

# Public Health Act 1991

## Does not include amendments by:

*Children and Young Persons Legislation (Repeal and Amendment) Act 1998 No 158* (not commenced)

*Pharmacy Practice Act 2006 No 59* (amended by *Health Legislation Amendment (Unregistered Health Practitioners) Act 2006 No 124*) (not commenced)

*Water Industry Competition Act 2006 No 104* (not commenced)

*Private Health Facilities Act 2007 No 9* (not commenced)

## Reprint history:

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5 July 1993

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1 April 2003

## Long Title

An Act relating to the maintenance of proper standards of health for the public; and for other purposes.

## Part 1 – Preliminary

### 1 Name of Act

This Act may be cited as the *Public Health Act 1991*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act: "**approved**" means approved by the Minister. "**area**", in relation to a local authority, means the area in relation to which the local authority exercises its functions. "**birth**" means the birth of a child who has breathed after delivery. "**Category 1 medical condition**" means a medical condition listed under Category 1 in Schedule 1. "**Category 2 medical condition**" means a medical condition listed under Category 2 in Schedule 1. "**Category 3 medical condition**" means a medical condition listed under Category 3 in Schedule 1. "**Category 4 medical condition**" means a medical condition

listed under Category 4 in Schedule 1. "**Category 5 medical condition**" means a medical condition listed under Category 5 in Schedule 1. "**delivery**", in relation to a child or still-born child, means the complete expulsion or extraction of the child or still-born child from the mother. "**Director-General**" means the Director-General, Department of Health. "**environmental health officer**" means a holder of that office who is:

- (a) an officer of the Department of Health, or
- (b) an employee of a local authority, or
- (c) an employee of a public health organisation within the meaning of the *Health Services Act 1997*.
- (d) (Repealed)

"**local authority**" means:

- (a) a council within the meaning of the *Local Government Act 1993*, or
- (b) the Western Lands Commissioner, or
- (c) the Lord Howe Island Board.

"**medical district**" means a medical district described in an order in force under section 63. "**medical officer of health**" means a medical practitioner holding office under section 62 as a medical officer of health. "**nursing home**" means a facility at which residential care (within the meaning of the *Aged Care Act 1997* of the Commonwealth) is provided and in relation to which any one or more of the following is satisfied:

- (a) a licence was in force, or an approval of an application for a licence in principle was effective, under the *Nursing Homes Act 1988* in relation to the facility immediately before the repeal of that Act,
- (b) residential care is provided at the facility in relation to an allocated place under the *Aged Care Act 1997* of the Commonwealth and that place requires a high level of residential care within the meaning of that Act,
- (c) the facility belongs to a class of facilities prescribed by the regulations.

"**occupier**", in relation to premises or a part of premises, means:

- (a) a person who has the right to occupy the premises or part to the exclusion of the owner, or
- (b) the person who is the owner of the premises or part if there is no person with a right to occupy the premises or part to the exclusion of the owner,

even if the premises are, or the part is, vacant. "**perinatal death**" means:

- (a) the death of a child on the day of his or her birth or within the next succeeding 28 days, or
- (b) a still-birth.

"**premises**" means:

- (a) a building or other structure on land, or
- (b) vacant land, or
- (c) a vessel, or
- (d) an aircraft.

"**public authority**" means an incorporated or unincorporated body constituted by or under an Act for public purposes. "**public health order**" means a public health order in force under section 23. "**scheduled medical condition**" means a medical condition listed in Schedule 1. "**still-birth**" means the birth of a child that exhibits no sign of respiration or heartbeat, or other sign of life, after birth and that:

- (a) is of at least 20 weeks' gestation, or
- (b) if it cannot be reliably established whether the period of gestation is more or less than 20 weeks, has a body mass of at least 400 grams at birth.

"**Tribunal**" means the Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal Act 1997*.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty,

and

(b) a reference to the exercise of a function includes, in relation to a duty, a reference to the performance of the duty.

(3) Notes included in this Act do not form part of this Act.

## **Part 2 – Health risks generally**

### **4 Orders and directions during state of emergency**

(1) This section applies if:

(a) action is being taken under the *State Emergency and Rescue Management Act 1989* in relation to an emergency within the meaning of that Act, and

(b) the Minister, in consultation with the Minister administering that Act, decides on reasonable grounds that the emergency could result in a situation (including the spread of a scheduled medical condition) under which the health of the public is, or is likely to be, at risk, and

(c) the Minister administering that Act agrees that action should be taken under this section.

(2) If this section applies, the Minister:

(a) may, by order published in the Gazette, give such directions, and

(b) if such an order is in force, may take such action,

as the Minister considers to be necessary to avert or deal with the risk and any of its possible consequences.

(3) An order published under this section may direct all persons:

(a) in a specified group, or

(b) residing in a specified area,

to submit themselves for medical examination as provided by the order.

(4) Subsection (3) and the other provisions of this Act do not affect the generality of subsection (2).

(5) A person (other than a public authority) who:

(a) is subject to a direction under this section, and

(b) has notice of the direction, and

(c) refuses or fails to comply with the direction,

is guilty of an offence. Maximum penalty: 50 penalty units or imprisonment for 6 months.

(6) A public authority has a duty to comply with a direction given to the public authority under this section.

(7) Unless it is earlier revoked, an order published under this section expires on cessation of the emergency on which it was based.

(8) A function exercised under this section in an emergency in respect of which a state of emergency exists under Division 4 of Part 2 of the *State Emergency and Rescue Management Act 1989* has effect as a function exercised in the execution of that Division.

### **5 Public health risks generally**

(1) If the Minister considers, on reasonable grounds, that a situation has arisen under which the health of the public is, or is likely to be, at risk and, in relation to the situation:

(a) action under the *State Emergency and Rescue Management Act 1989* is neither contemplated nor underway, and

(b) the Premier has approved the taking of action under this section,

the Minister may take such action, and may by order published in the Gazette give such directions, as the Minister considers to be necessary to deal with the risk and any of its possible consequences.

(2) If an order in force under this section declares a specified area to be a public health risk area, the action taken and directions given may be such as the Minister considers to be necessary:

(a) to reduce or remove any risk to the health of the public in the area, and

- (b) to segregate or isolate inhabitants of the area, and
  - (c) to prevent, or conditionally permit, access to the area.
- (3) Subsection (2) does not affect the generality of subsection (1).
- (4) A person (other than a public authority) who:
- (a) is subject to a direction given under this section, and
  - (b) has notice of the direction, and
  - (c) refuses or fails to comply with the direction,

is guilty of an offence. Maximum penalty: 50 penalty units or imprisonment for 6 months.

(5) A public authority has a duty to comply with a direction given to the public authority under this section.

(6) An order published under this section expires on a date that is specified in the order as its expiry date and is not more than 28 days later than the publication of the order.

(7) Section 72 (Powers of entry) applies in relation to any entry on premises required or directed for the purposes of this section.

## **6 Disinfection or destruction of articles**

(1) This section applies to an article that:

- (a) has been in contact with a person suffering from an infectious disease that is transmissible by contact with the article, or
- (b) is verminous, or
- (c) is likely to be verminous, or dangerous, or prejudicial to health, because it has been used by a person infested with vermin.

(2) If the Director-General:

- (a) has reasonable grounds for suspecting that there is on any premises an article to which this section applies, and
- (b) by written order authorises a person to enter the premises and take action under this section,

the person may enter the premises, seize any article found there that might reasonably be suspected of being an article to which this section applies and there or elsewhere disinfect or destroy it.

(3) Section 72 (Powers of entry) applies in relation to the powers of entry conferred by this section.

(4) A person (other than a public authority) who, without reasonable excuse:

- (a) transfers possession of an article to another person, or
- (b) exposes an article to another person, or
- (c) removes an article,

knowing it to be an article to which this section applies is guilty of an offence. Maximum penalty: 50 penalty units or imprisonment for 6 months.

(5) A public authority has a duty to avoid doing anything that, if done by a person other than a public authority, would be an offence under this section.

(6) A person who suffers damage as a result of the disinfection or destruction of an article under this section is entitled to reasonable compensation unless the condition of the article that necessitated its disinfection or destruction was attributable to an act or default of the person.

(7) Compensation under this section is payable out of money provided by Parliament.

## **7 (Repealed)**

## **8 Closure of premises**

(1) If the Minister considers on reasonable grounds that any premises on which the public, or sections of the public, are required, permitted or accustomed to congregate should be closed in order to preserve the health of the public, the Governor may, by order published in the Gazette, direct that the premises be closed, and kept closed, in accordance with the order while it is in force.

(2) If:

- (a) a direction given under this section is in force in relation to premises that are not under the control of a Minister, and
- (b) a person who controls, or is involved in the control of, the premises is notified of the direction,

the person must take such reasonably practicable action as may be necessary to ensure compliance with the direction.

(3) A person who, after being notified under subsection (2) of a direction given under this section, fails to comply with that subsection is guilty of an offence. Maximum penalty: 50 penalty units or imprisonment for 6 months.

## **9 Directions to public authorities**

(1) If the Minister considers, on reasonable grounds, that the health of the public is, or is likely to be, endangered because of an action by a public authority, the Minister may direct the public authority to rectify any adverse consequences of the action by taking other specified action.

(2) It is the duty of a public authority to comply with any direction given to the public authority under this section.

(3) The generality of this section is not affected by any other provision of this Act.

## **10 Direction to exercise statutory function**

(1) If the Minister considers, on reasonable grounds:

- (a) that a public authority has failed to exercise a function conferred or imposed on it (other than a power to make regulations or by-laws), and

- (b) that the failure is likely to endanger the health of the public,

the Minister may, by written notice to the public authority, require it to exercise the function within a time stated in the notice.

(2) If a notice given under this section is not complied with, the Minister may exercise the function to which the notice relates and:

- (a) unless the public authority represents the Crown--recover, as a debt owed by the public authority to the Crown, an amount equal to the cost of exercising the function, or

- (b) if the public authority represents the Crown--require the public authority to pay to the Department of Health an amount equal to the cost of exercising the function.

# **Part 2A – Provision and promotion of health services**

## **Division 1 – Preliminary**

### **10AA Definitions**

In this Part:

**"health practitioner", "health registration Act", "health service" and "registration authority"** have the same meanings as in the *Health Care Complaints Act 1993*.

The *Health Care Complaints Act 1993* defines those terms as follows:

**"health practitioner"** means a natural person who provides a health service (whether or not the person is registered under a health registration Act).

**"health registration Act"** means any of the following Acts:

*Chiropractors Act 2001*

*Dental Technicians Registration Act 1975*

*Dental Practice Act 2001*

*Medical Practice Act 1992*

*Nurses and Midwives Act 1991*

*Optical Dispensers Act 1963*

*Optometrists Act 2002*  
*Osteopaths Act 2001*  
*Pharmacy Act 1964*  
*Physiotherapists Act 2001*  
*Podiatrists Act 2003*  
*Psychologists Act 2001.*

**"health service"** includes the following services, whether provided as public or private services:

- (a) medical, hospital and nursing services,
- (b) dental services,
- (c) mental health services,
- (d) pharmaceutical services,
- (e) ambulance services,
- (f) community health services,
- (g) health education services,
- (h) welfare services necessary to implement any services referred to in paragraphs (a)-(g),
- (i) services provided by podiatrists, chiropractors, osteopaths, optometrists, physiotherapists, psychologists and optical dispensers,
- (j) services provided by dietitians, masseurs, naturopaths, acupuncturists, occupational therapists, speech therapists, audiologists, audiometrists and radiographers,
- (k) services provided in other alternative health care fields,
- (k1) forensic pathology services,
- (l) a service prescribed by the regulations as a health service for the purposes of this Act.

