This clause authorises the Chief Health Officer to take immediate action in respect of a material public health risk that is within a local government district if the circumstances are sufficiently urgent.

Clause 9: Chief Health Officer may delegate

This clause authorises the Chief Health Officer to delegate and sub-delegate his or her functions under to the Bill to a public health official.

Clause 10: Power to delegate under Health Legislation Administration Act 1984 section 9 excluded

This clause makes it clear that section 9 of the *Health Legislation Administration Act 1984* does not apply to the functions of the Chief Health Officer under the Bill.

Subdivision 2 – Designation of Chief Health Officer

This subdivision provides for the designation of the Chief Health Officer.

Clause 11: Minister to designate Chief Health Officer

This clause requires the Minister to designate a person as the Chief Health Officer.

The Chief Health Officer is required to be a departmental officer, a medical practitioner and to have appropriate qualifications and experience in public health.

Similar requirements exist in respect of the Executive Director, Public Health and Scientific Support Services and the Executive Director, Personal Health Services under section 6 of the *Health Legislation Administration Act 1984*.

Clause 12: Term of office and remuneration of Chief Health Officer

This clause provides for the term of office and remuneration of the Chief Health Officer.

Clause 13: Resignation, vacation of office and removal from office

This clause provides for the resignation, vacation of office and removal from office of the Chief Health Officer.

Clause 14: Acting Chief Health Officer

This clause authorises the Chief Executive Officer to designate a person to act in the office of the Chief Health Officer for a period of up to 12 months at a time.

A person must not be designated to act as the Chief Health Officer unless they are a departmental officer, a medical practitioner and have appropriate qualifications and experience in public health.

Clause 15: Authority of Acting Chief Health Officer

This clause clarifies the authority of the Acting Chief Health Officer.

Division 2 - Functions of local governments

This division makes provision for the functions of local governments under the Bill.

Clause 16: Functions of local governments

This clause provides the functions of local governments in the administration of the Bill.

Clause 17: Appointment of environmental health officers

This clause authorises local governments to appoint persons as environmental health officers if they hold the qualifications and experience approved by the Chief Health Officer.

Clause 18: Chief Health Officer to approve qualifications and experience required by environmental health officers

This clause requires the Chief Health Officer to approve the qualifications and experience required by persons to be appointed as environmental health officers.

Division 3 – Functions of enforcement agencies

This division makes provision for the functions of enforcement agencies.

Clause 19: Functions of enforcement agencies

This clause provides the functions of enforcement agencies in the administration of the Bill.

Clause 20: Conditions on performance of functions by enforcement agencies

This clause authorises the Chief Health Officer to impose conditions or restrictions on the performance of functions by enforcement agencies under the Bill.

Clause 21: Enforcement agency may delegate

This clause provides a mechanism for enforcement agencies to delegate their functions under the Bill.

Clause 22: Reports by and about enforcement agencies

This clause provides a mechanism for the Chief Health Officer to monitor the performance of functions by enforcement agencies under the Bill.

Division 4 – Authorised officers

This division authorises enforcement agencies to designate authorised officers for the purposes of the Bill. It is based on the model provided by Part 10 Division 3 of the *Food Act 2008*.

This division also facilitates the designation of authorised officers for the purposes of other relevant Acts, enabling enforcement agencies to designate authorised officers for the purposes of a multiple Acts by way of a single instrument. This is likely to be

particularly useful for enforcement agencies that are local governments who may wish to designate authorised officers for the purpose of the Bill, the *Dog Act 1976*, the *Tobacco Products Control Act 2006*, the *Food Act 2008* and the *Cat Act 2011*.

Clause 23: Terms used

This clause defines the terms that are used in this division.

Clause 24: Designation of authorised officers

This clause authorises enforcement agencies to designate persons as authorised officers for the purposes of the Bill and for the purposes of other specified Acts.

The Chief Health Officer may only designate persons who are public health officials.

Enforcement agencies that are local governments may designate persons who are environmental health officers and, subject to clause 25, such other persons who have appropriate qualifications and experience to perform the particular functions to be designated.

Clause 25: Certain authorised officers required to have qualifications and experience

This clause prohibits enforcement agencies from designating a person as an authorised officer unless the person has appropriate qualifications and experience to perform the functions to be designated, and the enforcement agency has had regard to any guidelines published by the Chief Health Officer.

This clause does not apply to the designation of public health officials or environmental health officers.

Clause 26: Further provisions relating to designations

This clause makes further provision in respect of the making and revocation of designations.

Clause 27: Lists of authorised officers to be maintained

This clause requires enforcement agencies to prepare and maintain lists of all persons and classes of persons who are designated by the agency as authorised officers.

Clause 28: When designation as authorised officer ceases

This clause provides the circumstances in which the designation of an authorised officer ceases to have effect.

Clause 29: Chief Health Officer may issue guidelines about qualifications and experience of authorised officers

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

Clause 30: Certificates of authority

This clause requires enforcement agencies to issue a certificate of authority to each person who is designated by that agency as an authorised officer, and provides the circumstances in which authorised officers are required to produce that certificate.

This clause also sets out the requirements for the content of the certificate of authority and provides a mechanism for the issue of a temporary certificate of authority.

Clause 31: Issuing and production of certificate of authority for purposes of other written laws

This clause provides a mechanism for an authorised officer who is designated under the Bill for the purpose of another written law to produce the certificate of authority issued under the Bill for the purpose of any certificate requirement imposed by that other written law.

Relevant amendments will be made to the *Dog Act 1976*, the *Food Act 2008* and the *Cat Act 2011* by Part 3 of the Public Health (Consequential Provisions) Bill 2014 to facilitate this arrangement.

Clause 32: Certificate of authority to be returned

This clause requires a person to whom a certificate of authority has been issued who ceases to be an authorised officer to return that certificate of authority to the enforcement agency as soon as practicable.

Failure to return the certificate as required constitutes an offence.

Division 5 – Advisory committees

This division provides for the establishment and functions of advisory committees. This flexible framework will be utilised to facilitate the provision of community and expert advice to assist the Chief Health Officer in the performance of his or her functions under the Bill.

It is noted that this framework will be applied to the Pesticides Advisory Committee that is established under Part VIIA Division 8 of the *Health Act 1911*. Transitional provisions for that Committee are provided by clause 308 of the Bill.

Clause 33: Establishment and functions of advisory committees

This clause authorises the Chief Health Officer to establish advisory committees to assist the Chief Health Officer in the performance of his or her functions under the Bill.

The Chief Health Officer may appoint any person who he or she thinks is fit to be a member.

The Chief Health Officer may determine the term of office of the members, the functions and procedure of the Committee and, after consultation with the Minister for Public Sector Management, any remuneration or allowances to be paid to the members.

Part 3 – General public health duty

This part establishes the general public health duty. It is the key element of the risk based approach that has been successfully utilised in the context of occupational health and safety and environmental protection legislation, and that was endorsed by the National Public Health Partnership “The Application of Risk Management Principles in Public Health Legislation” in 2000.

Unlike the prescriptive nature of the *Health Act 1911* the general public health duty is broad and flexible, ensuring that it captures both known and emerging risks to public health. It is also consistent with a broad notion of public health that includes the promotion of health and wellbeing

The regulations will play an important role in clarifying the application of the general public health duty and providing guidance as to the measures that will constitute compliance and non-compliance with the general duty in a range of specific contexts.

Clause 34: General public health duty

This clause requires a person to 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.

In assessing what is reasonable and practicable, regard must be had to the objects of the Act and to a range of other matters.

A person will not breach the general public health duty if they act in a manner or in circumstances that accord with generally accepted practices, or in circumstances prescribed by the regulations.

Clause 35: Consequences of failure to comply with general public health duty

This clause provides that a breach of the general public health duty does not constitute an offence or give rise to any right or remedy unless provision is made to that effect by regulations made under clause 293(3)(a)(i) of the Bill.

Breach of the general public health duty may however provide a sufficient basis for action to be taken under the Bill, including the issue of an improvement notice under Part 13 Division 2 of the Bill.

Part 4 – Serious public health risks and material public health risks

This part provides a broad and flexible offence framework that is capable of capturing both known and emerging public health risks.

It creates a tiered approach similar to that provided by Part 5 of the *Environmental Protection Act 1986* and Part 7 of the *South Australian Public Health Act 2010*.

In the first instance, there is a distinction based on the degree of risk that was or may have been caused by the conduct, namely whether the risk was a material public health risk or a serious public health risk. There is then a further distinction based on the degree of knowledge of the person as to the outcome or likely outcome of their conduct.

This part also provides a modern and appropriate penalty framework that will deter unlawful conduct and thereby prevent or minimise harm to public health.

It is noted that section 40(5) of the *Sentencing Act 1995* applies to offences committed by bodies corporate under this part.

Clause 36: Term used: engage in conduct

This clause defines the term used in this part.

“Engage in conduct” is defined to include both acts and omissions. This definition is drawn from section 101 of the *Children and Community Services Act 2004* and section 53X(2) of the *Human Reproductive Technology Act 1991*, and is consistent with the scope of the general public health duty.

Clause 37: Offences relating to serious public health risks

This clause provides three categories of offences relating to serious public health risks based on the degree of knowledge of the person as to the outcome or likely outcome of their conduct. The most serious offence requires actual knowledge that a serious public health risk would be caused or would likely be caused. The significant penalties for this category of offence appropriately reflect the high degree of culpability of the person.

Each category imposes liability with respect to persons who “engage in conduct”, “allow or permit conduct to be engaged in” or “allow or permit conduct to continue to be engaged in”.

Clause 38: Offences relating to material public health risks

This clause provides three categories of offences relating to material public health risks based on the degree of knowledge of the person as to the outcome or likely outcome of their conduct. The most serious offence requires actual knowledge that a material public health risk would be caused or would likely be caused.

Each category imposes liability with respect to persons who “engage in conduct”, “allow or permit conduct to be engaged in” or “allow or permit conduct to continue to be engaged in”.

Clause 39: Defence of due diligence

This clause provides that it is a defence to proceedings under the Bill if the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence.

However, the defence will only apply if the person can establish a range of specified matters that relate to risk management procedures. This creates an incentive for persons to have ongoing systems of monitoring and management in place to prevent, reduce and manage public health risks.

This clause reflects the recommendations of the Final Report of the National Public Health Partnership "*The Application of Risk Management Principles in Public Health Legislation*".