**"registration authority"** means the person who has the function, under a health registration Act, of determining an application for registration under the Act.

**"medical student"** has the same meaning as in the *Medical Practice Act 1992*.

**"registered midwife"** and **"registered nurse"** have the same meanings as in the *Nurses and Midwives Act 1991*.

### **10AB Proceedings for offences under this Part**

- (1) Proceedings for an offence under this Part may be instituted by the Director-General, a registration authority, the Health Care Complaints Commission or by any other person.
- (2) Proceedings for an offence under this Part may be commenced at any time within, but not later than, 2 years after the date on which the offence is alleged to have been committed.

### **Division 2 – Restricted health services**

#### **10AC Spinal manipulation**

- (1) A person must not engage in spinal manipulation in the course of providing a health service unless the person:
  - (a) is a registered chiropractor, or a chiropractic student acting under the appropriate supervision of a registered chiropractor, or
  - (b) is a registered medical practitioner, or a medical student acting under the appropriate supervision of a registered medical practitioner, or
  - (c) is a registered osteopath, or an osteopathy student acting under the appropriate supervision of a registered osteopath, or
  - (d) is a registered physiotherapist, or a physiotherapy student acting under the appropriate supervision of a registered physiotherapist.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) For the purposes of this Division, spinal manipulation is a restricted health service.

(3) An authorised person or inspector appointed under any of the following Acts is authorised to ascertain whether this section is being complied with:

- (a) *Chiropractors Act 2001*,
- (b) *Medical Practice Act 1992*,
- (c) *Osteopaths Act 2001*,

(d) *Physiotherapists Act 2001*.

(4) In this section: "**spinal manipulation**" means the rapid application of a force (whether by manual or mechanical means) to any part of a person's body that affects a joint or segment of the vertebral column.

#### **10AD Prescribed electrophysical treatments**

(1) A person must not provide a prescribed electrophysical treatment in the course of providing a health service unless the person:

- (a) is a registered chiropractor, or a chiropractic student acting under the appropriate supervision of a registered chiropractor, or
- (b) is a registered medical practitioner, or a medical student acting under the appropriate supervision of a registered medical practitioner, or
- (c) is a registered osteopath, or an osteopathy student acting under the appropriate supervision of a registered osteopath, or
- (d) is a registered physiotherapist, or a physiotherapy student acting under the appropriate supervision of a registered physiotherapist, or
- (e) is a registered podiatrist, or a podiatry student acting under the appropriate supervision of a registered podiatrist.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(2) For the purposes of this Division, prescribed electrophysical treatment is a restricted health service.

(3) An inspector or authorised person appointed under any of the following Acts is authorised to ascertain whether this section is being complied with:

- (a) *Chiropractors Act 2001*,
- (b) *Medical Practice Act 1992*,
- (c) *Osteopaths Act 2001*,
- (d) *Physiotherapists Act 2001*,
- (e) *Podiatrists Act 2003*.

(4) In this section: "**prescribed electrophysical treatment**" means an electrophysical treatment prescribed by the regulations for the purposes of this section.

#### **10AE Prescribing of contact lenses, spectacle lenses and other appliances**

(1) A person must not prescribe an optical appliance unless the person:

- (a) is a registered optometrist, or
- (b) is a registered medical practitioner, or
- (c) is a member of a class of persons declared by the regulations to be authorised to prescribe an optical appliance and the person acts in compliance with any conditions or limitations prescribed by the regulations.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(2) For the purposes of this Division, prescribing an optical appliance is a restricted health service.

(3) A person who prescribes an optical appliance for a person must on request provide the person, at no extra charge, with a copy of the prescription. Maximum penalty: 5 penalty units.

(4) A person who does not prescribe, but dispenses, an optical appliance for a person must provide the person, at no extra charge, with a copy of the prescription relating to the appliance. Maximum penalty: 5 penalty units.

(5) A person who prescribes contact lenses for a person is not required to comply with subsection (3) until after he or she has completed the prescription and fitting process in relation to the contact lenses.

(6) An authorised person or inspector appointed under any of the following Acts is authorised to ascertain whether this section is being complied with:

- (a) *Optometrists Act 2002*,
- (b) *Medical Practice Act 1992*.

(7) In this section: "**optical appliance**" means contact lenses, spectacle lenses or any

other appliance designed to correct, remedy or relieve any refractive abnormality or defect of sight.

### 10AF Restricted dental practices

- (1) A person must not carry out a restricted dental practice unless the person is:
- (a) a registered dentist, or
  - (b) a registered medical practitioner, or
  - (c) a registered dental student undertaking clinical studies, or undertaking a clinical placement at a public health organisation, or
  - (d) a registered dental auxiliary who is carrying out dental auxiliary activities subject to the practice oversight of a registered dentist, or
  - (e) a person performing radiographic work at a public health organisation, or on the order or at the request of a registered medical practitioner or registered dentist, or
  - (f) a dental prosthetist carrying out a practice of dental prosthetics, or
  - (g) a dental technician carrying out technical work on the written order of a registered dentist or of a dental prosthetist.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(2) For the purposes of this Division, restricted dental practice is a restricted health service.

(3) An authorised person or inspector appointed under any of the following Acts is authorised to ascertain whether this section is being complied with:

- (a) *Dental Practice Act 2001*,
- (b) *Dental Technicians Registration Act 1975*,
- (c) *Medical Practice Act 1992*.

(4) In this section: "**dental auxiliary activity**" has the same meaning as in the *Dental Practice Act 2001*. "**dental prosthetist**" has the same meaning as in the *Dental Technicians Registration Act 1975*. "**dental technician**" means any of the following:

- (a) a person registered as a dental technician under the *Dental Technicians Registration Act 1975*,
- (b) a person approved by the Dental Technicians Registration Board under section 13 (2) (f) of the *Dental Technicians Registration Act 1975*,
- (c) a person undergoing in good faith training in technical work under the supervision of a registered dentist or of a person referred to in paragraph (a),
- (d) an apprentice, within the meaning of the *Apprenticeship and Traineeship Act 2001*, employed by a person referred to in paragraph (a), or by a person employing a person referred to in paragraph (a).

"**practice of dental prosthetics**" has the same meaning as in section 5 (3) of the *Dental Technicians Registration Act 1975*. "**practice oversight**" means oversight by a registered dentist in accordance with guidelines approved by the Director-General from time to time. "**public health organisation**" has the same meaning as in the *Health Services Act 1997*. "**registered dental student**" means a person registered as a dentistry student or a dental auxiliary student under section 138 of the *Dental Practice Act 2001*. "**restricted dental practice**" means any of the following practices:

- (a) the performance of any operation on the human teeth or jaws or associated structures,
- (b) the correction of malpositions of the human teeth or jaws or associated structures,
- (c) the performance of radiographic work in connection with the human teeth or jaws or associated structures,
- (d) the mechanical construction or the renewal or repair of artificial dentures or restorative dental appliances,
- (e) the performance of any operation on, or the giving of any treatment or advice

to, any person that is preparatory to or for the purpose of the fitting, insertion, adjusting, fixing, constructing, repairing or renewing of artificial dentures or restorative dental appliances.

**"technical work"** has the same meaning as in section 5 (1) of the *Dental Technicians Registration Act 1975*. **"written order"** means an order:

- (a) in a form prescribed for the purposes of issuing directions to dental technicians under the *Dental Practice Act 2001*, or
- (b) in a form prescribed for the purposes of section 27 (b) (ii) of the *Dental Technicians Registration Act 1975*.

### **10AG Restricted birthing practices**

(1) A person must not engage in a restricted birthing practice unless the person is:

- (a) a registered midwife, or
- (b) a registered medical practitioner, or
- (c) a medical student or a registered nurse acting under the appropriate supervision of a medical practitioner or of a registered midwife, or
- (d) a midwifery student acting under the appropriate supervision of a registered midwife.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(2) For the purposes of this Division, a restricted birthing practice is a restricted health service.

(3) This section does not apply to the rendering of assistance to a woman who is giving birth to a child where the assistance is rendered in an emergency.

(4) An authorised person or inspector appointed under any of the following Acts is authorised to ascertain whether this section is being complied with:

- (a) *Nurses and Midwives Act 1991*,
- (b) *Medical Practice Act 1992*.

(5) In this section: **"restricted birthing practice"** means the care of a pregnant woman involving the management of the 3 stages of labour and child birth.

### **10AH Restricted foot care services**

(1) A person must not, in the course of providing a foot care service, perform any invasive procedure on the feet or toenails under anaesthesia unless the person is:

- (a) a registered podiatrist, or
- (b) a registered medical practitioner.

Maximum penalty: 50 penalty units.

(2) A person must not, in the course of providing a foot care service, carry out surgical debridement of hypertrophic tissue of the foot using a sharp instrument unless the person is:

- (a) a registered podiatrist, or
- (b) a registered medical practitioner, or
- (c) a registered nurse and the debridement is carried out to the extent necessary to provide immediate relief from pain or discomfort.

Maximum penalty: 50 penalty units.

(3) A person must not, in the course of providing a foot care service, treat a disorder of or injury to the foot knowing that the person treated:

- (a) has a medical condition causing inadequate blood circulation to their feet, or
- (b) has peripheral neuropathy affecting their feet,

unless the person providing that treatment is:

- (c) a registered podiatrist, or
- (d) a registered medical practitioner, or
- (e) a registered nurse, or
- (f) a registered chiropractor, or
- (g) a registered osteopath, or

- (h) a registered physiotherapist, or
- (i) a pharmacist registered under the *Pharmacy Act 1964*.

Maximum penalty: 50 penalty units.

(4) For the purposes of this Division, a procedure or treatment referred to in subsection (1), (2) or (3) that is carried out in the circumstances set out in those subsections is a restricted health service.

(5) An authorised person or inspector appointed under any of the following Acts is authorised to ascertain whether this section is being complied with:

- (a) *Podiatrists Act 2003*,
- (b) *Medical Practice Act 1992*,
- (c) *Nurses and Midwives Act 1991*.

(6) An authorised person or inspector is not to exercise any function under subsection (5) except with the approval of the Director-General given in a particular case.

### **10AI Restricted health services--powers of authorised officers appointed under other Acts**

(1) An authorised officer, who is authorised under this Division to ascertain whether a provision of this Division is being complied with, has and may exercise for that purpose all the functions that the authorised officer has under the officer's Act for the purpose of ascertaining whether a provision of the officer's Act is being complied with or has been contravened.

(2) For the purposes of subsection (1):

- (a) the functions of the authorised officer under the officer's Act apply in respect of premises on which a person engages in a restricted health service in the course of providing a health service in the same way as those functions apply in respect of premises on which a person engages in professional practice under the officer's Act, and
- (b) the functions of the authorised officer under the officer's Act apply in respect of engaging in the restricted health service in the course of providing a health service in the same way as they apply in respect of professional practice engaged in under the officer's Act, and
- (c) the provisions of an officer's Act with respect to the functions of an inspector, authorised officer or authorised person (including any provision that creates an offence in connection with those functions) extend to the exercise of functions of the authorised officer under this section as if the functions under this section were exercised under the officer's Act.

(3) In this section: "**authorised officer**" means an authorised person or inspector who is authorised to ascertain whether a particular section of this Division is being complied with. "**officer's Act**", in relation to an authorised officer, means the Act under which the authorised officer is appointed as an authorised person or inspector. "**restricted health service**" means a health service that is specified to be a restricted health service for the purposes of this Division.

### **Division 3 – Health practitioners who are de-registered or subject to prohibition orders**

#### **10AJ Definitions**

(1) In this Division: "**corresponding health registration legislation**" means legislation of another State or Territory that provides for the registration of health practitioners. "**de-registered health practitioner**" means a health practitioner whose registration as a health practitioner under a health registration Act or corresponding health registration legislation is cancelled or suspended as a result of disciplinary proceedings. "**prohibition order**" means a prohibition order made under a health registration Act or under section 41A of the *Health Care Complaints Act 1993*.

(2) For the purposes of this Division, a person's registration as a health practitioner under a health registration Act or corresponding health registration legislation is cancelled if:

- (a) any of the following happen as a result of an action, decision, determination or

order of a registration board, tribunal or court under that Act or legislation:

- (i) the person's registration is cancelled,
- (ii) the person is de-registered,
- (iii) the person's name is removed from, or struck off, a register or a roll,
- (iv) the person's practising certificate is cancelled, or

(b) the person's name is removed from the Register of Optical Dispensers for New South Wales under section 25 of the *Optical Dispensers Act 1963*.

(3) For the purposes of this Division, a health practitioner is subject to a prohibition order if the health practitioner is, because of the order, subject to conditions when providing health services or is prohibited from providing some or all health services.

#### **10AK Provision of health services by persons who are de-registered or subject to prohibition orders**

(1) A person must not provide a health service in contravention of a prohibition order.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(2) A de-registered health practitioner must, before providing a health service to a person, ensure that the following persons are notified, in accordance with the regulations, that the health practitioner was registered under a particular health registration Act or corresponding health registration legislation and that the health practitioner's registration under that Act or legislation has been cancelled or suspended:

- (a) the person to whom the health practitioner intends to provide the health service or, if that person is under 16 years of age or under guardianship, a parent or guardian of the person,
- (b) if the health service is to be provided by the health practitioner as an employee, the health practitioner's employer.

Maximum penalty: 50 penalty units.

(3) A health practitioner who is subject to a prohibition order must, before providing a health service to a person, ensure that the following persons are notified, in accordance with the regulations, that the health practitioner is subject to the order:

- (a) the person to whom the health practitioner intends to provide the health service or, if that person is under 16 years of age or under guardianship, a parent or guardian of the person,
- (b) if the health service is to be provided by the health practitioner as an employee, the health practitioner's employer.

Maximum penalty: 50 penalty units.

#### **10AL Advertising of health services if person is de-registered or subject to a prohibition order**

(1) A person must not advertise a health service that is to be provided by a de-registered health practitioner unless the advertisement specifies that the health practitioner was registered under a particular health registration Act or corresponding health registration legislation and that the health practitioner's registration under that Act or legislation is cancelled or suspended. Maximum penalty: 50 penalty units.

(2) A person must not advertise a health service that is to be provided by a health practitioner who is subject to a prohibition order unless the advertisement specifies that the health practitioner is subject to the order. Maximum penalty: 50 penalty units.

(3) A person is not guilty of an offence under this section if he or she did not know, and could not reasonably have known, that the health practitioner was de-registered or subject to a prohibition order.

### **Division 4 – Miscellaneous**

#### **10AM Codes of conduct for unregistered health practitioners**

(1) The regulations may prescribe codes of conduct for the provision of health services by:

- (a) health practitioners who are not required to be registered under a health

- registration Act (including de-registered health practitioners), and  
(b) health practitioners who are registered under a health registration Act who provide health services that are unrelated to their registration.
- (2) Before a code of practice is prescribed under subsection (1), the Minister is to:
- (a) give public notice of the code in a form and manner determined by the Minister, specifying where the code can be inspected and the time and manner in which submissions may be made, and
  - (b) place the draft code and an impact assessment statement for the code on public exhibition for not less than 21 days, and
  - (c) consider any submission received within 21 days (or such longer period as the Minister may determine) after the end of that exhibition period.

Section 41A of the *Health Care Complaints Act 1993* permits the Health Care Complaints Commission to make a prohibition order in respect of a health practitioner if the Commission finds that the health practitioner has breached the code of conduct and poses a substantial risk to the health of members of the public. The Commission is also able to cause a public statement to be issued in such circumstances identifying and giving warnings about the health practitioner.

### **10AN Advertisement or promotion of health services**

A person must not advertise or otherwise promote the provision of a health service in a manner that:

- (a) is false, misleading or deceptive, or
- (b) is likely to mislead or deceive, or
- (c) creates, or is likely to create, an unjustified expectation of beneficial treatment.

Maximum penalty:

- (a) for a first offence--100 penalty units, or
- (b) for a second or subsequent offence--200 penalty units.

## **Part 2B – Safety of drinking water**

### **Division 1 – Preliminary**

#### **10A Definitions**

In this Part:

**"boil water advice"**, in relation to drinking water, means a statement to the effect that the water should not be used for human consumption (or for purposes connected with human consumption) until after it has been boiled or otherwise treated.

**"Chief Health Officer"** means the Chief Health Officer of the Department of Health.

**"drinking water"** means water that is intended, or likely, to be used:

- (a) for human consumption, or
- (b) for purposes connected with human consumption, such as the washing or cooling of food or the making of ice for consumption or for the preservation of unpackaged food, whether or not the water is used for other purposes.

**"record"** means:

- (a) a documentary record, or
- (b) a record made by an electronic, electromagnetic, photographic or optical process, or
- (c) any other kind of record.

**"supplier of drinking water"** (or **"supplier"**) means:

- (a) Sydney Water Corporation,
- (b) Hunter Water Corporation,
- (c) a water supply authority within the meaning of the *Water Management Act 2000*,
- (d) a local council or a county council exercising water supply functions under Division 2 of Part 3 of Chapter 6 of the *Local Government Act 1993*,
- (e) the Lord Howe Island Board within the meaning of the *Lord Howe Island Act 1953*,
- (f) (Repealed)
- (g) any person who treats or supplies water on behalf of a person referred to in any of the preceding paragraphs,
- (h) any person supplying drinking water in the course of a commercial undertaking (other than that of supplying bottled or packaged drinking water), being a person who has not received the water:
  - (i) from a person referred to in any of the preceding paragraphs, or
  - (ii) in the form of bottled or packaged water.

**"treatment of water"** means any process or technique used to improve the quality of water.

## **Division 2 – Functions of Chief Health Officer in relation to drinking water**

### **10B Advice to public**

- (1) The Chief Health Officer may from time to time prepare advice, for the benefit of the public, concerning the safety of available drinking water (or drinking water available from a particular supplier) and any possible risks to health involved in the consumption of that water.
- (2) An advice under this section may include a boil water advice.
- (3) The Chief Health Officer is to provide any advice prepared under this section to the relevant supplier of drinking water.
- (4) A supplier of drinking water must issue the advice provided to it under this section to the public in such form and manner as the Director-General may from time to time direct by notice in writing to the supplier. Maximum penalty: 10,000 penalty units (in the case of a corporation) or 2,500 penalty units (in any other case).
- (5) Nothing in subsection (3) or (4) prevents the Chief Health Officer from also issuing the advice to the public as the Chief Health Officer sees fit.

### **10C Correction of misleading information**

- (1) The Chief Health Officer may, by notice in writing given to a supplier of drinking water, direct the supplier to retract or correct any information or advice issued, by or on behalf of the supplier, to the public in relation to the safety of the supplier's drinking water if the Chief Health Officer is of the opinion that the information or advice is inaccurate, incomplete or otherwise misleading.
- (2) The Chief Health Officer may specify any one or more of the form, content and manner of the retraction or correction and of its publication.
- (3) A supplier of drinking water who is given a direction under this section must comply with the direction as and when required by the direction. Maximum penalty: 10,000 penalty units (in the case of a corporation) or 2,500 penalty units (in any other case).
- (4) If the supplier of drinking water fails to comply with the direction within the time specified in the direction, the Chief Health Officer may issue the retraction or correction on behalf of the supplier.

### **10D Chief Health Officer may delegate**

The Chief Health Officer may delegate to any officer of the Department of Health any of the Chief Health Officer's functions (including the function specified in section 10E (4), but excluding this power of delegation) under this Part.

## **Division 3 – Functions of Director-General in relation to drinking water**

### **10E Power to declare Chief Health Officer solely responsible for determining necessity for boil water advices**

- (1) The Director-General may, by order published in the Gazette, declare that, in relation to a supplier of drinking water specified in the order, the function specified in subsection (4) is to be exercised only by the Chief Health Officer.
- (2) A declaration under this section operates to confer the power to exercise the function on the Chief Health Officer.
- (3) The Director-General is taken to have published such orders in relation to Sydney Water Corporation and Hunter Water Corporation on the commencement of this section. The Director-General may, by further order published in the Gazette, amend or revoke an order so taken to have been published.
- (4) The function concerned is that of deciding from time to time:
  - (a) whether a boil water advice is to be issued in respect of the drinking water supplied or available for supply by the supplier, and
  - (b) if a boil water advice is to be issued--the additional information (if any) that is to be provided to the public in connection with it, and
  - (c) whether a boil water advice that has been issued is to be withdrawn.

### **10F Power to enter and inspect premises of supplier**

- (1) Any person authorised by the Director-General for the purposes of this section may enter any premises of a supplier of drinking water and do any one or more of the following on those premises:
  - (a) examine and inspect any apparatus, equipment or works,
  - (b) take and remove samples of any water,
  - (c) take and remove samples of any substance used in, or produced by, the treatment of water on those premises,
  - (d) require samples referred to in paragraph (b) or (c) to be taken and given to the person or to another person or to the Director-General,
  - (e) take such photographs, films and audio, video and other recordings as the person considers necessary,
  - (f) require records to be produced for inspection,
  - (g) examine, inspect and copy any records,
  - (h) make such other examinations, inquiries and tests as the person considers necessary.
- (2) Despite section 74, the maximum penalty that may be imposed on a person who wilfully intimidates, obstructs or hinders a person authorised by the Director-General for the purposes of this section who is exercising, or attempting to exercise, a function under this section is 2,500 penalty units (in the case of a corporation) or 400 penalty units (in any other case).

### **10G Power to require testing of drinking water**

- (1) The Director-General may, by notice in writing given to a supplier of drinking water, direct the supplier to carry out such tests on water that it has available for supply, or on any substance used in or produced by the treatment of such water, as the Director-General considers appropriate.
- (2) A direction given under this section may specify that the test to be carried out on water is to be carried out in any one or more of the following ways:
  - (a) on the water in its raw state, or
  - (b) while the water is undergoing treatment, or
  - (c) after the water has been treated or partly treated.
- (3) A supplier of drinking water who is given a direction under this section must comply with the direction as and when required by the direction. Maximum penalty: 2,500 penalty units (in the case of a corporation) or 400 penalty units (in any other case).

### **10H Power to require production of information**

- (1) The Director-General may, by notice in writing given to a supplier of drinking water, direct the supplier to produce to the Director-General such information as the Director-General may specify concerning:
  - (a) the quality of the drinking water that the supplier has available for supply, and
  - (b) the methods by which the water has been treated.
- (2) The information required may include (but is not limited to) the following:
  - (a) copies of relevant records of the supplier,
  - (b) the results of any tests required under section 10G.
- (3) The information is to be provided in such form and manner as the Director-General may direct.
- (4) A supplier of drinking water who is given a direction under this section must comply with the direction as and when required by the direction. Maximum penalty: 2,500 penalty units (in the case of a corporation) or 400 penalty units (in any other case).