Clause 40: Alternative verdicts for certain offences

This clause enables a person who is found not guilty of an offence to be convicted of a lesser offence if the court is satisfied that the person committed that lesser offence.

Clause 41: Determination by court of appropriate punishment

This clause provides a range of matters to which a Court must have regard in determining the appropriate punishment to impose on a person found guilty of an offence under this part.

This clause does not limit the powers of a court under the *Sentencing Act 1995*.

Part 5 – Public health plans

This part furthers the objectives of the Bill to promote and protect public health by requiring State and local governments to prepare public health plans.

A long standing criticism of existing public health legislation is that it tends to be reactive. A problem is identified and a remedy is then sought to rectify the problem. Public health planning requires government to provide a strategic and forward-thinking approach that ensures that public health can be effectively promoted and protected.

In order to minimise the number of separate planning processes required of local government, local public health plans will be integrated with existing planning processes under the *Local Government Act 1995*.

Clause 42: Term used: public health plan

This clause defines the term that is used in this part.

Clause 43: State public health plans

This clause requires the Chief Health Officer to prepare a public health plan that applies to the whole of the State. The State public health plan must address a range of specified matters to present a consolidated State-wide assessment of public health issues with the potential to shape and influence the content of local public health plans across the State

Clause 44: Publication of current State public health plan

This clause requires the Chief Health Officer to make the State public health plan publicly available without charge.

Clause 45: Local public health plans

This clause requires each local government to prepare a local public health plan that applies to its local government district. Local public health plans must be consistent with the State public health plan and must address a range of specified matters.

Local public health plans may be prepared in conjunction with plans for the future of the local government district prepared under section 5.56 of the *Local Government Act 1995*.

Clause 46: Publication of current local public health plans

This clause requires each local government to make their local public health plan publicly available without charge.

Clause 47: Provision of local public health plans to Chief Health Officer

This clause provides a mechanism for the Chief Health Officer to monitor the preparation of local public health plans by local government.

Part 6 – Public Health assessments

This part provides a framework for the assessment of the public health risks and benefits that may result from assessable proposals to which this part is prescribed by regulation to apply.

There is considerable overlap between the issues of planning and development, environmental protection and public health. The Bill provides a framework for public health assessments to be undertaken in conjunction with existing approvals processes, in a streamlined and efficient manner.

This framework implements the recommendations of the Economics and Industry Standing Committee in 2002 (Bellevue Hazardous Waste Fire Inquiry) and the Education and Health Standing Committee in 2007 (Inquiry into the Cause and Extent of Lead Pollution in the Esperance Area).

Clause 48: Terms used

This clause defines the terms used in this part.

Clause 49: Regulations may provide for assessable proposals

This clause authorises regulations to be made to declare a proposal to be an assessable proposal.

In addition, the regulations may require the proponent of the assessable proposal to give notice of the proposal to the Chief Health Officer and may provide for the form, content and timing of the notice that is required.

Clause 50: Chief Health Officer may require public health assessments of assessable proposals

This clause authorises the Chief Health Officer to require, by written notice, the proponent of an assessable proposal to undertake (or cause to be undertaken) a public health assessment in respect of the proposal and at the expense of the proponent.

The Chief Health Officer must, without delay, give a copy of the notice to the decision-making authority.

The proponent must comply with the notice and provide to the Chief Health Officer with a written report setting out the findings of the public health assessment.

The Chief Health Officer must, without delay, give a copy of the report to the decision-making authority.

Clause 51: Chief Health Officer may give advice or make recommendations in relation to assessable proposal

This clause requires the Chief Health Officer to consider the report provided by the proponent and to provide written advice or recommendations to the decision-making authority in respect of the proposal.

The Chief Health Officer must, without delay, provide a copy of that written advice or recommendations to the proponent.

Clause 52: Decision-making authority to have regard to advice and recommendations of Chief Health Officer

This clause requires a decision-making authority to have regard to advice or recommendations provided by the Chief Health Officer before causing or allowing the proposal to be implemented, irrespective of any other written law.

Clause 53: Minister may request Chief Health Officer to conduct inquiry into other proposals

This clause authorises the Minister to request the Chief Health Officer to conduct an inquiry under Part 14 with respect to any proposal that is not an assessable proposal that would be likely, if implemented, to have a significant effect on public health.

The Chief Health Officer must comply with that request.

Clause 54: Regulations may provide for certain matters

This clause authorises regulations to be made to provide for various matters relating to public health assessments.

Part 7 - Registration and licensing

This part provides a general framework for registration and licensing that can be applied to activities that are declared by the regulations to be public health risk activities.

This part is modelled on Part 3 of the *Public Health Act 1997* of the Australian Capital Territory and is likely to be utilised to regulate activities relating to asbestos, pesticides, skin penetration procedures and public events.

Division 1 – Preliminary

This division provides for preliminary matters.

Clause 55: Terms used

This clause defines the terms used in this part.

Clause 56: Regulations may declare licensable and registrable activities

This clause authorises regulations to be made to declare a public health risk activity to be registrable, licensable, or both registrable and licensable.

Clause 57: Application of Part to Crown

This clause makes it clear that this part applies to registrable activities carried on by the Crown and to licensable activities carried on by individuals in their capacity as an employee, agent or officer of the Crown.

Division 2 – Registration of registrable activities

This division provides for registrable activities.

Clause 58: Carrying on unregistered registrable activity

This clause creates an offence with respect to the carrying on of a registrable activity at premises that are not registered in accordance with this division.

Clause 59: Registration of registrable activity

This clause authorises the appropriate enforcement agency to register a registrable activity in respect of any premises.

This clause also provides the process for applications to be made to, considered by and either granted or refused by the appropriate enforcement agency.

Clause 60: Registration remains in force until cancelled

This clause provides that the registration of a registrable activity under this division remains in force until it is cancelled, subject to clause 63(2).

Clause 61: Annual or other fee in relation to registration

This clause authorises annual and other fees with respect to registration to be prescribed by the regulations or imposed by an appropriate enforcement agency that is a local government in accordance with clause 283.

Clause 62: Variation of conditions, suspension or cancellation of registration

This clause authorises the appropriate enforcement agency to vary the conditions of, suspend or cancel a registration in specified circumstances, and for the process applicable to that variation, suspension or cancellation.

Where the variation, suspension or cancellation occurs at the initiative of the appropriate enforcement agency, this clause requires the agency to give the holder of the certificate of registration written reasons, an opportunity to make submissions and to consider any submissions made by that person.

Clause 63: Further provisions relating to suspension of registration

This clause makes further provision with respect to the suspension of a registration.

Clause 64: Notification of certain matters relating to registrable activity or premises

This clause creates offences with respect to the failure to notify the appropriate enforcement agency of certain matters relating to a registrable activity or premises.

Clause 65: Transfer of certificate of registration

This clause authorises the transfer of a certificate of registration from one person to another person, but only with the prior approval of the appropriate enforcement agency.

A registration is not transferable to any other premises.

Clause 66: Review of decisions relating to registration

This authorises the State Administrative Tribunal to review various decisions made with respect to registration under this division.

Clause 67: Register of activities and premises to be maintained

This clause requires each enforcement agency to prepare and maintain a register of the registrable activities that are registered by the agency under this division.

Division 3 – Licensing of individuals carrying on licensable activities

This division provides for licensable activities.

Clause 68: Unlicensed persons carrying on licensable activities

This clause creates an offence with respect to the carrying on of a licensable activity without an activity licence granted in accordance with this division.

Clause 69: Activity licences

This clause authorises the appropriate enforcement agency to grant an activity licence.

This clause also provides the process for applications to be made to, considered by and either granted or refused by the appropriate enforcement agency.

Clause 70: Period an activity licence remains in force

This clause provides for an activity licence to remain in force for the period specified in the licence, unless it is suspended or cancelled.

Clause 71: Renewal of activity licence

This clause provides a mechanism for the renewal of an activity licence.

Clause 72: Annual or other fee in relation to activity licence

This clause authorises annual and other fees with respect to activity licences to be prescribed by the regulations or imposed by an appropriate enforcement agency that is a local government in accordance with clause 283.

Clause 73: Variation of conditions, suspension or cancellation of activity licence

This clause authorises the appropriate enforcement agency to vary the conditions of, or to suspend or cancel an activity licence in specified circumstances, and for the process applicable to that variation, suspension or cancellation.

Where the variation, suspension or cancellation occurs at the initiative of the appropriate enforcement agency, this clause requires the agency to give the holder of the licence written reasons, an opportunity to make submissions and to consider any submissions made by that person.

Clause 74: Further provisions relating to suspension of activity licence

This clause makes further provision with respect to the suspension of an activity licence.

Clause 75: Notification of certain changes to licensable activities

This clause creates offences with respect to the failure to notify the appropriate enforcement agency of certain changes to licensable activities.

Clause 76: Review of decisions relating to activity licences

This clause authorises the State Administrative Tribunal to review various decisions made with respect to activity licences under this division.

Clause 77: Register of licence holders to be maintained

This clause requires each enforcement agency to prepare and maintain a register of the activity licences granted by the agency under this division.

Part 8 - Notifiable infectious diseases and related conditions

The Bill provides a broad and flexible framework for the management of infectious diseases and related conditions that is capable of responding to both known and emerging risks to public health. It does this by providing a generic framework that utilises four common public health tools to aid the prevention and control the spread of infectious diseases and related conditions: obligations for medical practitioners, nurse practitioners and pathologists to make notifications to the Chief Health Officer; orders for compulsory testing (test orders); orders to require or prohibit specified matters (public health orders); and measures to identify and inform persons who have or may be affected by or exposed to a notifiable infectious disease.

Importantly, the Bill strikes a balance between the powers necessary to prevent the spread of infection and the rights of individuals. In addition to providing principles to be considered in the application, operation and interpretation of Part 8, the Bill provides a range of tangible rights and safeguards, including the right to receive specified information, to seek legal advice, and to seek a review of a test or public health order.

The development of this part was guided by the National Public Health Partnership Report "*Principles to be Considered when Developing Best Practice Legislation for the Management of Infected Persons who Knowingly Place Others at Risk*" (December 2003).

Division 1 – Principles and declarations

This division provides the principles relevant to this part and for the making of declarations.

Clause 78: Principles applying in relation to this Part

This clause provides for the principles listed in clause 79 to apply for the purposes of the application, operation and interpretation of this part.

The principles listed in clause 79 do not limit the application of clause 3(2).

Clause 79: Principles listed

This clause lists the principles that apply for the purposes of the application, operation and interpretation of this part.

The principle listed in paragraph (1) is of fundamental importance. It draws upon the principle of proportionality provided by clause 3(2) and reflects the intention for a staged approach whereby the use of coercive powers is reserved for exceptional cases. Actions taken under the Bill should be consistent with and not greater than the public health risk that the action is seeking to address.

This clause also requires persons who have or may have, or who may be at risk of contracting, a notifiable infectious disease, to take actions that are directed at reducing the risk of transmission of that disease.

It also creates a range of rights for persons who have or may have, or who may be at risk of contracting, a notifiable infectious disease or related condition.

Clause 80: Further provisions relating to application of principles

This clause provides that the failure to comply with the principles provided by clause 79(2) to (4) does not constitute an offence or give rise to any right or remedy, although it may constitute grounds for action to be taken under this part.

The principles provided in clause 79(5) do not confer any legally enforceable rights.

Clauses 78 and 79 do not limit section 66U of the *Equal Opportunity Act 1984*.

Clause 81: Declaration of notifiable infectious diseases

This clause authorises regulations to be made to declare a disease to be a notifiable infectious disease, an urgently notifiable infectious disease or a vaccine preventable notifiable infectious disease.

If it is necessary in the interests of public health because of urgent circumstances the declaration may be effected by way of an order made by the Minister. This clause ensures that immediate action can be taken to address emerging public health risks.

Clause 82: Declaration of notifiable infectious disease-related conditions

This clause authorises regulations to be made to declare a medical condition to be a notifiable infectious disease-related condition.

Clause 83: Orders by Minister

This clause deems orders made by the Minister under clause 81(2) to be subsidiary legislation and applies section 42 of the *Interpretation Act 1984* to those orders.

An order can have effect for up to 6 months and expires at the end of that period.

Division 2 – Notification

This division provides a framework for the notification by specified health professionals of notifiable infectious diseases and disease-related conditions.

The notification of infectious diseases and related conditions facilitates effective surveillance, enabling the Chief Health Officer to monitor trends and identify outbreaks, and to evaluate public health programs such as vaccination.

Clause 84: Term used: responsible pathologist

This clause defines the term used in this division.

Clause 85: Notification of notifiable infectious diseases and notifiable infectious disease-related conditions

This clause requires the notification of notifiable infectious diseases and disease-related conditions by medical practitioners, nurse practitioners and responsible pathologists to the Chief Health Officer in specified circumstances.

Notifications must be made in the approved form and must include the information that is specified in the clause, to the extent that the medical practitioner, nurse practitioner or responsible pathologist has the specified information.

The information that is to be notified may be varied by the regulations and may differ in respect of different notifiable infectious diseases and disease-related conditions.

Clause 86: Offence of failing to notify the Chief Health Officer

This clause creates an offence for medical practitioners, nurse practitioners and responsible pathologists who fail to notify the Chief Health Officer in accordance with clause 85.

It is a defence for the medical practitioner, nurse practitioner or responsible pathologist to prove that they believed on reasonable grounds that another person had made the required notification.

Clause 87: No liability for notifying Chief Health Officer

This clause protects medical practitioners, nurse practitioners and responsible pathologists who make notifications to the Chief Health Officer in good faith from the various legal liabilities and consequences that might, in the absence of this clause, otherwise arise.

Division 3 – Duty to inform

This division imposes obligations on medical practitioners and nurse practitioners to provide patients who have notifiable infectious diseases and disease-related conditions with specified information. These obligations reflect appropriate clinical practices and ensure that patients are provided with the information that is necessary to prevent or minimise the transmission of infectious diseases.

Clause 88: Practitioners to provide patients with information

This clause requires medical practitioners and nurse practitioners to provide patients who have notifiable infectious diseases and disease-related conditions with specified information.

Clause 89: Offence of failing to provide patient with information

This clause creates an offence for medical practitioners and nurse practitioners who fail to provide a patient with the information specified in clause 88(2)(a)(i) or (iii).

It is a defence for the medical practitioner or nurse practitioner to prove that they believed on reasonable grounds that another person had given the patient the required information.

Division 4 – Test orders

This division provides a framework for test orders to be made.

Clause 90: Terms used

This clause defines the terms used in this division.

Clause 91: Chief Health Officer may make test orders

This clause authorises the Chief Health Officer to make test orders.

The Chief Health Officer may make a test order if four criteria are established relating to the circumstances of possible transmission, the provision of counselling, the absence of consent and the need for the test for clinical or public health purposes.

Test orders may also be made with respect to deceased persons.

Clause 92: Process for making test order

This clause provides the content of and process for making a test order.

Clause 93: Explanation of test order

This clause requires the Chief Health Officer to inform a person who is to be tested under a test order of specified matters, in language likely to be readily understood by that person.

If the person to be tested is a protected person, the explanation is to be provided to the responsible person named in the order.

If the person to be tested is a deceased person, the explanation is to be provided to the person who has the lawful custody of the body.

Clause 94: Effect of test orders

This clause sets out the effect of a test order.

A test order authorises a sample of the kind specified in the order to be obtained or taken in accordance with the order, and authorises the testing of the sample obtained or taken for the disease specified in the order.

A test order also requires the person to be tested under the test order to give the sample or submit to the obtaining or taking of the sample, in accordance with the order.

If the person to be tested under the test order is a protected person, the responsible person who is named in the order is required to take all reasonable steps to enable the sample to be obtained or taken in accordance with the order.

If the person to be tested under the test order is a deceased person, the person with the lawful custody of the body is required to take all reasonable steps to enable the sample to be taken in accordance with the order.

Clause 95: Offences of failing to comply with test order

This clause creates various offences in respect of the failure to comply with a test order.

Clause 96: No payment may be required in relation to testing under test order

This clause prohibits a person who obtains or takes a sample under a test order from requiring any payment with respect to the obtaining, taking or testing of the sample.

Clause 97: Enforcement of test orders

This clause authorises an authorised officer to take action to enforce a test order. An authorised officer may request the assistance of a police officer.

Specific requirements are imposed in respect of action that involves the removal of an item of clothing. These provisions are modelled on Part 8 of the *Criminal Investigation (Identifying People) Act 2002*.

Clause 98: Warrant to enforce test order

This clause authorises the making of an application for, and the issue of, a warrant for the enforcement of a test order.

A warrant authorises specified action to be taken by the authorised officer and by any police officer who accompanies the authorised officer.

Clause 99: Further provisions relating to warrant

This clause makes provision for various matters relating to the execution of a warrant and the period for which a warrant remains in force.

Clause 100: Review by State Administrative Tribunal

This clause authorises the State Administrative Tribunal to review the decision of the Chief Health Officer to make a test order.

The State Administrative Tribunal must hear and determine an application as soon as is practicable.

Clause 101: Obtaining or taking samples under test orders

This clause specifies who may obtain or take a sample and provides the procedure for the obtaining and taking of samples in accordance with a test order.

Clause 102: Test results to be reported

This clause requires specified persons to notify the Chief Health Officer of the results of a test on a sample that is the subject of a test order.

As soon as is practicable after receiving the test results, the Chief Health Officer must give notice of the test results to the persons specified in the clause.

Clause 103: Person tested not to be identified

This clause restricts the identification of a person from whom a sample was obtained or taken under a test order.

An offence is created with respect to specified conduct by a person notified of results in accordance with clause 102(2)(d).

Clause 104: No liability for reporting test results

This clause protects a person who reports test results to the Chief Health Officer in good faith and in accordance with clause 102(1) from various legal liabilities and consequences that might, in the absence of this clause, otherwise arise.

Clause 105: Division not limited by Mandatory Testing (Infectious Diseases) Act 2014

This clause ensures that the *Mandatory Testing (Infectious Diseases) Act 2014* does not limit or affect this division.

Division 5 – Public health orders

This division provides a framework for public health orders to be made.

Clause 106: Terms used

This clause defines the terms used in this division.

Clause 107: Chief Health Officer may make public health orders

This clause authorises the Chief Health Officer to make public health orders.

The Chief Health Officer may make a public health order if five criteria are established relating to the disease status and behaviour of the person, the presence of a material public health risk, the provision of counselling and whether the order is necessary to prevent or minimise the material public health risk posed by the person.

The Chief Health Officer must have regard to the principle specified in clause 107(3).

This clause also provides for the content of and process for making a public health order.

Clause 108: Effect of public health orders

This clause sets out the effect of a public health order.

A public health order may require the person to whom it applies to either take specified actions or to refrain from specified actions.

A public health order that requires a person to undergo a medical examination authorises the carrying out of that examination and the testing of any sample obtained or taken in connection with that examination.

A public health order that requires a person to undergo medical treatment authorises the giving of that treatment and the testing of any sample taken in connection with that treatment.

Clause 109: Personal service of orders required

This clause requires a public health order (and any variation or revocation of that order) to be served personally on the person to whom it applies.

If the person to whom the order applies is a protected person, the order (and any variation or revocation of that order) must be personally served on a responsible person.

Clause 110: Explanation of public health order

This clause requires the Chief Health Officer to inform a person to whom a public health order applies of specified matters, in language likely to be readily understood by that person.

If the person to whom the order applies is a protected person, the explanation is to be provided to the responsible person.

Clause 111: Provisions applying if person detained under public health order

This clause requires periodic reviews to be undertaken in respect of any person who is detained in accordance with a public health order.

This clause also recognises the rights of the person detained to communicate with a lawyer and to obtain legal advice, and if the person detained is a protected person, to be represented by a responsible person.

Clause 112: Minister to be informed of detention or release from detention under public health order

This clause requires the Chief Health Officer to provide the Minister with written notice of various decisions about detention under a public health order.

Clause 113: Offence to fail to comply with public health order

This clause creates an offence in respect of the failure to comply with a public health order.

Clause 114: Responsible persons to facilitate compliance with public health order

This clause requires a responsible person served with a public health order under clause 109(2) to take reasonable steps to ensure that the protected person complies with the order.

A responsible person who fails to comply with that requirement commits an offence.

Clause 115: Enforcement of public health orders

This clause authorises an authorised officer to take action to enforce a public health order. An authorised officer may request the assistance of a police officer.

Specific obligations are imposed in respect of action that involves the removal of an item of clothing. These provisions are modelled on Part 8 of the *Criminal Investigation (Identifying People) Act 2002*.

Clause 116: Warrant to apprehend person to whom public health order applies

This clause authorises the making of an application for, and the issue of, a warrant for the enforcement of a public health order.