## **Division 4 – General**

### **10I Closure of water supply**

- (1) This section applies to water in, or flowing from, any source if:
  - (a) the water is drinking water and the Minister has reason to suspect that the water is not fit for human consumption, or
  - (b) the Minister suspects on reasonable grounds that the water constitutes (or is likely to constitute) a risk to public health.
- (2) The Minister may take such action, and give such directions by notice in writing to any person or class of persons, as the Minister considers necessary:
  - (a) to restrict or prevent the use of any water to which this section applies, and
  - (b) to bring the water to such a condition that it is no longer unfit for human consumption or a risk (or a likely risk) to public health.
- (3) Before giving a direction under this section to any of the suppliers of drinking water referred to in the following paragraphs (or to any person who treats or supplies water on behalf of the supplier), the Minister is to consult with the Minister specified in respect of the supplier:
  - (a) Sydney Water Corporation--the Minister administering the *Water Board (Corporatisation) Act 1994*,
  - (b) Hunter Water Corporation--the Minister administering the *Hunter Water Board (Corporatisation) Act 1991*,
  - (c) a water supply authority within the meaning of the *Water Management Act 2000* (other than State Water Corporation)--the Minister administering the *Water Management Act 2000*,
  - (c1) State Water Corporation--the Minister administering the *State Water Corporation Act 2004*,
  - (d) a local council or a county council that supplies water under the *Local Government Act 1993* --both the Minister administering that Act and the Minister administering the *Water Management Act 2000*.
- (4) A person given a direction under this section must comply with it as and when required by the direction. Maximum penalty: 10,000 penalty units (in the case of a corporation) or 2,500 penalty units (in any other case).

### **10J Protection from liability**

- (1) The provision of any information or advice concerning drinking water by the Chief Health Officer exercising any function under section 10B, 10C or 10E in good faith for the purpose of executing this Act does not subject any of the following to any action, liability, claim or demand:
  - (a) the State,
  - (b) a Minister of the Crown in right of New South Wales,
  - (c) an officer of the Department of Health.

(2) A reference in this section to the exercise by the Chief Health Officer of a function under this Part includes a reference to a decision by the Chief Health Officer not to exercise a power conferred by this Part.

(3) To avoid doubt, it is declared that:

(a) the exercise of a function under section 10B (1) or 10E (4) (a) extends to deciding that a boil water advice is not to be issued in particular circumstances or at a particular time, and

(b) the exercise of a function under section 10C extends to deciding that a direction under section 10C (1) should not be given.

### **10K Evidentiary provision**

A certificate signed by the Minister, the Director-General or the Chief Health Officer, being a certificate to the effect that the signatory gave a specified direction to a specified person on a specified day, is admissible in evidence and is prima facie evidence of the facts stated in it.

### **10L Proceedings for offences under Part 2B**

(1) Proceedings for an offence under this Part may be dealt with summarily before the Supreme Court in its summary jurisdiction.

(2) Proceedings for an offence under this Part may be commenced at any time within, but not later than, 2 years after the date on which the offence is alleged to have been committed.

### **10M Regulations for the purposes of Part 2B**

Without limiting the generality of section 82, the regulations may make provision for or with respect to any of the following:

(a) requiring a supplier of drinking water to establish, and adhere to, a quality assurance program designed to ensure that the drinking water it supplies is consistently safe to drink,

(b) the tests on water and other substances referred to in section 10G,

(c) the records to be maintained by a supplier of drinking water.

## **Part 3 – Scheduled medical conditions**

### **Division 1 – General precautions**

#### **11 Precautions against spread of certain medical conditions**

(1) A person who:

(a) suffers from a Category 2, Category 3, Category 4 or Category 5 medical condition, and

(b) is in a public place or other place of public resort (including any means of public transport), and

(c) fails to take reasonable precautions against spreading the medical condition, is guilty of an offence. Maximum penalty: 50 penalty units or imprisonment for 6 months.

(2) It is a defence to a prosecution of a person for an offence under this section if it is proved that the person was, at the time of commission of the alleged offence, ignorant of the existence of the medical condition on which the prosecution is based.

### **Division 2 – Sexually transmissible medical conditions**

#### **12 Provision of information**

(1) A medical practitioner who believes on reasonable grounds that a person receiving attention from the medical practitioner suffers from a sexually transmissible medical condition must, as soon as practicable, provide the person with such information concerning the condition as is required by the regulations.

(2) A medical practitioner who fails to comply with this section is guilty of an offence unless the court is satisfied that the medical practitioner knew that the information to which the offence relates had been supplied to the patient by another medical practitioner.

Maximum penalty: 50 penalty units.

### **13 Sexual intercourse--sexually transmissible medical condition**

(1) A person who knows that he or she suffers from a sexually transmissible medical condition is guilty of an offence if he or she has sexual intercourse with another person unless, before the intercourse takes place, the other person:

- (a) has been informed of the risk of contracting a sexually transmissible medical condition from the person with whom intercourse is proposed, and
- (b) has voluntarily agreed to accept the risk.

Maximum penalty: 50 penalty units.

(2) An owner or occupier of a building or place who knowingly permits another person to:

- (a) have sexual intercourse at the building or place for the purpose of prostitution, and
- (b) in doing so, commit an offence under subsection (1),

is guilty of an offence. Maximum penalty: 50 penalty units.

(3) For the purposes of this section, a person is not to be presumed incapable of having sexual intercourse if the only ground for the presumption is the age of the person.

(4) In this section, "**sexual intercourse**" means:

- (a) sexual connection by the introduction into the vagina, anus or mouth of a person of any part of the penis of another person, or
- (b) cunnilingus.

### **Division 3 – Notification and treatment of certain medical conditions**

#### **14 Medical practitioner to notify certain scheduled medical conditions**

(1) This section applies to a medical practitioner who:

- (a) attends a person because of a Category 1 medical condition or believes on reasonable grounds that a person receiving attention from the medical practitioner suffers from a Category 2 medical condition, or
- (b) as a result of any kind of post-mortem examination, believes on reasonable grounds that a person has died as a result of such a medical condition.

(2) A medical practitioner to whom this section applies in relation to a person must:

- (a) as soon as practicable, record in accordance with the regulations particulars concerning the person, and
- (b) keep the record for the prescribed period, and
- (c) immediately after recording the particulars, send to the Director-General a certificate that relates to the particulars and is in an approved form that does not provide for the provision of information that the medical practitioner is prohibited by section 17 from disclosing, and
- (d) in so far as it is within the medical practitioner's ability to do so, provide the Director-General with any information requested by the Director-General as to the medical condition from which the person is or was suffering, not including information that the medical practitioner is prohibited by section 17 from disclosing.

(2A) The medical practitioner is not required to comply with any such requirements if:

- (a) the medical practitioner is attending the person as a patient at a hospital, and
- (b) the person is suffering from a notifiable disease, and
- (c) the medical practitioner has been notified that the chief executive officer of the hospital has, in accordance with section 69, already provided the Director-General with the relevant information concerning the person.

In this subsection, "**notifiable disease**", "**hospital**" and "**chief executive officer**" have the same meanings as in section 68.

(3) Except to the extent that the regulations otherwise provide, this section applies to a person engaged in a prescribed occupation in the same way as it applies to a medical

practitioner.

### **15 Offence**

(1) A person who fails to comply with a requirement of section 14 applicable to the person is guilty of an offence. Maximum penalty: 50 penalty units.

(2) It is a defence to a prosecution for an offence under this section if the court is satisfied:

- (a) that the record alleged not to have been made or kept, or
- (b) that the certificate alleged not to have been sent,

had been made, kept or sent by another medical practitioner or person to whom section 14 applies.

### **16 Notification of test results--Category 3 medical condition**

(1) If:

- (a) a medical practitioner requests a serological or other prescribed test for the purpose of detecting whether a person is suffering from a Category 3 medical condition, and
- (b) the test has a positive result,

the person who, in response to the request, certifies the result of the test to the medical practitioner must, as soon as practicable, send to the Director-General a report in the approved form that relates to the test but does not disclose the name or address of the patient if the medical condition is also a Category 5 medical condition.

(2) A person who is required to send a report under this section and fails to do so is guilty of an offence. Maximum penalty: 50 penalty units.

(3) A medical practitioner who requests a person to carry out a test referred to in subsection (1) (a) must provide the person with sufficient information to enable the person to comply with subsection (1).

(4) A medical practitioner who, without reasonable excuse, fails to comply with subsection (3) within the prescribed period is guilty of an offence. Maximum penalty: 50 penalty units.

### **Division 4 – Category 5 medical condition**

#### **17 Protection of identity**

(1) A medical practitioner must not state the name or address of a patient:

- (a) in a certificate sent to the Director-General under section 14 in relation to a Category 5 medical condition, or
- (b) except as may be prescribed, in a written or oral communication made by the medical practitioner for the purpose of arranging a test to find out whether the patient suffers from a Category 5 medical condition.

(2) A person who, in the course of providing a service, acquires information that another person:

- (a) has been, or is required to be, or is to be, tested for a Category 5 medical condition, or
- (b) is, or has been, infected with a Category 5 medical condition,

must take all reasonable steps to prevent disclosure of the information to another person.

(3) Information about a person that is of a kind referred to in subsection (2) may be disclosed:

- (a) with the consent of the other person, or
- (b) in connection with the administration of this Act or another Act, or
- (c) by order of a court or a person authorised by law to examine witnesses, or
- (d) to a person who is involved in the provision of care to, or treatment or counselling of, the other person if the information is required in connection with providing such care, treatment or counselling, or
- (e) in such circumstances as may be prescribed.

(4) A medical practitioner or other person who fails to comply with the requirements of

this section is guilty of an offence. Maximum penalty: 50 penalty units.

### **18 District Court may authorise disclosure of name and address**

(1) The Director-General may apply to the District Court, in accordance with the rules of the District Court, for an order authorising the service on a medical practitioner of a notice under section 19 requiring disclosure of a name and address that would otherwise be protected by section 17 from disclosure.

(2) An application under this section may be made in relation to a medical practitioner only if the Director-General has reasonable grounds for believing that:

- (a) the person whose name and address are sought is suffering from a Category 5 medical condition, and
- (b) identification of the person is necessary in order to safeguard the health of the public.

(3) An application to the District Court under this section is to be heard and determined in the absence of the public but is to be otherwise heard and determined in accordance with the rules of the District Court.

(4) The District Court:

- (a) is to make an order applied for under this section if satisfied that there are reasonable grounds for making the order, or
- (b) is to dismiss the application if not so satisfied.

### **19 Notice by Director-General requiring disclosure of name and address**

(1) If authorised to do so by an order of the District Court made under section 18, the Director-General may, by written notice served personally or by post on:

(a) a medical practitioner or other person who has sent a certificate to the Director-General under section 14, or

(b) a medical practitioner who has requested a serological or other test to which a report under section 16 relates,

require the medical practitioner or other person to provide the Director-General, within a reasonable time specified in the notice, with the name and address of the person the subject of the certificate or report.

(2) A medical practitioner or other person who, without reasonable excuse, refuses or neglects to comply with the requirement of a notice served on the medical practitioner or other person under this section is guilty of an offence. Maximum penalty: 50 penalty units.

## **Division 5 – Death from scheduled medical condition**

### **20 Notification of certain deaths**

Immediately after registration of the death of a person apparently caused by a scheduled medical condition, the Registrar of Births, Deaths and Marriages is to arrange to have sent to the Director-General, in the approved form, a notification of the death stating:

- (a) the name, address and age of the deceased, and
- (b) the name of the person who certified the cause of death, and
- (c) such other particulars as may be prescribed.

## **Division 6 – Public health orders--Categories 4 and 5**

### **21 Definitions**

In this Division:

**"appropriate reviewer"**, in relation to a public health order, means:

(a) if the order relates to a Category 5 medical condition and there has been no application to the Tribunal for its continuation--the Tribunal (as constituted for the purposes of section 25), or

(b) in any other case--the Tribunal (as constituted for the purposes of section 26).

**"authorised medical practitioner"** means:

- (a) the Chief Health Officer, Department of Health, or
- (b) a medical practitioner authorised by the Director-General to exercise the functions of an authorised medical practitioner under this Division.

"**proceeding**" includes an inquiry and an application to the Tribunal relating to a matter arising under this Division.

## **22 Power to require medical examination**

(1) The Director-General may, by written notice, require a named person to undergo a medical examination that:

- (a) is carried out by a medical practitioner chosen by the person, and
- (b) is of a kind described in the notice,

if the Director-General believes on reasonable grounds that the person is suffering from a Category 4 or Category 5 medical condition.

(2) If:

- (a) a notice under this section is served personally on the person to whom it relates, and
- (b) the person fails, without reasonable excuse, to comply with the requirements of the notice,

the person is guilty of an offence. Maximum penalty: 50 penalty units.

## **23 Making of public health order**

(1) An authorised medical practitioner may make a written public health order in respect of a person if satisfied on reasonable grounds that the person:

- (a) is suffering from a Category 4 or Category 5 medical condition, and
- (b) is behaving in a way that is endangering, or is likely to endanger, the health of the public because the person is suffering from that medical condition.

(2) A public health order must:

- (a) name the person to whom it applies, and
- (b) state the circumstances purporting to justify the making of the order, and
- (c) state that, unless the order is earlier varied as to its duration or is earlier revoked, it expires a specified number of days (not exceeding 28) after its service on the person, and
- (d) comply with subsection (3).

(3) A public health order must require the person to whom it applies to do any one or more of the following:

- (a) refrain from specified conduct,
- (b) undergo specified treatment,
- (c) undergo counselling by a specified person or by one or more persons belonging to a specified class of persons,
- (d) submit to the supervision of a specified person or one or more persons belonging to a specified class of persons,
- (e) undergo specified treatment and be detained at a specified place while undergoing the treatment,
- (f) if the order is based on a Category 5 medical condition--be detained at a specified place while the order is in force.

(3A) In making a public health order, the authorised medical practitioner must take into account:

- (a) such guidelines relating to public health orders as may be approved by the Director-General from time to time, and
- (b) the principle that any requirement restricting the liberty of the person to whom the order applies should be imposed only if it is the only effective way to ensure that the health of the public is not endangered or likely to be endangered.

(4) A public health order may include provisions ancillary to, or consequential upon, the matters required to be included in the order.

(5) A public health order does not take effect until it is served personally on the person to whom it applies.

#### **24 Duration of public health order**

(1) A public health order that relates to a Category 5 medical condition ceases to have any effect if:

(a) the person subject to the order is not, within 3 business days after service on the person of the order, also served with a copy of an application made to the Tribunal for confirmation of the order under section 25, or

(b) such an application is made and the Tribunal revokes the order under section 25, or

(c) the order expires before it is confirmed or revoked by the Tribunal under section 25, or

(d) the order expires before or after an application to continue the order is made to the Tribunal under section 26.

(2) In this section, "**business days**" means successive days excluding any Saturday, Sunday and public holidays.

#### **25 Tribunal to review certain public health orders**

(1) An application may be made to the Tribunal for confirmation of a public health order based on a Category 5 medical condition.

(2) The Tribunal is, as soon as practicable, to inquire into the circumstances surrounding the making of the order and:

(a) if satisfied that the making of the order was justified--is to confirm the order or vary the order and confirm it as varied, or

(b) if not so satisfied--is to revoke the order.

(3) The Tribunal may vary the order only by:

(a) adding a requirement that could have been included in the order when made, or

(b) substituting any such requirement for any one or more of them already included in the order.

(4) The Tribunal may, from time to time, adjourn an inquiry under this section for not more than 7 days.

(5) For the purposes of an inquiry under this section, the Tribunal may:

(a) obtain the assistance of any person having medical or other qualifications relevant to the subject-matter of the inquiry, and

(b) take into account a certificate given by such a person.

(6) A decision of the Tribunal made in proceedings determining an application under this section is an appealable decision for the purposes of Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997*.

#### **26 Tribunal may continue public health order**

(1) An authorised medical practitioner may, before the expiration of a public health order, apply to the Tribunal for continuation of an order if:

(a) the order is based on a Category 4 medical condition, or

(b) the order is based on a Category 5 medical condition and has been confirmed by the Tribunal under section 25.

(2) An application for continuation of a public health order may be made under this section only if the applicant is satisfied, on reasonable grounds, that the person to whom the order relates would, if not subject to such an order, continue to endanger the health of the public as a consequence of suffering from a Category 4 or Category 5 medical condition.

(3) If continuation of a public health order is applied for under this section and the person

subject to the order notifies the Tribunal that continuation of the order is not opposed, the Tribunal may, without inquiry, continue the order for a period not exceeding 6 months.

(4) Unless the order is continued under subsection (3), the Tribunal is to make such inquiries as it thinks fit in relation to the application and may:

- (a) continue the order, with or without variation, for a period not exceeding 6 months, or
- (b) refuse to continue the order, or
- (c) revoke the order.

(5) The Tribunal may vary the order only by:

- (a) omitting a requirement included in the order, or
- (b) adding a requirement that could have been included in the order when made, or
- (c) substituting any such requirement for any one or more of them already included in the order.

(6) For the purposes of an inquiry under this section, the Tribunal may:

- (a) obtain the assistance of any person having medical or other qualifications relevant to the subject-matter of the inquiry, and
- (b) take into account a certificate given by such a person.

### **27 Conditions applicable if person detained**

(1) A person detained under the authority of a public health order may be so detained subject to such conditions with respect to the person's security as the medical practitioner making the order considers necessary in the interests of the health of the public and specifies in the order.

(2) A person detained under the authority of a public health order may, for any special reason accepted by an authorised medical practitioner, be permitted to leave the place of detention, but only under the constant personal supervision of a person, or any one of a number of persons, nominated by the medical practitioner.

(3) A person who is detained under a public health order and:

- (a) is in breach of a condition specified in the order, or
- (b) evades supervision to which he or she is subject under this section,

is to be taken to have contravened the public health order.

### **28 Offence to contravene public health order**

(1) If the person to whom a public health order applies contravenes the order, the person is guilty of an offence. Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

(2) Proceedings for an offence under this section may be brought only by the Director-General or a police officer.

(3) Prosecution for an offence under this section does not preclude action under section 30 in respect of the contravention on which the prosecution is based.

### **29 Apprehension of person who contravenes public health order**

(1) A certificate by an authorised medical practitioner to the effect that a named person is contravening a public health order is a sufficient ground for the issue to a police officer of a warrant to apprehend the person and detain the person in custody pending an inquiry under section 30.

(2) A police officer who is provided with such a certificate is, as soon as practicable, to:

- (a) obtain a warrant for which the certificate is a ground, and
- (b) apprehend the person named in the certificate, and
- (c) detain the person in custody pending an inquiry under section 30.

(3) Section 27 applies in relation to detention following apprehension under this section in the same way as it would apply if the certificate that led to the apprehension had been a public health order.

### **30 Action following apprehension or surrender**

(1) If a person alleged to have contravened a public health order:

- (a) is apprehended and brought before the appropriate reviewer, or
  - (b) appears voluntarily before the appropriate reviewer,
- the reviewer is to inquire into the allegation.
- (2) If, after inquiry, the appropriate reviewer is not satisfied that the person has contravened a public health order, it is to order that the person be discharged.
- (3) If, after inquiry, the appropriate reviewer is satisfied that a person has contravened a public health order, it may confirm the public health order or:
- (a) vary the public health order by adding a requirement, direction or other provision that could have been included in the order when made, or
  - (b) vary the public health order by substituting any such requirement, direction or other provision for any one or more of them already included in the order, or
  - (c) caution the person and take no further action in the matter.
- (4) A person may be dealt with under this section in respect of an alleged contravention of a public health order whether or not the person has been charged under section 28 for an offence in relation to the same contravention.

### **31 Revocation of public health order by authorised medical practitioner**

If an authorised medical practitioner considers that the person to whom a public health order applies is no longer endangering, or likely to endanger, the health of the public, the medical practitioner is to revoke the order and immediately give written notice of the revocation to:

- (a) the person to whom the order applied, and
- (b) the appropriate reviewer.

### **32 Restriction on making of further public health order**

- (1) This section applies to a person who was the subject of a public health order if:
- (a) the order was revoked by the Tribunal under section 25 or 26, by an authorised medical practitioner under section 31 or on an appeal against the order, or
  - (b) the Tribunal has refused under section 26 to continue the order.
- (2) A further public health order may be made in respect of a person to whom this section applies only if the authorised medical practitioner proposing to make the further order is satisfied on reasonable grounds that, since the earlier order ceased to have effect, there has been a change in the person's health or behaviour which increases the risk of endangering the health of the public.

### **33 Apprehension of escapee**

- (1) If a person detained under a public health order or following apprehension under section 29 escapes from the place of detention, he or she may be apprehended at any time by:
- (a) the person for the time being in charge of the place from which the person escaped, or
  - (b) an authorised medical practitioner, or
  - (c) a police officer, or
  - (d) any person assisting a person referred to in paragraphs (a)-(c).
- (2) On being apprehended, the escapee must be returned to the place from which he or she escaped.

### **34 Unlawful release from detention**

- (1) A person who, without lawful authority, releases, or attempts to release:
- (a) a person detained under a public health order or following apprehension under section 29 or 33, or
  - (b) a person being conveyed to a place at which he or she is to be so detained,
- is guilty of an offence. Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.
- (2) It is a defence to a prosecution for:
- (a) an offence under this section, or
  - (b) aiding, abetting, counselling or procuring the escape of a person detained

under a public health order or following apprehension under section 29 or 33, if it is proved that the action of the defendant did not endanger the health of the public and that the defendant knew this to be so.

### **35 Restrictions on publication**

- (1) The court in which proceedings under this Division have been instituted or are being heard may make orders having the effect of prohibiting or restricting the publication of matters relating to the proceedings or to a person in respect of whom the proceedings have been instituted.
- (2) The orders that a court may make under this section include orders prohibiting or restricting publication of any one or more of the following:
  - (a) any report that relates to the proceedings,
  - (b) the identity of the person in respect of whom the proceedings have been instituted,
  - (c) any information from which the identity of that person could be deduced,
  - (d) any information from which could be deduced the identity of a person in respect of whom a public health order is, or at any time was, sought or made, whether or not in the proceedings.
- (3) An order under this section may be made by the court of its own motion or on the application of a party to the proceedings.
- (4) If an application under this section is made by a party to the proceedings, the onus is on the other party to show cause why the application should be refused.
- (5) An order made under this section does not operate to prevent publication of a report of the proceedings if:
  - (a) the report is published in a genuine volume of law reports, a legal journal or any other publication intended to be read mainly by legal practitioners, Magistrates and Judges, and
  - (b) the person in respect of whom the proceedings were instituted, or in respect of whom a public health order is sought or made, is not identified in the report.
- (6) A person who contravenes an order in force under this section (whether aware of the order or not) is guilty of an offence. Maximum penalty:
  - (a) in the case of a corporation--100 penalty units, or
  - (b) in any other case--50 penalty units or imprisonment for 6 months, or both.
- (7) This section does not prevent punishment, as a contempt, of a contravention of an order made in proceedings before a court but, in respect of such a contravention, a person may not be dealt with both for a contempt of the court and by prosecution for an offence.
- (8) In this section: "**publish**" means:
  - (a) publish in a newspaper, magazine or other periodical publication, or
  - (b) publish by radio or television transmission, or
  - (c) include in a cinematographic film or videotape that is, or is to be, available to the public, or
  - (d) include in a book or sound recording that is, or is to be, available to the public, or
  - (e) make known to the public in any other manner or by any other means.