A warrant authorises specified action to be taken by the authorised officer and by any police officer who accompanies the authorised officer.

Clause 117: Further provisions relating to warrant

This clause makes provision for various matters relating to the execution of a warrant and the period for which a warrant remains in force.

Clause 118: Review by State Administrative Tribunal

This clause authorises the State Administrative Tribunal to review the decision of the Chief Health Officer to make a public health order.

The State Administrative Tribunal must hear and determine an application as a matter of priority and urgency.

Clause 119: Restriction on making of further public health order

This clause restricts the making of a further public health order if a previous public health order has ceased to have effect because it was revoked under clause 107 or as a result of a decision of the State Administrative Tribunal under clause 118, or on appeal from that decision.

Clause 120: Recognition of interstate public health orders

This clause provides a mechanism to recognise public health orders that are made under a corresponding law.

Clause 121: Further provisions applying to interstate public health orders operating in this State.

This clause provides for the application of various provisions of this division to interstate public health orders that are recognised under clause 120.

Division 6 – Reporting requirements

This division imposes reporting requirements with respect to test orders and public health orders.

Clause 122: Annual report to include information about test orders and public health orders

This clause requires the accountable authority of the Department of Health to include certain specified matters in each annual report submitted under Part 5 of the *Financial Management Act 2006*.

Division 7 – Identifying and informing contact persons

This division provides a framework for contact tracing to be undertaken with respect to notifiable infectious diseases.

Clause 123: Terms used

This clause defines the terms used in this division.

Clause 124: Requiring information where person believed to have notifiable infectious disease

This clause authorises an authorised officer to obtain specified information from an affected person.

Amongst other things, specified information includes the contact details of the affected person, information about any circumstances in which they acquired or were exposed to the notifiable infectious disease, and information about any circumstances in which they may have exposed another person to the notifiable infectious disease.

Clause 125: Requiring information where person believed to have been exposed to notifiable infectious disease

This clause authorises an authorised officer to obtain specified information from an exposed person.

Amongst other things, specified information includes the contact details of the exposed person, information about any circumstances in which the exposed person may have been exposed to the notifiable infectious disease, and information about any circumstances in which they may have exposed another person to the notifiable infectious disease.

Clause 126: Requiring other persons to give required information

This clause authorises an authorised officer to obtain specified information in relation to an affected person or an exposed person from a person other than the affected person or the exposed person.

Clause 127: Authorised officer to produce evidence of authority

This clause requires an authorised officer who exercises a power under this division to produce evidence of his or her designation and to explain that the information is required in order to prevent or minimise the spread of a notifiable infectious disease.

Clause 128: Offence to fail to comply with requirement to provide information

This clause creates an offence relating to the failure to comply with the requirement of an authorised officer under this division.

An offence will only be committed under this clause if the authorised officer informed the person that non compliance with the requirement may constitute an offence.

Clause 129: Protection from liability

This clause protects a person who gives information in good faith in accordance with a requirement under clauses 124(1), 125(1) or 126(2) from various legal liabilities and consequences that might, in the absence of this clause, otherwise arise.

Clause 130: Informing contact persons

This clause authorises the Chief Health Officer or an authorised officer to take reasonable steps to provide a contact person with specified information. Amongst other things, specified information may include advice that the contact person may be the source of or have been exposed to a notifiable infectious disease, that the person should be tested or treated for the disease, and information about preventing the transmission of the disease to other persons.

In deciding whether and what steps should be taken to provide the contact person with the specified information, the Chief Health Officer or authorised officer must have regard to the degree of risk, any guidelines issued under clause 131 and to any other relevant circumstances.

The Chief Health Officer or authorised officer may request another person (such as a medical practitioner or nurse practitioner) provide the information to the contact person.

If the contact person is a child or does not have the capacity to understand the information, the information can be provided to a specified person (such as a parent or guardian) on their behalf.

Clause 131: Chief Health Officer may issue guidelines

This clause authorises the Chief Health Officer to issue guidelines in respect of the taking of steps under clause 130.

Clause 132: Protection from liability

This clause protects specified persons who provide information under clause 130 in good faith from various legal liabilities and consequences that might, in the absence of this clause, otherwise arise.

Division 8 – Regulations relating to immunisation status of children

This division authorises regulations to be made with respect to the immunisation status of children.

This regulation making power is sufficiently wide to enable Western Australia to follow the National Public Health Partnership “*Model Provisions for Certification of Immunisation Status on School and Childcare Entry*” (2000).

Clause 133: Regulations relating to immunisation status of children

This clause authorises regulations to be made with respect to the immunisation status of children.

This clause makes various references to the term school. That term is defined in clause 4 to include a child care service.

Division 9 – Advisory Panels

This division provides for the establishment of Case Management and Coordination Advisory Panels.

Clause 134: Term used: Advisory Panel

This clause defines the term used in this division.

Clause 135: Advisory Panels

This clause authorises the Chief Health Officer to establish Case Management and Coordination Advisory Panels to advise the Chief Health Officer in respect of the management of a person or group of persons who have a notifiable infectious disease.

The role of the Advisory Panel is not limited to the management of persons who are subject to a public health order. Examples of circumstances in which the advice of an Advisory Panel might be sought include consideration of appropriate management of a person with a notifiable infectious disease who knowingly puts other persons at risk of infection.

Advisory Panels are to be comprised of persons with a range of suitable qualifications and experience who are to be appointed on terms and conditions determined by the Chief Health Officer.

Clause 136: Performance of functions and procedures

This clause makes provision for the functions and procedures of Advisory Panels.

Clause 137: Protocols

This clause authorises the Chief Health Officer to determine protocols in respect of the performance of functions by Advisory Panels.

Clause 138: Access to information

This clause authorises the release of confidential information to an Advisory Panel for the purposes of its functions. Persons who disclose information to an Advisory Panel in accordance with this clause are protected from various legal liabilities and consequences that might, in the absence of this clause, otherwise arise.

Members of Advisory Panels are prohibited from disclosing information gained by them as a result of or in connection with the functions of the Advisory Panel, except as authorised by subclause (3).

Part 9 - Non-infectious diseases and physical or functional abnormalities

This part provides a framework for the notification of prescribed conditions of health to the Chief Health Officer to facilitate important public health programmes and initiatives with respect to a range of non-infectious conditions such as cancer, developmental anomalies and lead poisoning.

It is noted that clause 309 provides for a number of specified regulations that are made under Part IXA of the *Health Act 1911* to be deemed to be regulations made under this part of the Bill.

Clause 139: Terms used

This clause defines the terms used in this part.

Clause 140: Objects of this Part

This clause sets out the objects of this part.

Clause 141: Regulations for this Part

This clause authorises regulations to be made to achieve the objects of this part.

Clause 142: Protection from liability

This clause protects persons who provide information in good faith in accordance with regulations made under this part from various legal liabilities and consequences that might, in the absence of this clause, otherwise arise.

Part 10 - Serious public health incident powers

This part authorises serious public health incident powers to be exercised in specified circumstances.

While the Bill provides a range of powers that may be exercised in order to prevent, control or abate risks to public health, from time to time the nature or degree of that risk may require the exercise of more wide scale and sweeping powers. For example, in the context of bioterrorism or rapidly spreading epidemics of serious infectious diseases such as SARS, pandemic influenza or Ebolavirus, where there is an overwhelming need to take action to protect public health.

Part 10 provides the first level of response to such risks. In accordance with this part, the Chief Health Officer may authorise, for the purpose of preventing, controlling or abating a serious public health risk, authorised officers to exercise serious public health incident powers.

If required, Part 11 is available to provide a higher level of response by way of the application of a more extensive range of coercive powers.

Although similar powers are already available under the *Emergency Management Act 2005* with respect to some public health related risks, Parts 10 and 11 of the Bill reflect the unique nature of health emergencies which can typically be managed without the necessity to involve other agencies. However, where a co-ordinated inter-agency response is required the exercise of powers under the *Emergency Management Act 2005* may be appropriate.

Provisions equivalent to Parts 10 and 11 of the Bill exist in equivalent public health legislation in other Australian jurisdictions.

Division 1 – Authorisation to exercise serious public health incident powers

This division empowers the Chief Health Officer to authorise the exercise of serious public health incident powers.

Clause 143: Authorisation to exercise serious public health incident powers

This clause empowers the Chief Health Officer to authorise an authorised officer to exercise serious public health incident powers for the purpose of preventing, controlling or abating a serious public health risk.

An authorisation under this clause does not limit the powers conferred on authorised officers under Part 15 or under another written law or other law.

The authorisation may be varied or revoked.

Clause 144: Authorisation to state certain matters

This clause sets out the requirements in respect of authorisations.

Clause 145: Authorisation may be given orally or in writing

This clause provides for the authorisation to be given orally or in writing.

If the authorisation is given orally it must be confirmed in writing as soon as is practicable.

Division 2 – Serious public health incident powers

This division provides a framework for the exercise of serious public health incident powers.

Clause 146: Terms used

This clause defines the terms used in this division.

Clause 147: Operation of this Division

This clause ensures that serious public health incident powers may only be exercised by the authorised officer in respect of the serious public health risk to which the authorisation relates and only while that serious public health risk continues.

Clause 148: Serious public health incident powers

This clause sets out the serious public health incident powers. Importantly, these powers include the power to direct persons in respect of medical observation, medical examination, medical treatment and vaccination.

Clause 149: Enforcement of requirement to undergo medical observation, medical examination

This clause authorises directions in respect of medical observation, medical examination, medical treatment and vaccination given under clause 148(1)(j) to be enforced by an authorised officer or police officer. This includes the exercise of reasonable force.

Specific requirements are imposed with respect to enforcement action that involves the removal of an item of clothing. These provisions are modelled on Part 8 of the *Criminal Investigation (Identifying People) Act 2002*.

Clause 150: Provisions relating to requirement to remain at premises or remain quarantined

This clause requires authorised officers and police officers to explain specified matters to persons who are to be issued with directions under clause 148(1)(c) or (i) or who are to be detained under clause 149. Amongst other things, specified matters include the reason for the direction or detention and information about rights to seek legal advice and review by the State Administrative Tribunal.

If the direction or detention is in respect of a child or an impaired person, the explanation is to be provided to another specified person on their behalf.

The failure to provide the required explanation does not invalidate the direction or detention.

Clause 151: Review of requirement to remain at premises or remain quarantined

This clause requires the Chief Health Officer to undertake periodic reviews in respect of any person who has been given a direction under clause 148(1)(c) or (i) or who has been detained under clause 149.

This clause also grants to the person the subject of the direction or detention specified rights to communicate with a lawyer and to obtain legal advice, and if the person is a child or an impaired person, to be represented by a specified person.

Clause 152: Authorised officer may be given assistance, and may use force

This clause authorises serious public health incident powers to be enforced by an authorised officer or by a police officer who is assisting an authorised officer. This includes the use of reasonably necessary force.

Clause 153: Failure to comply with requirements and directions

This clause creates an offence in respect of the failure to comply with a requirement or direction of an authorised officer exercising a serious public health incident power.

An offence will only be committed under this clause if the authorised officer informed the person that non compliance with the requirement or direction may constitute an offence.

A person who complies with a requirement or direction given by an authorised officer is protected from various legal liabilities and consequences that might, in the absence of this clause, otherwise arise.

Clause 154: Review by State Administrative Tribunal

This clause authorises the State Administrative Tribunal to review various directions and decisions made in accordance with this division.

The State Administrative Tribunal must hear and determine an application as a matter of priority and urgency.

Part 11 - Public health emergencies

This part empowers the Chief Health Officer to authorise the exercise of emergency powers during a public health emergency.

As outlined with respect to Part 10, from time to time the degree or nature of a public health risk may require the exercise of wide scale and sweeping powers. This part provides the highest level of response to ensure that action can be taken to prevent, control or abate a public health emergency.

This part is modelled on Parts 5 and 6 of the *Emergency Management Act 2005*.

Division 1 – Relationship to *Emergency Management Act 2005*

This division clarifies the relationship between the Bill and the *Emergency Management Act 2005*.

Clause 155: Relationship to Emergency Management Act 2005

This clause ensures that this part does not prevent the making of an emergency situation declaration or a state of emergency declaration under the *Emergency Management Act 2005*.

Equally, the making of a declaration under the *Emergency Management Act 2005* does not prevent a public health state of emergency declaration from being made under this part.

This clause also ensures that the Bill does not limit section 8(1) of the *Emergency Management Act 2005*.

Division 2 – Public health emergency management plans

This division provides for the preparation, review, amendment, replacement and testing of public health emergency management plans.

Clause 156: Public health emergency management plans

This clause requires the Chief Health Officer to prepare one or more public health emergency management plans. In preparing the public health emergency plan the Chief Health Officer is to have regard to the State emergency management policies and the State emergency management plans prepared under sections 17 and 18 of the *Emergency Management Act 2005*.

The Chief Health Officer may arrange for the public health emergency management plan to be tested as appropriate.

Clause 157: Directions to, and duties of, public authorities

This clause authorises the Chief Health Officer to direct public authorities to assist the Chief Health Officer in the development of a public health emergency management plan. Public authorities must comply with any such directions.

A public authority that is given a role and responsibilities under a public health emergency management plan must comply with that plan.

Division 3 – Public health state of emergency declarations

This division provides for public health state of emergency declarations.

Clause 158: Minister may make public health state of emergency declaration

This clause authorises the Minister to declare a public health state of emergency.

The Minister may make a public health state of emergency declaration if he or she is satisfied that a public health emergency has occurred, is occurring or is imminent, and that extraordinary measures are required to prevent or minimise loss of life or prejudice to the safety or harm to health of persons. The Minister must also consider the advice of the Chief Health Officer after the Chief Health Officer has consulted with the State Emergency Coordinator.

The declaration must be made in writing and must include the matters specified.

Clause 159: Duration of public health state of emergency declaration

This clause provides for a public health state of emergency declaration to have effect from the time it is made or any later date specified in the declaration, and to cease to have effect at the end of the 6th day after the day on which it first had effect, unless it is extended or revoked.

Clause 160: Amendment of public health state of emergency declaration

This clause authorises the Minister to amend a public health state of emergency declaration in order to address changes in the nature or severity of the public health emergency.

Clause 161: Extension of public health state of emergency declaration

This clause authorises the Minister to extend and further extend the duration of a public health state of emergency declaration.

Clause 162: Revocation of public health state of emergency declaration

This clause authorises the Minister to revoke a public health state of emergency declaration.

The revocation of a public health state of emergency declaration does not affect any penalty, punishment, investigation or legal proceedings relating to matters that occurred prior to the revocation.

Clause 163: Notice of declaration

This clause requires notice of a declaration to be published as soon as is practicable.

The failure to publish notice of the declaration does not affect the validity of the declaration.

Clause 164: Limitation of stay of operation of public health state of emergency declaration

This clause clarifies the capacity of a court or tribunal to make an interlocutory order that has the effect of staying the operation of a public health state of emergency declaration.

In view of the decision of the High Court in *Kirk v Industrial Court (NSW) (2010) 239 CLR 531*, this clause does not apply to proceedings for judicial review for jurisdictional error.

Division 4 – Authorisation to exercise emergency powers

This division empowers the Chief Health Officer to authorise the exercise of emergency powers by authorised persons and by health professionals.

Clause 165: Authorisation to exercise emergency powers during public health state of emergency

This clause empowers the Chief Health Officer to authorise an authorised officer or a health professional, either individually or as a member of a specified class, to exercise emergency powers during a public health state of emergency. An authorisation under this clause does not limit the powers conferred by Part 15 or by another written law or other law.

The authorisation may be varied or revoked, and is subject to any limitations on the public health state of emergency declaration.

Clause 166: Authorisation to state certain matters

This clause sets out the matters that must be included in the authorisation.

Clause 167: Authorisation may be given orally or in writing

This clause provides for the authorisation or a variation or revocation of that authorisation to be given orally or in writing.

If the authorisation is given orally it must be confirmed in writing as soon as is practicable.

Division 5 – Emergency powers

This division establishes a framework for the exercise of emergency powers.

Clause 168: Terms used

This clause defines the terms used in this division.

Clause 169: Operation of this Division

This clause limits the exercise of emergency powers to emergency officers who are authorised by the Chief Health Officer to exercise emergency powers.

Clause 170: Powers to obtain identifying particulars

This clause authorises emergency officers to obtain identifying particulars.

An emergency officer is prescribed for the purposes of section 5 of the *Criminal Investigation (Identifying People) Act 2002* and an emergency officer may exercise the powers in Part 3 of that Act in relation to an offence or suspected offence under the Bill during a public health state of emergency.

Clause 171: Powers relating to movement and evacuation

This clause authorises an emergency officer to give various directions and to take action in respect of the movement and evacuation of persons, animals and vehicles, for emergency management purposes.

Clause 172: Powers to use vehicles

This clause authorises an emergency officer to use a vehicle for emergency management purposes despite the provisions of any written law that require an authorisation for specified matters.

Clause 173: Powers to control or use premises or property

This clause authorises an emergency officer to control or use premises or property (whether inside or outside of the emergency area) for emergency management purposes.

If an emergency officer exercises powers under this clause the officer must give written notice to the owner, occupier or person in charge of the premises or property in the specified manner.

Clause 174: Powers in relation to drugs and vaccines

This clause authorises an emergency officer to make use of any vaccine or drug (whether inside or outside of the emergency area) for emergency management purposes. The emergency officer can exercise any of the powers conferred by clause 173 in order to do so.

An emergency officer may also give directions to specified persons with respect to any vaccine or drug.

Clause 175: Powers in relation to quarantine and medical or other procedures

This clause authorises an emergency officer to give directions relating to quarantine, medical observation, medical examination, medical treatment, vaccination and decontamination, for emergency management purposes.

A direction relating to quarantine must be for a period of no more than 24 hours, unless a longer period has been authorised by the Chief Health Officer.

Clause 176: Enforcement of requirement to undergo medical observation or medical or other procedure

This clause authorises directions in respect of medical observation, medical examination, medical treatment and vaccination given under clause 175(1)(c) to be enforced by an emergency officer. This includes the exercise of reasonable force.

Specific obligations are imposed in respect of action that involves the removal of an item of clothing. These provisions are modelled on Part 8 of the *Criminal Investigation (Identifying People) Act 2002*.

Clause 177: Further provisions relating to requirement to remain in area or remain quarantined

This clause requires an emergency officer to explain specified matters to persons who are to be issued with directions under clause 175(1)(a) or (b). Amongst other things, specified matters include the reason for the direction and information about rights to seek legal advice and review by the State Administrative Tribunal.

If the direction is in respect of a child or an impaired person, the explanation is to be provided to another specified person on their behalf.

The failure to provide the required explanation does not invalidate the direction.

Clause 178: Review of requirement to remain in area or remain quarantined

This clause requires the Chief Health Officer to undertake periodic reviews in respect of any person who has been given a direction under clause 175(1)(a) or (b).

This clause also grants to the person subject to the direction specified rights to communicate with a lawyer and to obtain legal advice, and if the person is a child or an impaired person, to be represented by a specified person.

Clause 179: Information sharing

This clause provides a framework for the sharing of relevant information for emergency management purposes.

Clause 180: Regulations about information sharing for purposes of section 179

This clause authorises regulations to be made in respect of the sharing of relevant information in accordance with clause 179.

Clause 181: Other emergency powers

This clause authorises emergency officers to exercise various powers for emergency management purposes.

An emergency officer who is exercising an emergency power under this division may be assisted by a police officer or other person.

This clause is modelled on section 75 of the *Emergency Management Act 2005*. Powers of particular relevance to public health emergencies have also been included.

Clause 182: Further provisions relating to power to detain under section 176(1) or 181(1)(o)

This clause requires an emergency officer or police officer to explain specified matters to persons who are to be detained under clause 176(1) or 181(1)(o). Amongst other things, specified matters include the reason for detention and information about rights to seek legal advice and review by the State Administrative Tribunal.

If the person is a child or an impaired person, the explanation is to be provided to another specified person on their behalf.

The failure to provide the required explanation does not invalidate the detention.

Clause 183: Review of detention

This clause requires the Chief Health Officer to undertake periodic reviews in respect of any person who has been detained under clause 176(1) or 181(1)(o).

This clause also grants to the person detained specified rights to communicate with a lawyer and to obtain legal advice, and if the person is a child or an impaired person, to be represented by a specified person.

Clause 184: Minister to be informed of detention or release from detention

This clause requires the Chief Health Officer to give the Minister notice of various decisions about detention.