### **36 Inspection of medical records**

- (1) A person to whom a public health order applies, or the authorised agent of such a person, is, unless the appropriate reviewer otherwise directs, entitled to inspect, and make copies of, medical records relating to the person that are kept by another person.
- (2) If the medical records are not kept in a readable form, the person in charge of the records is to provide a readable copy of them.

### **Division 7 – Procedural matters**

#### **37 Proceedings--Divisions 2 and 3**

Proceedings for offences under Divisions 2 and 3 are to be heard and determined in the absence

of the public.

### **38 Proceedings--Division 6**

Proceedings under Division 6 before a court:

- (a) are to be open to the public unless an objection is made by or on behalf of a party to the proceedings and is upheld by the court, or
- (b) are to be held in closed court if such an objection is made and upheld.

### **39 Representation in proceedings under Division 6**

A party to proceedings under Division 6 before a court may be represented by a barrister or solicitor or, with the leave of the court, by a person other than a barrister or solicitor.

## **Division 8 – Other applications to Administrative Decisions Tribunal**

### **40 Applications to Tribunal for review of action or direction of Minister**

An application may be made to the Tribunal for a review of any of the following decisions:

- (a) any action taken by the Minister under section 5 other than the giving of a direction by an order published under that section, or
- (b) any direction given by an order so published.

### **41 Applications to Tribunal for review of public health order relating to Category 4 medical condition**

An application may be made to the Tribunal for a review of a public health order that is based on a Category 4 medical condition.

### **42 (Repealed)**

## **Part 3A – Control of vaccine preventable diseases**

### **42A Definitions**

In this Part:

"**child**" means a child of a class (such as children of a specified age group) prescribed by the regulations.

"**child at risk**", in relation to a vaccine preventable disease, means a child enrolled at a school or child care facility for whom no immunisation certificate or evidence of immunisation has been lodged or produced to the principal of the school or director of the facility which shows that the child has been immunised against, or has acquired immunity by infection from, the disease.

"**child care facility**" means:

- (a) a child care service to which Division 1 of Part 3 of the *Children (Care and Protection) Act 1987* applies, or
- (b) a service or facility of a class declared by the regulations to be a child care facility for the purposes of this Part.

"**director**" of a child care facility means the person in charge of the facility.

"**immunisation**" means the process of administering to a person, either orally or parenterally, a substance registered as a vaccine in the part of the Australian Register of Therapeutic Goods maintained under section 17 of the *Therapeutic Goods Act 1989* of the Commonwealth relating to registered goods.

"**immunisation certificate**" means a certificate in the approved form in which a medical

practitioner, or a person of a class specified by the Director-General, certifies the immunisation status of a child, and includes a photocopy or a duplicate of such a certificate.

**"immunisation status"** of a child means whether or not the child has been immunised against, or has acquired immunity by infection from, all or specified vaccine preventable diseases.

**"parent"** of a child includes a guardian or other person having the care or custody of the child.

**"school"** means:

- (a) a government school established under the *Education Reform Act 1990*, or
- (b) a non-government school registered under that Act.

**"vaccine preventable disease"** means measles, diphtheria, whooping cough, poliomyelitis, tetanus, mumps, rubella or any other disease specified in the regulations as a vaccine preventable disease for the purposes of this Part.

#### **42B Responsibilities of principals of schools with respect to immunisation**

- (1) When a child is being enrolled at a school, the principal of the school must request a parent of the child to lodge with the principal an immunisation certificate for the child, unless satisfied that the certificate can be obtained under subsection (2).
- (2) If an immunisation certificate has been lodged with the principal of a school in respect of a child and the child has subsequently become enrolled at another school, the principal must, on being requested to do so by a parent of the child or the principal of the other school, forward the certificate to the principal of the other school.
- (3) The principal of a school must record in the approved manner the immunisation status of each child enrolled at the school as indicated by any immunisation certificate lodged with the principal in respect of the child.
- (4) For the purposes of recording the immunisation status of a child for whom no immunisation certificate has been lodged with a principal, the child is taken not to have been immunised against any of the vaccine preventable diseases.
- (5) A principal must retain an immunisation certificate lodged with the principal in safe custody for such period as may be prescribed by the regulations.
- (6) The medical officer of health for a medical district may, at any reasonable time:
  - (a) enter any school located in the district, and
  - (b) request the principal of the school to produce the immunisation certificates and records required by this section to be kept by the principal.

A principal must comply with such a request.

#### **42C Responsibilities of directors of child care facilities with respect to immunisation**

- (1) When a child is being enrolled at a child care facility, and on such subsequent occasions as may be prescribed by the regulations, the director of the facility must request a parent of the child to produce to the director evidence as to the child's immunisation status, unless satisfied that the evidence can be obtained under subsection (2). The evidence to be produced under this subsection must be in an approved form.
- (2) If the director of a child care facility has recorded in the register under this section the immunisation status of the child and the child has subsequently become enrolled at another child care facility, the director must, on being requested to do so by a parent of the child or the director of the other child care facility, provide that director with a copy of the entry in the register relating to the immunisation status of the child.
- (3) The director of a child care facility must record in a register, kept in the approved manner, the immunisation status of each child enrolled at the facility as indicated by evidence produced in an approved form to the director in respect of the child.
- (4) For the purposes of recording the immunisation status of a child for whom no

evidence is produced to the director in an approved form, the child is taken not to have been immunised against any of the vaccine preventable diseases.

(5) The director of a child care facility must retain an entry in the register for such period as may be prescribed by the regulations.

(6) The medical officer of health for a medical district may, at any reasonable time:

(a) enter any child care facility located in the district, and

(b) request the director of the facility to produce the register required by this section.

A director must comply with such a request.

#### **42D Duties of principals and directors when there is an outbreak of a vaccine preventable disease**

(1) The principal of a school, or the director of a child care facility, must, on becoming aware that a child enrolled at the school or facility is suffering from a vaccine preventable disease, inform the medical officer of health for the medical district where the school or facility is located that the child is suffering from the disease.

(2) On being informed that a child is suffering from a vaccine preventable disease, a medical officer of health may, for the purpose of preventing the spread of the disease, direct the principal of the school, or the director of the child care facility, at which the child is enrolled to do either or both of the following:

(a) to send or deliver to the parent of the child, and of every child at risk who is enrolled at the school or facility, a notice to the effect that, unless the requirements specified in the notice are complied with in respect of that parent's child within the period so specified, that child is to be excluded from the school or facility for the duration of the outbreak of the disease (as determined by that medical officer),

(b) to take such other action with respect to the child suffering from the disease and the children at risk as may be specified in the direction.

(3) In giving a direction under subsection (2), a medical officer of health must comply with such guidelines as may be issued from time to time by the Director-General.

(4) On receiving a direction under subsection (2), the principal or director must comply with the direction.

(5) A principal who has sent or delivered a notice referred to in subsection (2) (a) must ensure that the child to whom the notice relates is excluded from the school or child care facility concerned for the duration of the outbreak of the disease (as determined by the medical officer of health concerned), unless the requirements specified in the notice have been complied with within the period so specified.

(6) Subsections (1) and (2) do not apply when the school or child care facility is closed for a public holiday or vacation, unless the school or facility would reopen before the end of the duration of the outbreak of the disease (as determined by the medical officer of health concerned).

(7) A member of the staff of a school or child care facility must not, except as provided by this section, subject a child who attends or is seeking to attend the school or facility to any detriment because of the child's immunisation status.

### **Part 3B – Pap Test Register**

#### **Division 1 – Preliminary**

##### **42E Definitions**

In this Part:

**"cervical cancer"** means a malignant growth of human tissue in the cervix of the uterus that is likely to spread to tissue beyond its site of origin.

**"cervical cancer test"** means a test that is carried out to determine whether or not a woman has cervical cancer or any of its precursors, and that:

- (a) consists of a pathological examination of a specimen of any kind taken from the woman, or
- (b) is a test, or a test of a class, prescribed by the regulations for the purposes of this paragraph.

**"health practitioner"** means a person who is:

- (a) a medical practitioner, or
- (b) a registered nurse within the meaning of the *Nurses and Midwives Act 1991*, or a registered midwife within the meaning of that Act, or
- (c) a person, or a person of a class, prescribed by the regulations for the purposes of this paragraph.

**"identifying particulars"** of a woman means the woman's:

- (a) full name (and any previous name), and
- (b) residential or postal address.

**"pathology request form"** means a form submitted to a pathology laboratory by or on behalf of a health practitioner requesting the laboratory to carry out a pathological examination of a specimen.

**"Register"** means the New South Wales Pap Test Register referred to in section 42F.

## **Division 2 – New South Wales Pap Test Register**

### **42F New South Wales Pap Test Register**

- (1) The Director-General is to cause to be compiled and maintained a Register, to be known as the New South Wales Pap Test Register.
- (2) The Director-General may enter into any agreement or arrangement for any other person to maintain the Register.

### **42G Object of establishing Register**

The object of establishing the Register is to reduce the incidence of, and mortality from, preventable cervical cancer by using the Register for the purposes specified in section 42I.

### **42H Contents of Register**

- (1) The Register is to contain the following information in relation to a cervical cancer test:
  - (a) the identifying particulars of the woman who had the test,
  - (b) her date of birth,
  - (c) the date of the test,
  - (d) the result of the test,
  - (e) an indication of whether the test was carried out:
    - (i) because the woman had symptoms that warranted investigation, or
    - (ii) as a routine measure only,
  - (f) the identification number of the test,
  - (g) if the test consisted of a pathological examination of a specimen taken from the woman:
    - (i) the name, address and identification code of the health practitioner by or on whose behalf the relevant pathology request form was submitted, and
    - (ii) the identification code of the laboratory that examined the specimen,
  - (h) if the test was a test, or a test of a class, prescribed by the regulations:

- (i) the name, address and identification code of the health practitioner who carried out the test, and
  - (ii) such clinical information as the regulations may prescribe.
- (2) In this section: "**identification code**", in relation to a health practitioner or laboratory, means a code used to identify the health practitioner or laboratory for the purposes of the Register. "**identification number**", in relation to a test, means the number allocated uniquely to the test by:
- (a) the laboratory that carried out the test (in the case of a test consisting of a pathological examination of a specimen taken from a woman), or
  - (b) the health practitioner (in any other case).

#### **42I Use of information in Register**

- (1) The information in the Register is to be used for the following purposes:
- (a) to remind any woman who does not have a further cervical cancer test (or other appropriate investigation or treatment) within a reasonable time after a cervical cancer test that a further test (or investigation or treatment) is recommended,
  - (b) to provide a record of test results that links each woman tested with her health practitioner and any laboratory that produces her test results,
  - (c) to monitor rates and patterns of cervical cancer tests to assist in the planning and evaluation of test programs,
  - (d) to provide information (being information that does not include any woman's identifying particulars):
    - (i) to the public--so as to increase public awareness of the Register and its objects, and
    - (ii) to health practitioners and laboratories--to assist them to monitor their quality control procedures in relation to cervical cancer tests, and
    - (iii) to the Department of Health, and
    - (iv) to the Commonwealth,
  - (e) to maintain a database (being a database that does not contain any woman's identifying particulars) for use in research into the prevention and treatment of cervical cancer.
- (2) Any person acting for the purposes of this Division does not, if acting in good faith, incur any liability by reason of any notification or advice to a woman, or any failure to notify or advise a woman, in relation to any matter included in or otherwise concerning the Register.
- (3) In this section, "**test results**" means the results of a cervical cancer test.