Clause 185: Review by State Administrative Tribunal

This clause authorises the State Administrative Tribunal to review various directions and decisions made in accordance with this division.

The State Administrative Tribunal must hear and determine an application as a matter of priority and urgency.

Division 6 – Other powers exercisable during public health state of emergency

This division provides further powers that are exercisable during a public health state of emergency.

Clause 186: Powers of police relating to closure of places, movement and evacuation

This clause authorises a police officer who is present in the emergency area to give directions in respect of the closure of places, movement and evacuation, for emergency management purposes.

A police officer who is present in the emergency area may also exercise any of the powers of an emergency officer under clause 171.

A police officer must not exercise a power under this clause or under clause 171 in a manner that is contrary to or in conflict with the exercise of a power by an emergency officer under clause 171 or 181(1)(j).

Clause 187: Power of Chief Health Officer to direct public authorities during public health state of emergency

This clause authorises the Chief Health Officer to direct public authorities during a public health state of emergency.

This clause does not authorise the Chief Health Officer to direct the Police Force or a police officer.

Division 7 – General provisions

This division provides general provisions applicable to this part.

Clause 188: General provisions regarding powers

This clause authorises an emergency officer (which term includes a police officer assisting under clauses 181(3) or 186) to enforce directions given by an emergency officer. This includes the use of reasonable force.

Clause 189: General provisions regarding directions

This clause provides for directions under this part to be given orally or in writing.

If given orally the direction must be confirmed in writing within 2 working days, unless within that period the direction is either complied with or cancelled.

The failure to confirm a direction in writing does not invalidate the direction.

Clause 190: Direction under Emergency Management Act 2005 prevails over inconsistent direction under this Part

This clause clarifies the effect of a direction given under Part 6 of the *Emergency Management Act 2005* on an inconsistent direction given under this part.

Clause 191: Failure to comply with directions

This clause creates an offence with respect to the failure to comply with the direction of an emergency officer or police officer under this part.

An offence will only be committed under this clause if the emergency officer or police officer informed the person that non compliance with the direction may constitute an offence.

A person who complies with a direction given by an emergency officer or police officer is protected from various legal liabilities and consequences that might, in the absence of this clause, otherwise arise.

Part 12 - Compensation and insurance

This part provides arrangements to address losses incurred by persons as a result of the exercise of Part 10 and 11 powers.

This part is modelled on Part 7 of the *Emergency Management Act 2005*.

Division 1 – Compensation

This division provides a framework for the payment of compensation to persons who suffer loss or damage as a result of the exercise of Part 10 and 11 powers.

Clause 192: Entitlement to compensation

This clause creates an entitlement for persons who suffer loss or damage by reason of the exercise or purported exercise of Part 10 and 11 powers to receive just and reasonable compensation from the State.

Compensation is not payable if the person contributed to the loss or damage, or if the loss or damage is recovered or recoverable by the person under a policy of insurance.

Compensation is also not payable if the loss or damage would have happened in any event.

Clause 193: Applying for compensation

This clause provides for the content of, and the process for, compensation applications.

Clause 194: Lapsing of application

This clause authorises the Minister to direct an applicant by notice to provide information that is required in order for the Minister to decide their application. If the applicant fails to comply with the notice their application for compensation will lapse.

Clause 195: Notice of decision

This clause requires the Minister to give written notice of his or her decision in respect of an application for compensation as soon as is practicable.

Amongst other things the notice is to state the decision and the reasons for it, and if applicable, inform the applicant of the right to seek a review of the decision by the State Administrative Tribunal.

Clause 196: Review of decision as to payment of compensation

This clause authorises an applicant who is dissatisfied with a decision of the Minister to refuse to pay compensation or to pay the decided amount of compensation to have that decision reviewed by the State Administrative Tribunal.

Clause 197: False compensation claim

This clause creates an offence relating to false and misleading statements in the context of compensation claims.

Division 2 - Insurance

This division, which is modelled on section 84 of the *Emergency Management Act 2005*, extends the application of policies of insurance in specified circumstances

Clause 198: Extension of policy of insurance

This clause provides for a policy of insurance for loss or damage to a property to be extended to apply to loss or damage that is caused as a result of the exercise of specified powers under the Bill, in good faith, and for the purpose of protecting the property from loss or damage, or a person or animal from death or injury.

Part 13 - Improvement notices and enforcement orders

This part establishes improvement notices and enforcement orders as tools that are available to authorised officers and enforcement agencies to proactively manage public health risks. These tools support the general public health duty and ensure that appropriate action can be taken to protect, promote and improve public health.

Division 1 - Preliminary

This division provides for preliminary matters relating to improvement notices and enforcement orders.

Clause 199: Terms used

This clause defines the terms used in this part.

Importantly, occupier is defined to include both the owner, any person in charge of the premises and the authorised agent of either of those persons. This provides necessary flexibility to ensure that notices can be issued to the most appropriate person in the circumstances.

Clause 200: Proceedings for offences: how affected

This clause clarifies that the issue of an improvement notice or enforcement order does not prevent proceedings for an offence under the Bill or any other written law from being taken or continued.

This clause also provides that no criminal proceedings may be instituted for non-compliance with an improvement notice, including under sections 177 and 178 of the *Criminal Code*.

Division 2 – Improvement notices

This division provides for improvement notices.

Clause 201: Issue of improvement notice

This clause authorises an improvement notice to be issued by an authorised officer if he or she reasonably believes that one of the specified criteria for the issue of the improvement notice has been met.

Clause 202: Contents of improvement notice

This clause provides for the content of an improvement notice.

An improvement notice is an order that either requires or prohibits a person from taking specified action. This is consistent with the general public health duty which applies to actions and omissions. Amongst other things, an improvement notice may require the preparation and implementation of a risk management plan.

An authorised officer must have regard to specified matters when issuing an improvement notice, including the principles set out in the Table to clause 3(2).

An improvement notice must include the matters specified in the clause and may include ancillary or incidental directions.

Clause 203: Extension of period of compliance with improvement notice

This clause authorises an authorised officer to extend the time during which the person is to comply with the improvement notice.

Clause 204: Compliance with improvement notice

This clause authorises an authorised officer to issue a notice of compliance if the officer is satisfied, after carrying out an appropriate assessment, that the improvement notice has been complied with.

If the authorised officer is not satisfied that the improvement notice has been complied with, the officer must issue the person with a notice that sets out the reasons why the officer is not satisfied.

An assessment in respect of compliance may be carried out at the request of the person issued with the improvement notice or at the initiative of the authorised officer.

Division 3 – Enforcement orders

This division provides for enforcement orders.

Clause 205: Issue of enforcement orders

This clause authorises enforcement orders to be issued by an enforcement agency if it reasonably believes that an improvement notice has not been complied with, or if the issue of the order is necessary to prevent or mitigate a serious public health risk.

An enforcement agency may issue an enforcement order in respect of non compliance with an improvement notice irrespective of whether the improvement notice was issued by a person who was an officer of that or another agency.

Clause 206: Contents of enforcement order

This clause provides for the content of an enforcement order.

An enforcement order is an order that either requires or prohibits a person from taking specified action. A prohibition with respect to specified action may be limited, absolute or conditional.

An authorised officer must have regard to specified matters when issuing an improvement notice, including the principles set out in the Table to clause 3(2).

An improvement notice must include the matters specified in the clause and may include ancillary or incidental directions.

Clause 207: Extension of period of compliance with enforcement order

This clause authorises an enforcement agency to extend the time during which the person is to comply with the enforcement order.

Clause 208: Enforcement agency may implement enforcement order

This clause authorises an enforcement agency to implement an enforcement order.

If a person issued with an enforcement order has not complied with that order, the enforcement agency may take any action the agency reasonably believes to be necessary to ensure that the order is complied with, including those actions that are specified in the clause.

Clause 209: Application of Criminal and Found Property Disposal Act 2006

This clause applies the *Criminal and Found Property Disposal Act 2006* to anything that is seized under clause 208(3)(c) and deems each enforcement agency to be a prescribed agency under that Act.

Clause 210: Recovery of costs incurred by or on behalf of enforcement agency

This clause provides for the amount of any costs incurred by or on behalf of an enforcement agency in taking action under clause 208 to be a debt due to the agency by the person who did not comply with the order, and for this debt to be recoverable by the agency from that person.

Clause 211: Criminal liability not affected

This clause clarifies that the implementation of an enforcement order by an enforcement agency under clause 208 does not affect the liability of a person to be prosecuted for an offence under this Bill or any other written law.

Clause 212: Certificate of clearance to be given in certain circumstances

This clause requires an enforcement agency to issue a certificate of clearance to a person if it is satisfied that either the enforcement order has been complied with, or if applicable, that there is no longer a serious public health risk to be prevented or mitigated. The enforcement agency may be satisfied of these matters on its own assessment or on the assessment and report of an authorised officer.

Clause 213: Request for assessment

This clause authorises a person issued with an enforcement order to request an assessment for the purposes of clause 212.

An enforcement agency that conducts an assessment in accordance with this clause but which does not issue a certificate of clearance under clause 212 must provide written notice of that decision and the reasons for it.

If an enforcement agency fails to conduct an assessment within 5 working days of receiving the written request through no fault of the person who made the written request, a certificate of clearance is taken to have been issued.

Clause 214: Contravention of enforcement order

This clause creates an offence with respect to the failure to comply with an enforcement order.

Division 4 – Review by State Administrative Tribunal

This division provides for the review of decisions relating to improvement notices and enforcement orders by the State Administrative Tribunal.

Clause 215: Review of decisions relating to improvement notices and enforcement orders

This clause authorises the State Administrative Tribunal to review a decision to issue an improvement notice and a decision not to give a notice of compliance.

This clause also authorises the State Administrative Tribunal to review a decision to issue an enforcement order and a decision not to give a certificate of clearance.

Part 14 - Inquiries

This part provides a framework for the conduct of inquiries into matters related to public health, with the findings of such inquiries to be laid before each house of Parliament.

The effect of this part is to provide a more modern framework for inquiries that may presently be authorised under sections 13 and 14 of the *Health Act 1911*.

Clause 216: Terms used

This clause defines the terms used in this part.

Clause 217: Chief Health Officer may conduct inquiry

This clause authorises the Chief Health Officer to conduct an inquiry into any matter relating to public health, either at the initiative of the Chief Health Officer or at the request of the Minister.

The Chief Health Officer may undertake the inquiry or may appoint another person for that purpose.

Clause 218: Preliminary matters

This clause provides for preliminary matters relating to an inquiry.

Before conducting an inquiry the Chief Health Officer must prepare the terms of reference. If an inquiry is to be conducted by another person, the Chief Health Officer is to state which powers the inquirer is to have for the purpose of that inquiry. The Chief Health Officer must also advise the Minister in writing of his or her intention to undertake an inquiry.

Clause 219: Procedure

This clause sets out provisions relevant to the procedure of an inquiry.

Clause 220: Hearings

This clause sets out provisions relating to the holding of hearings.

Clause 221: Inquirer's powers in relation to inquiry

This clause authorises the inquirer to obtain information and documents for the purposes of the inquiry.

Clause 222: Failure to comply with requirements of notice

This clause creates various offences relating to the exercise of the inquirer's powers to obtain information and documents.

Clause 223: Incriminating answers or documents

This clause addresses the application of the privilege against self incrimination.

Clause 224: Disruption of inquiry

This clause creates various offences with respect to the conduct of an inquiry.

Clause 225: False information

This clause creates an offence for providing answers or information that a person knows to be false or misleading in a material particular.

Clause 226: Protection for certain purposes

This clause provides informants to the inquiry with a protection with respect to loss or damage that is suffered by another person as a result of the information given or a document produced, in good faith, for the purposes of an inquiry.

Clause 227: Reports

This clause requires the inquirer to prepare a written report relating to the inquiry and to submit this to the Minister as soon as is practicable.

The report must outline the findings and conclusions, any recommendations and the reasons for those recommendations, and any other matters prescribed by the regulations.

The Minister is to table a copy of the report before each House of Parliament as soon as is practicable.

Part 15 - Powers of entry, inspection and seizure

This part, which is modelled on Part 5 of the *Food Act 2008*, provides authorised officers with robust powers including powers of entry, inspection, search and seizure.

Division 1 – Entry, inspection and seizure

This division provides a framework for the exercise of powers by authorised officers.

Clause 228: Term used: reasonably suspects

This clause defines the term used in this division.

Clause 229: Powers of authorised officers

This clause empowers authorised officers to exercise various powers including powers of entry, inspection, search and seizure for the purposes of the Bill.

An authorised officer exercising a power under this clause may be assisted by a police officer or other person.

Clause 230: Stopping of vehicles

This clause makes further provision in respect of the exercise of the power in clause 229(1)(i) to stop vehicles.

Clause 231: Incriminating information or answers

This clause overrides the common law privilege against self incrimination in respect of the provision of information or answers or the production of documents or things under clause 229. However, any information or answers provided or documents or things produced are not admissible in evidence in any proceedings, except in respect of proceedings for an offence under clauses 242, 243 or 244.

Clause 232: Liability for complying with requirement to provide information, answer question or produce document or thing

This clause provides a protection from liability for persons who comply with a requirement under clause 229 to provide information, answer questions or to produce any document or thing.

Clause 233: Power of seizure

This clause empowers authorised officers to seize things that are relevant to an offence under the Bill, in specified circumstances.

Clause 234: Application of Criminal Investigation Act 2006

This clause deems an authorised officer to be a public officer for the purposes of the *Criminal Investigation (Identifying People) Act 2002* and empowers an authorised officer to exercise powers under Parts 6 and 13 of that Act.

Clause 235: Application for warrant to enter premises

This clause empowers an authorised officer to apply for a warrant to enter premises in order to gather evidence that an offence under the Bill has or is being committed, or for the purpose of exercising powers under clause 229.

Clause 236: How application made

This clause sets out the procedure for applying for a warrant.

Clause 237: Further provisions relating to application for warrant

This clause sets out the procedure applicable to the issue of a warrant in circumstances where the application was made by way of remote communication.

Clause 238: Issue of warrant

This clause empowers a judicial officer to issue a warrant to an authorised officer if he or she is satisfied that there are reasonable grounds for doing so.

Clause 239: Duration of warrant

This clause provides for a warrant to remain in force a period of no more than 30 days or such lesser period as the warrant specifies.

Clause 240: Execution of warrant

This clause provides for the execution of a warrant.

The warrant may be executed by the authorised officer to whom it was issued or by another authorised officer of the enforcement agency concerned.

The authorised officer may be accompanied by a police officer and must produce the warrant for inspection.

Clause 241: Use of force

This clause addresses the use of force in the context of the execution of a warrant.

Clause 242: Failure to comply with requirements of authorised officers

This clause creates an offence with respect to the failure to comply with a requirement of an authorised officer under this division.

An offence will only be committed under this clause if the authorised officer informed the person that non compliance with the requirement may constitute an offence.

Clause 243: False information

This clause creates an offence in respect of the provision of false or misleading information or documents in connection with a requirement or direction given by an authorised officer under this Bill.

Clause 244: Obstructing, impersonating or threatening authorised officers

This clause creates offences for obstructing, impersonating or threatening an authorised officer in the performance of the officer's functions under this Bill.

Division 2 – Items seized by authorised officers

Clause 245: Application of Criminal and Found Property Disposal Act 2006

This clause applies the *Criminal and Found Property Disposal Act 2006* to things and items that are seized under clause 233 or forfeited under clause 250.

Clause 246: Seized items

This clause authorises an authorised officer who seizes an item to detain the item at the premises at which it was seized or at another place.

Powers and obligations are provided in respect of items that are to be detained at the premises at which they were seized.

Clause 247: Notification of seizure

This clause requires an authorised officer who seizes any item under this part to provide written notice of specified matters to the person from whom it was seized.

Clause 248: Immediate destruction or disposal of things seized

This clause authorises the immediate destruction or disposal of seized items that are perishable or pose a risk to health or property.

Clause 249: Return of seized item

This clause provides a mechanism for seized items to be returned in specified circumstances.

Clause 250: Forfeiture of item

This clause provides a mechanism for the forfeiture of items that are seized under this part.

Clause 251: Cost of destruction or disposal of forfeited item

This clause provides a mechanism for an enforcement agency to recover the costs of the lawful destruction or disposal of an item seized under this part.

Clause 252: Return of forfeited item

This clause provides a mechanism for seized items that have been forfeited but not yet destroyed or disposed of, to be returned in specified circumstances.

Clause 253: Compensation

This clause authorises a person to be paid compensation that is just and reasonable in respect of the seizure of an item in accordance with this part, in specified circumstances.

Clause 254: Review of decisions relating to compensation

This clause authorises the State Administrative Tribunal to review decisions not to pay compensation or as to the amount of compensation.

Part 16 – Crown exemptions

This part provides a mechanism by which the Minister for Health may issue the Crown and Crown authorities with exemptions from compliance with the Bill or the regulations.

This part recognises that the Crown and Crown authorities may not be capable of achieving immediate compliance with the Bill. This is because many of the required improvements to infrastructure and service delivery can only be achieved in the medium to long term. The Bill recognises that incremental measures may be required, and in appropriate circumstances the Minister for Health may exempt the Crown or a Crown authority from compliance with the Bill or the regulations.

Division 1 – Preliminary

This division provides for preliminary matters.

Clause 255: Terms used

This clause defines the terms used in this part.

Division 2 – Ministerial exemptions for Crown and Crown authorities

This division authorises the Minister for Health to issue exemptions to the Crown and to Crown authorities.

Clause 256: Minister may exempt Crown or Crown authority from certain provisions

This clause authorises the Minister for Health to exempt, by way of notice published in the Gazette, the Crown or a Crown authority from compliance with the Bill and regulations made under the Bill.

An exemption may not be issued in respect of the parts of the Bill that are specified in the clause.

The Minister may grant an exemption if the Minister is satisfied that the Crown or Crown authority is unable to take the steps necessary to comply with the Bill or regulations made under the Bill.

Before issuing an exemption the Minister must obtain and have regard to the advice and recommendations of the Chief Health Officer.

The Minister can attach conditions to an exemption.

Clause 257: Duration of exemption

This clause authorises exemptions to be issued for up to 10 years.

Clause 258: Content of exemption

This clause requires exemptions to include the content specified in the clause.

Importantly, the clause provides for an exemption that is not issued in the name of a Crown authority to be issued in the name of a Minister on behalf of the Crown.

Clause 259: Effect of exemption

This clause clarifies the effect of an exemption, namely that the exemption-holder is not bound by the provisions of the Bill or regulations made under the Bill to the extent of the terms of the exemption. Those provisions are also not binding on the Crown to the extent that the Crown would otherwise be responsible for any non-compliance by the exemption-holder.

Non-compliance with a condition of an exemption does affect the exemption or give rise to any criminal or civil liability or any right or remedy.

Clause 260: Minister to consult before amending or revoking exemption

This clause requires the Minister to consult with the exemption-holder prior to amending or revoking an exemption.

Clause 261: Application of Interpretation Act 1984 to exemptions

This clause applies various provisions of the *Interpretation Act 1984* to exemptions.

Division 3 – Compliance Plans

This division makes provision for compliance plans.

Clause 262: Exemption may require compliance plan

This clause authorises the Minister to attach conditions to an exemption requiring the exemption-holder to develop a compliance plan.

A compliance plan is a plan that sets out the steps that the exemption-holder will take in order to achieve full or partial compliance with the provisions of the Bill or the regulations to which the exemption applies.

A failure to implement a compliance plan does not of itself give rise to any right or remedy.

Clause 263: Development and approval of compliance plan

This clause requires the exemption-holder to develop any compliance plan in consultation with the Chief Health Officer and for the plan to be approved by the Minister for Health in consultation with the Minister responsible for the exemption-holder.

Clause 264: Annual review of compliance plan

This clause requires the exemption-holder to review any compliance plan at least annually.

Clause 265: Amendment or replacement of compliance plan

This clause authorises exemption-holders to amend or replace a compliance plan subject to the procedure set out in clause 263.

Division 4 – Publication and reporting obligations

This division imposes various obligations in respect of publication and reporting.

Clause 266: Exemption-holder to make exemption and compliance plan publicly available

This clause requires exemption-holders to ensure that all current exemptions and compliance plans are available to the public without charge.

Clause 267: Annual report to include information about exemption and compliance plan

This clause requires the accountable authority of a Crown authority to include specified information in the annual report submitted under Part 5 of the *Financial Management Act 2006*. The specified information includes the details of the exemption held by the Crown authority and a report about the progress on the implementation of any compliance plan.

If the exemption-holder does not have an accountable authority, the accountable authority of the Department of Health must include the specified information in its reported submitted under Part 5 of the *Financial Management Act 2006*.