#### **42J Disclosure of identifying particulars in conjunction with test result**

- (1) A person may disclose, in conjunction with the result of a cervical cancer test, the identifying particulars of the woman who had the test only:
- (a) to the woman concerned, or
  - (b) with the written consent of the woman, or
  - (c) to the woman's health practitioner, or
  - (d) to the person in charge of a laboratory that is, or has previously been, engaged on the woman's behalf to make a pathological examination of a specimen taken from her, or
  - (e) for the purposes of section 42I (1) (a) or (b), or
  - (f) if permitted or required to do so under the terms of an order of a court or the provisions of an Act, or
  - (g) in accordance with the regulations.
- (2) The regulations may prescribe either or both of the following:
- (a) the persons, or class of persons, to whom a woman's identifying particulars may be disclosed in conjunction with the results of the woman's cervical cancer

test,

(b) the circumstances in which that disclosure may be made.

#### **42K Provision of information for inclusion in Register**

(1) The person in charge of a laboratory that carries out a cervical cancer test must provide a report relating to the test in accordance with this section. Maximum penalty: 10 penalty units.

(2) A person in charge of a laboratory is not guilty of an offence under this section by reason only that the report concerned did not include information that it was not in the power of the laboratory to provide.

(3) A health practitioner who carries out a test, or a test of a class, prescribed by the regulations for the purposes of paragraph (b) of the definition of "**cervical cancer test**" in section 42E, must provide a report relating to the test in accordance with this section. Maximum penalty: 10 penalty units.

(4) A health practitioner who takes a specimen from a woman for the purposes of a cervical cancer test is to ensure that the relevant pathology request form contains as much of the information required by this section to be included in a report from a laboratory as it is in the power of the health practitioner to provide.

(5) A report referred to in this section:

(a) is to be provided to the Director-General (or, if the Director-General has entered into an agreement or arrangement with another person under section 42F

(2) and the person in charge of the laboratory or the health practitioner concerned has been notified accordingly, to that other person), and

(b) is to be provided within 30 days after the completion of the test, and

(c) is to contain, in relation to the test, the information referred to in section 42H, and

(d) is to be in a form approved by the Director-General.

(6) This section is subject to section 42O.

#### **Division 3 – Right to anonymity in Register**

##### **42L Application of Division**

This Division has effect despite section 42H.

##### **42M Woman may elect not to be identified in Register**

A woman who has a cervical cancer test may elect to have her identifying particulars withheld from the Register by advising the health practitioner carrying out, or taking the specimen for the purposes of, the test that she does not want to be identified in the Register.

##### **42N Removal of identifying particulars from Register**

(1) A woman may at any time request the Director-General, in writing, to remove her identifying particulars from the Register.

(2) The Director-General is to cause any such request to be complied with as soon as practicable after receiving it.

##### **42O Withholding of identifying particulars**

(1) If a woman elects to have her identifying particulars withheld from the Register, the health practitioner to whom she makes the election:

(a) must note any relevant pathology request form accordingly, and

(b) must not provide those particulars to any person for the purpose of their inclusion in the Register.

Maximum penalty: 10 penalty units.

(2) A person in charge of a laboratory that receives a pathology request form noted as referred to in subsection (1) must ensure that the laboratory does not provide the identifying particulars of the woman to whom the form relates to any person for the purpose of their inclusion in the Register. Maximum penalty: 10 penalty units.

(3) Any person who has reason to believe that a woman has elected to have her identifying particulars withheld from the Register is not to include those particulars in the Register.

#### **42P Health practitioner to provide information about Register**

(1) A health practitioner who carries out a cervical cancer test, or takes a specimen from a woman for the purpose of such a test, is, before carrying out the test or taking the specimen, to provide the woman concerned with details of:

- (a) the object of the Register, and
- (b) the information that is recorded in the Register, and
- (c) the purposes for which that information may be used, and
- (d) the way in which the confidentiality of the Register is protected.

(2) Subsection (1) does not apply if the health practitioner's records indicate that the woman has previously been provided with details of the Register. In that case, however, the health practitioner is to remind the woman of her right to have her identifying particulars removed from the Register.

(3) If the health practitioner's records do not indicate that the woman has previously been provided with details of the Register, the health practitioner is also to inform the woman:

- (a) that she may elect to have her identifying particulars withheld from the Register, and
- (b) that if she does not so elect, she may have those particulars removed from the Register at any time after they are recorded in it.

### **Part 4 – Microbial control**

#### **43 Purpose of Part 4**

(1) The purpose of this Part is to regulate:

- (a) the installation on premises of certain kinds of systems, and
- (b) the operation and maintenance of those kinds of systems installed on premises, whether the installation took place before, or takes place after, the commencement of this Part,

in order to prevent or inhibit the growth in the systems of micro-organisms that are liable to cause Legionnaires' disease and other diseases.

(2) The systems comprise:

- (a) air-handling systems, and
- (b) evaporative cooling systems, and
- (c) hot-water systems, and
- (d) humidifying systems, and
- (e) warm-water systems, and
- (f) water-cooling systems,

and their associated equipment and fittings.

#### **44 Definitions**

In this Part:

**"air-handling system"** means a system designed for the purpose of directing air in a positive and controlled manner to and from specific enclosures by means of air-handling plant, ducts, plenums, air-distribution devices and automatic controls.

**"authorised officer"**, in relation to any premises, means:

- (a) an environmental health officer employed by the local authority for the area in which the premises are situated, or
- (b) an environmental health officer of the Department of Health, or
- (c) a person authorised by the Minister or the Director-General to exercise the powers

conferred by this Part on an authorised officer.

**"cooling-tower"** means:

- (a) a device for lowering the temperature of water or other liquid by evaporative cooling, or
- (b) an evaporative condenser which incorporates a device containing a refrigerant or heat exchanger.

**"evaporative cooling system"** means a system that effects a reduction of dry bulb temperature by evaporating water into the air being treated.

**"hot water system"** means a system designed to heat and deliver water at a temperature of at least 60°C at each outlet point.

**"humidifying system"** means a system for adding moisture to air in order to raise its humidity.

**"install"** includes construct.

**"maintain"** includes repair, inspect, carry out preventive servicing and clean.

**"prescribed installation requirements"** means requirements specified in the regulations with respect to the design and installation of a regulated system.

**"prescribed maintenance requirements"** means requirements specified in the regulations with respect to the maintenance of a regulated system.

**"prescribed operating requirements"** means requirements specified in the regulations with respect to the operation of a regulated system.

**"regulated premises"** means any premises other than premises declared by the regulations not to be regulated premises for the purposes of this Part.

**"regulated system"** means:

- (a) a system referred to in section 43, or
- (b) any system that is for the treatment of air or water and is declared by the regulations to be a regulated system for the purposes of this Part.

**"warm-water system"** means a system designed to heat and deliver water at a temperature of less than 60°C at each outlet point.

**"water-cooling system"** means a cooling tower and its associated equipment and pipe work.

#### **45 Installation of system**

- (1) The installation on regulated premises of a regulated system must be done in accordance with the prescribed installation requirements.
- (2) If a regulated system is installed in contravention of this section, the installer of the system is guilty of an offence.
- (3) If a regulated system is installed on regulated premises in contravention of this section, the occupier of the premises at the time of installation of the system is guilty of an offence unless the court is satisfied that the installation was carried out by a person or persons who might reasonably be expected to be competent to do so.

#### **46 Operation and maintenance of system**

- (1) If the occupier of regulated premises fails, while such an occupier, to ensure that the

prescribed operating requirements, or the prescribed maintenance requirements, are complied with in relation to a regulated system installed on the premises, the occupier is guilty of an offence.

(2) It is a defence to proceedings for an offence under this section if the court is satisfied that:

- (a) the occupier engaged a person to carry out the requirements to which the proceedings relate, and
- (b) the person so engaged might reasonably have been expected to be competent to carry out the requirements.

(3) If a contractor:

- (a) is engaged by the occupier of regulated premises to operate a regulated system, and
- (b) fails to carry out the prescribed operating requirements for the system,

the contractor is guilty of an offence.

(4) If a contractor:

- (a) is engaged by the occupier of regulated premises to maintain a regulated system, and
- (b) fails to carry out the prescribed maintenance requirements for the system,

the contractor is guilty of an offence.

(5) This section applies to a regulated system whether installed before or after the commencement of this Part.

#### **47 Powers of authorised officers**

(1) An authorised officer who believes on reasonable grounds that a regulated system has been, or is being, installed on any regulated premises may:

- (a) enter the premises at any reasonable time in order to find out whether or not a system on the premises is a regulated system, and
- (b) inspect and test any system on the premises, and
- (c) investigate whether or not the prescribed operating requirements, and the prescribed maintenance requirements, have been complied with in relation to any regulated system on the premises, and
- (d) require the production of, and inspect, any records required by the regulations to be kept in relation to the operation and maintenance of any regulated system on the premises.

(2) Section 72 (Powers of entry) applies in relation to the exercise of the powers conferred by this section.

#### **48 Directions to carry out maintenance requirements**

(1) The Director-General, or a local authority, may serve on the occupier of regulated premises in which a regulated system is installed a notice:

- (a) directing that a specified prescribed maintenance requirement for the system be complied with before a date stated in the notice, and
- (b) if appropriate, directing that the system not be operated until the Director-General, or the local authority, is satisfied that the requirement has been complied with.

(2) A notice under this section may be served:

- (a) only if the Director-General, or the local authority, believes on reasonable grounds that the requirement to which the notice relates is not being, or has not been, complied with, and
- (b) in the case of a local authority, only if the premises are within the area for which it is the local authority.

(3) Service of a notice under this section does not preclude proceedings for an offence under section 46.

#### **49 Failure to comply with directions**

- (1) If the directions given in a notice served under section 48 are not complied with:
  - (a) the Director-General, if the notice was served by the Director-General, or
  - (b) the local authority that served the notice,may make arrangements for the doing of such work as may be necessary in order to comply with the requirements of the notice other than the time required for compliance.
- (2) An employee assigned, or contractor engaged, by the Director-General or a local authority to do any work on regulated premises in accordance with those arrangements may, at any reasonable time, enter the premises and do the work or have it done.
- (3) An amount equal to the cost of carrying out work in accordance with those arrangements may be recovered from the occupier of the premises:
  - (a) as a debt due to the Crown if the arrangements were made by the Director-General, or
  - (b) as a debt due to the local authority if the arrangements were made by the local authority.
- (4) An occupier of regulated premises is guilty of an offence if a regulated system on the premises is operated in contravention of a direction given in a notice served on the occupier under this section.
- (5) Section 72 (Powers of entry) applies in relation to the exercise of the powers of entry on premises conferred by this section.

#### **50 Proceedings for offences under Part 4**

- (1) Proceedings for an offence under this Part are to be disposed of summarily either:
  - (a) before a Local Court constituted by a Magistrate sitting alone, or
  - (b) before the Supreme Court in its summary jurisdiction.
- (2) A person convicted by a Local Court of an offence under this Part is liable to a penalty not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months, or both.
- (3) A person convicted by the Supreme Court of an offence under this Part is liable to a penalty not exceeding 500 penalty units or imprisonment for a term not exceeding 2 years, or both.
- (4) Proceedings for an offence under this Part may be commenced at any time within, but not later than, 2 years after the time at which the offence is alleged to have been committed.

#### **Part 5 – General health matters**

##### **51 Skin penetration procedures--power of environmental health officers to enter and inspect premises**

- (1) An environmental health officer who believes on reasonable grounds that premises are used for the carrying on of skin penetration procedures may enter the premises and do any one or more of the following on those premises:
  - (a) inspect the premises,
  - (b) make inquiries of any person found on the premises,
  - (c) examine, inspect or test any apparatus, equipment or works,
  - (d) take and remove samples of any substance or other thing,
  - (e) require the samples referred to in paragraph (d) to be taken and given to the environmental health officer or another person or to the Director-General,
  - (f) take such photographs, films and audio, video and other recordings as the environmental health officer considers necessary,
  - (g) require records to be produced for inspection,
  - (h) examine, inspect and copy any records,
  - (i) make such other examinations, inquiries and tests as the environmental health officer considers necessary.
- (2) Section 72 (Powers of entry) applies in relation to the exercise of powers conferred by

this section.