Part 17 – Liability, evidentiary and procedural provisions

This part makes provision for various liability, evidentiary and procedural matters.

Division 1 – Civil Liability

This division provides for matters relating to civil liability.

Clause 268: Contraventions not breach of statutory duty

This clause makes it clear that a contravention of a provision of the Bill is not actionable as a breach of statutory duty.

Division 2 – Criminal Liability

This division provides for matters relating to criminal liability.

Clause 269: Commencing proceedings

This clause provides for prosecutions to be commenced by the Chief Health Officer or by an authorised officer authorised by the Chief Health Officer, or by an enforcement agency other than the Chief Health Officer.

It is noted that section 21(5) of the *Criminal Procedure Act 2004* applies to the offences provided by the Bill.

Clause 270: Offences by employees – liability of employer

This clause makes employers vicariously liable for contraventions of the Bill by their employees.

Clause 271: Liability of officers of body corporate for offence by body corporate

This clause makes the directors and officers of a body corporate vicariously liable for contraventions of the Bill by that body corporate.

The content of this clause aligns with the Council of Australian Governments Principles on Directors' Liability Provisions that were adopted in December 2009.

Clause 272: Further provisions relating to liability of officers of body corporate

This clause makes further provision in respect of the vicarious liability of directors and officers for contraventions of the Bill by a body corporate.

Clause 273: Liability of employees and agents

This clause provides that it is not a defence in proceedings for an offence under the Bill that the accused person was an employee or agent of another person.

Clause 274: Disclosure by witness

This clause provides certain protections for witnesses in the context of proceedings for an offence under the Bill.

Clause 275: Documentary evidence of certain matters

This clause provides for specified documents to be evidence of certain matters in the context of proceedings for an offence under the Bill.

Clause 276: Court may order costs and expenses

This clause authorises a court that hears proceedings for an offence under the Bill to make the orders it thinks fit in respect of the costs and expenses of doing various things relating to the proceedings (such as examination, seizure, storage, analysis and destruction).

This clause does not limit any other power of a court to award costs.

Clause 277: Court may order forfeiture

This clause authorises a court that convicts a person of an offence under the Bill to, in addition to any penalty or other order, order the forfeiture to the State of anything that was used in the commission of the offence.

Clause 278: Court's powers in relation to registration and licences

This clause authorises a court that convicts a person of an offence to make orders in respect of any registration or activity licence held by that person in addition to any penalty imposed or order made in respect of the conviction.

The court may defer the operation of an order under this clause pending an appeal.

Clause 279: Further provisions relating to orders under section 278

This clause clarifies the effect of orders made under clause 278.

Division 3 – Enforcement action against Crown

This division provides for matters relating to enforcement action against the Crown.

Clause 280: Term used: responsible agency

This clause defines the term used in this division.

Clause 281: Improvement notices may be given to Crown

This clause authorises improvement notices to be given to the Crown under Part 13 of the Bill.

Clause 282: Enforcement orders cannot be given to Crown

This clause confirms that enforcement orders may not be given to the Crown under Part 13 of the Bill.

Part 18 - Miscellaneous

This part provides for miscellaneous matters.

Division 1 – Provisions relating to local governments

This division provides for miscellaneous matters relating to local governments.

Clause 283: Fees and charges may be fixed and recovered by enforcement agencies that are local governments

This clause authorises enforcement agencies that are local governments to impose and recover fees or charges in respect of their performance of functions as enforcement agencies under the Bill. Such fees or charges are to be imposed and recovered in accordance with the framework provided by Part 6 Division 5 Subdivision 2 of the *Local Government Act 1995*.

Clause 284: Exercise of functions of local government outside its district

This clause provides a mechanism for managing a material public health risk in one local government district that is caused by some act or default in another local government district.

This clause does not limit the power of the Chief Health Officer to address material public health risks in accordance with clauses 7 or 8. It also does not limit the application of section 3.19 of the *Local Government Act 1995* which deems certain places to be within a local government district.

Clause 285: Chief Health Officer may act where no local government

This clause authorises the Chief Health Officer to perform the functions of a local government in any place that is not within the boundaries of a local government district.

This clause is similar in effect to section 16 of the *Health Act 1911*, though it does not authorise local laws to be made.

Division 2 – General

This division provides a protection from liability.

Clause 286: Protection from liability for wrongdoing

This clause provides a protection from liability with respect to the performance of functions under the Bill.

Division 3 – Provisions relating to information

This division makes provision with respect to the disclosure and use of information.

Clause 287: Disclosure and use of information provided under Part 8 or 9

This clause provides for the disclosure and use of information that is provided under Parts 8 or 9 of the Bill.

Clause 288: Information sharing

This clause provides for information that is relevant to the administration or enforcement of the Bill to be shared amongst and between enforcement agencies and information sharing agencies.

Clause 289: Guidelines relating to information sharing

This clause requires the Chief Health Officer to issue guidelines with respect to the disclosure and the requesting of information under clause 288.

Clause 290: Regulations relating to information sharing

This clause authorises regulations to be made in respect of the use, disclosure and storage of, and access to, information disclosed under clause 288.

Clause 291: Confidential information officially obtained

This clause creates an offence for a person who, without lawful authority, directly or indirectly uses or discloses confidential information obtained by reason of a function that the person has or had in the administration of the Bill.

Division 4 – Guidelines

This division makes provision for the Chief Health Officer to issue guidelines.

Clause 292: Guidelines

This clause makes provision for the Chief Health Officer to issue guidelines.

Guidelines are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

Division 5 – Regulations

This division authorises regulations to be made in respect of the specified matters.

Clause 293: Regulations – general power

This clause authorises regulations to be made in respect of the specified matters.

Clause 294: Regulations may adopt codes or legislation

This clause authorises the regulations to adopt any code or subsidiary legislation.

Division 6 – Review of Act

This division provides for the review of the Bill.

Clause 295: Review of Act

This clause requires the Minister to carry out a review of the operation and effectiveness of the Bill.

Part 19 - Transitional and savings provisions

This part provides transitional and savings provisions in respect of various provisions of the *Health Act 1911* including regulations and by-laws made under that Act.

Clause 296: Terms used

This clause defines the terms that are used in this part.

Importantly, “Health Act” is defined to include references both to the *Health Act 1911* as it currently exists, and to the *Health (Miscellaneous Provisions) Act 1911* as it will be known after its renaming by the Public Health (Consequential Provisions) Bill 2014. This ensures that the clauses in this part have effect irrespective of when the *Health Act 1911* is renamed.

Clause 297: Application of Interpretation Act 1984

This clause ensures the application of the *Interpretation Act 1984* to provisions of the Health Act that are repealed by the Public Health (Consequential Provisions) Bill 2014.

Clause 298: References to Health Act 1911 and Health (Miscellaneous Provisions) Act 1911

This clause provides for references in a written law or document to the *Health Act 1911* or the *Health (Miscellaneous Provisions) Act 1911* to be deemed to be references to this Bill, if the context so permits.

Clause 299: Reference to Chief Health Officer to be temporarily read as Executive Director, Public Health for purposes of Part 16

This clause provides for the reference to the Chief Health Officer in clause 256(4)(a) to be deemed to be a reference to the Executive Director, Public Health until such time as clause 300 comes into operation.

This clause enables Part 16 of the Bill to come into operation on the day after Royal Assent, before relevant terminology changes have been effected by the Public Health (Consequential Provisions) Bill 2014.

Clause 300: Executive Director, Public Health to hold office as Chief Health Officer

This clause provides transitional provisions to deem the person appointed as the Executive Director, Public Health to be designated as the Chief Health Officer under the Bill.

Clause 301: Environmental health officers to be authorised officers for certain purposes

This clause provides transitional provisions to deem persons who are appointed as environmental health officers under the Health Act to be designated as authorised officers under clause 24(1).

The designation has effect for specified provisions of the Bill, the Health Act, the *Dog Act 1976*, the *Tobacco Products Control Act 2006*, the *Food Act 2008* and the *Cat Act 2011*.

Clause 302: Unpaid rates levied under Health Act Part III remain recoverable

This clause provides transitional provisions for unpaid rates levied under Part III of the Health Act. Rates that were levied by a local government prior to the repeal of Part III continue to be due and payable and may be recovered under the *Local Government Act 1995*.

Clause 303: Transitional provisions relating to deletion of Health Act Part IV

This clause provides transitional provisions to enable the Governor to continue to decide any disputes between local governments with respect to the cost or maintenance of joint schemes entered into prior to the repeal of section 61 of the Health Act.

Clause 304: Transitional provisions relating to notices and orders issued under Health Act Part V Division 1 or 2

This clause provides transitional provisions in respect of notices and orders issued under Part V Division 1 or 2 of the Health Act.

Clause 305: Transitional provisions relating to deletion of Health Act Part VII

This clause provides transitional provisions in respect of requisitions and notices issued under Part VII of the Health Act.

Clause 306: Transitional provisions relating to deletion of Health Act Part IX

This clause provides transitional provisions in respect of requisitions issued under Part IX of the Health Act.

Clause 307: Transitional provisions relating to recovery for work done by local government, and charges on land or premises

This clause provides for the continued application of sections 371 and 372 of the Health Act with respect to works carried out by a local government under a provision of the Health Act or under an agreement entered into under that Act.

Clause 308: Pesticides Advisory Committee

This clause provides for the Pesticides Advisory Committee that is established under section 246B of the Health Act to be deemed to be an advisory committee established by the Chief Health Officer under clause 33.

This clause also provides transitional provisions with respect to the membership and procedure of the Committee that will operate until such time as the Chief Health Officer otherwise determines.

Clause 309: Transitional provisions for Health Act Part IXA

This clause provides for the application of section 36 of the *Interpretation Act 1984* to the repeal of Part IXA of the Health Act as if that Part was being replaced by Part 9 of the Bill.

However, only the specified regulations continue in force as if they were made under clause 141. The remaining regulations that are made under Part IXA of the Health Act relate to infectious diseases, and will be regulated in accordance with the framework provided by Part 8 of the Bill.

Clause 310: Transitional provisions for Blood and Tissue (Transmissible Diseases) Regulations 1985

This clause provides for the *Blood and Tissue (Transmissible Diseases) Regulations 1985* that are made under sections 249(10) and 343A of the Health Act to be deemed to be regulations made under clause 293.

Clause 311: Transitional regulations

This clause authorises regulations to be made in respect of transitional matters.