(3) In this section: "**skin penetration procedure**" means any of the following procedures:

- (a) acupuncture,
- (b) tattooing,
- (c) ear piercing,
- (d) hair removal,
- (e) any other procedure (whether medical or not) that involves skin penetration,
- (f) any other procedure prescribed by the regulations,

but does not include:

- (g) a procedure carried out in the practice of medicine or dentistry by:
  - (i) a medical practitioner registered under the *Medical Practice Act 1992*, or
  - (ii) a dentist registered under the *Dentists Act 1989*, or
  - (iii) a person acting under the direction or supervision of such a medical practitioner or dentist, or
- (h) any other procedure prescribed by the regulations.

## **52 Nursing requirements for nursing homes**

(1) A person who operates a nursing home must:

- (a) ensure that a registered nurse is on duty in the nursing home at all times, and
- (b) ensure that a registered nurse is appointed as a director of nursing of the nursing home, and
- (c) ensure that any vacancy in the position of director of nursing of the nursing home is filled within 7 days.

Maximum penalty: 20 penalty units.

(2) The regulations may prescribe the minimum necessary qualifications for a registered nurse to be appointed as a director of nursing at a nursing home.

(3) In this section: "**director of nursing**" of a nursing home means the registered nurse responsible for care of the residents of the nursing home. "**registered nurse**" has the same meaning as in the *Nurses and Midwives Act 1991*.

## **Part 6 – Tobacco and other smoking products**

### **Division 1 – Preliminary**

#### **53 Definitions**

In this Part:

"**authorised officer**" means:

- (a) an environmental health officer, or
- (b) a person authorised as an officer for the purposes of this Part by an order made by the Director-General.

"**brand name**" includes any part of a brand name.

"**Commonwealth Act**" means the *Tobacco Advertising Prohibition Act 1992* of the Commonwealth.

"**display**", in relation to a tobacco advertisement, includes cause or permit to be displayed.

"**non-tobacco smoking product**" means any product (other than a tobacco product) that is intended to be smoked, and includes any product known or described as herbal cigarettes.

"**pack**" includes cause, permit or suffer to be packed.

**"package"** includes:

- (a) a box, carton, cylinder, packet, pouch and tin, and
- (b) a wrapping other than a transparent outer wrapping.

**"racing"** includes horse racing and harness racing, greyhound racing and motor car and motorcycle racing.

**"registered club"** has the same meaning as in the *Registered Clubs Act 1976*.

**"sell"** includes:

- (a) barter or exchange, and
- (b) offer or expose for sale, barter or exchange, and
- (c) keep for sale or have in possession for sale, and
- (d) supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit, and
- (e) supply, or offer to supply, gratuitously, but with a view to gaining or maintaining custom or otherwise with a view to commercial gain.

**"sporting"** includes recreational and other activities but does not include racing.

**"tobacco advertisement"** means writing, or any still or moving picture, sign, symbol or other visual image or message or audible message, or a combination of two or more of them, that gives publicity to, or otherwise promotes or is intended to promote:

- (a) the purchase or use of a tobacco product, or
- (b) the trademark or brand name, or part of a trademark or brand name, of a tobacco product.

**"tobacco product"** means tobacco, cigarette or cigar or any other product containing tobacco and designed for human consumption or use.

**"trademark"** includes any part of a trademark.

**"word"** includes symbol.

## **Division 2 – Tobacco products**

### **53A Tobacco products to which this Division does not apply**

This Division does not apply to cigars or plug tobacco.

### **54 Certain sales prohibited**

A person who:

- (a) sells a tobacco product that is not in the package in which it was packed by the manufacturer, or
- (b) sells cigarettes as individual items or in a package containing fewer than 20,

is guilty of an offence.

Maximum penalty: 50 penalty units.

### **55 Packing of tobacco product without health warning prohibited**

A person who packs a tobacco product into a package in which the product is to be sold is guilty of an offence unless the package is marked with a health warning that complies with Schedule 2.

Maximum penalty: 50 penalty units.

### **56 Sale of tobacco product without health warning prohibited**

A person who sells a tobacco product is guilty of an offence unless the package in which the product is sold is marked with a health warning that complies with Schedule 2.

Maximum penalty: 50 penalty units.

### **57 Prohibited words**

(1) A person who:

- (a) packs a tobacco product into a package in which the product is to be sold, or
- (b) sells a tobacco product in a package,

is guilty of an offence if the package is marked with, or accompanied by, any material that contains any prohibited words. Maximum penalty: 50 penalty units.

(2) For the purposes of this section, the prohibited words are:

- (a) "non-injurious", "non-hazardous" and "harmless to man", and
- (b) words of similar import to those specified in paragraph (a), and
- (c) words that directly or by implication contradict, qualify or modify a health warning that complies with Schedule 2 and is marked on the package.

### **Division 3 – Juvenile smoking**

#### **58 Seizure of tobacco products or non-tobacco smoking products in possession of minors**

(1) A police officer may seize a tobacco product or non-tobacco smoking product in the possession of a person in a public place if the officer suspects on reasonable grounds that the person is under the age of 18 years.

(2) Any tobacco product or non-tobacco smoking product seized under subsection (1) is forfeited to the Crown.

(3) A tobacco product or non-tobacco smoking product may be seized under subsection (1) from a person's possession even though the person is under the age of criminal responsibility.

(4) The regulations may make provision for or with respect to the following:

- (a) the procedure to be followed as regards the seizure of tobacco products or non-tobacco smoking products under subsection (1),
- (b) without limiting paragraph (a), prescribing the circumstances in which, and the procedure by which, tobacco products or non-tobacco smoking products seized under this section are to be returned.

#### **58A Purchasing tobacco products or non-tobacco smoking products on behalf of minors**

(1) A person of or above the age of 18 years who purchases, on behalf of a person under the age of 18 years, a tobacco product or non-tobacco smoking product from premises where such products are sold is guilty of an offence. Maximum penalty: 20 penalty units.

(2) It is a defence to a prosecution for an offence under this section if the court is satisfied that:

- (a) the person on whose behalf the relevant product was purchased was over the age of 14 years, and
- (b) at or before the time the relevant product was purchased there was produced to the defendant documentary evidence that might reasonably be accepted as applying to the person and as proving that the person was at least 18 years of age.

#### **59 Sale of tobacco and non-tobacco smoking products to minors**

(1) A person who sells a tobacco product to a person who is under the age of 18 years is guilty of an offence. Maximum penalty: 50 penalty units.

(1A) A person who sells a non-tobacco smoking product to a person who is under the age of 18 years is guilty of an offence. Maximum penalty: 50 penalty units.

(2) It is a defence to a prosecution for an offence under this section if the court is satisfied that:

- (a) the person to whom the tobacco product or non-tobacco smoking product was sold was over the age of 14 years at the time of the sale, and
- (b) at or before the time of the sale there was produced to the defendant documentary evidence that might reasonably be accepted as applying to the person to whom the tobacco product or non-tobacco smoking product was sold and as proving that the person was at least 18 years of age.

(3)-(5) (Repealed)

### **59AA Evidence of age**

For the purposes of sections 58A (2) and 59 (2), documentary evidence includes evidence that is of a kind prescribed by the regulations for the purposes of section 117E (Reasonable evidence of age) of the *Liquor Act 1982*.

### **59A Liability of employers**

(1) If an employee contravenes section 59, the employer is taken to have contravened that section (whether or not the employee contravened the provision without the employer's authority or contrary to the employer's orders or instructions).

(2) It is a defence to a prosecution against an employer for such a contravention if it is established:

- (a) that the employer had no knowledge of the contravention, and
- (b) that the employer could not, by the exercise of due diligence, have prevented the contravention.

(3) An employer may be proceeded against and convicted under section 59 by virtue of this section whether or not the employee has been proceeded against or convicted under that provision.

(4) For the purposes of this section, the following additional persons are taken to be employers of persons who contravene section 59:

- (a) any person who authorised a person who contravenes section 59 to sell tobacco as the person's agent.
- (b) (Repealed)

### **60 Confiscation of proof of age cards**

The following persons are authorised persons for the purposes of section 152A (Confiscation of proof of age cards) of the *Liquor Act 1982*:

- (a) any police officer,
- (b) any environmental health officer,
- (c) a person who sells tobacco products or non-tobacco smoking products and any employee of that person (being a person or employee of or above the age of 18 years), but only while on, or in the immediate vicinity of, the premises where the tobacco products or non-tobacco smoking products are sold.

### **61 Regulations**

The Governor may make regulations for or with respect to:

- (a) the form and content of signs relating to the provisions of this Division, and
- (b) the display of the signs at places where tobacco products are sold.

## **Division 4 – Advertising of tobacco products**

### **61A Objects of this Division**

The objects of this Division are:

- (a) the active discouragement of the smoking of tobacco by:
  - (i) encouraging non-smokers, particularly young people, not to start smoking, and

- (ii) limiting the exposure of children and young people to persuasion to smoke, and
- (b) the promotion of good health and the prevention of illness.

### **61B Certain advertising prohibited**

(1) A person who in New South Wales for any direct or indirect benefit displays a tobacco advertisement in, or so that it can be seen or heard from, a public place or a place prescribed by the regulations is guilty of an offence.

(2) A person who in New South Wales:

- (a) distributes to the public any unsolicited object, or
- (b) sells, hires or supplies for any direct or indirect benefit any object to any person (other than a person, or the employee of a person, who is a manufacturer, distributor or retailer of a tobacco product),

that constitutes or contains a tobacco advertisement is guilty of an offence.

(3) This section does not apply in relation to any of the following:

- (a) anything done by means of a radio or television broadcast,
- (b) a tobacco advertisement in or on a newspaper or book:
  - (i) printed and published outside New South Wales, or
  - (ii) printed and published before 17 December 1991,

unless the sole or main purpose of the newspaper or book is the promotion or publicising of the purchase or use of a tobacco product or a trademark or brand name of a tobacco product,

(c) a tobacco advertisement (other than an advertisement involving an audible message) in or on a package containing a tobacco product, where:

- (i) the advertisement was included in or on the package before it was sold by the manufacturer, and
- (ii) the size of the package does not exceed the size (if any) prescribed by the regulations,

(d) a tobacco advertisement that is an incidental accompaniment to the subject of a film, video tape or live stage performance unless the sole or main purpose of the film, video tape or performance is the promotion or publicising of the purchase or use of a tobacco product or a trademark or brand name of a tobacco product,

(e) the display of retail prices of tobacco products within a retail outlet, where the display complies with the regulations,

(f) an invoice, statement, order, letterhead, business card, cheque, manual or other document that is ordinarily used in the course of the business of a manufacturer or distributor of a tobacco product,

(g) any matter the subject of an exemption under section 61H, to the extent provided by the exemption.

(4) Subsection (3) (c) does not operate so as to permit an advertisement to be created and displayed by means of:

- (a) any arrangement of two or more packages containing a tobacco product, or
- (b) such a package and any other thing,

unless every such package or other thing is displayed, in accordance with the regulations, within a shop at which tobacco products are sold by retail.

(5) In any proceedings for an offence under this section, if there is present in the relevant tobacco advertisement, or the relevant object alleged to constitute or contain a tobacco advertisement:

- (a) the name of a person who manufactures or distributes any tobacco product, or
- (b) a trademark of which a person who manufactures or distributes any tobacco product is the registered proprietor or the registered user within the meaning of the *Trade Marks Act 1955* of the Commonwealth, or
- (c) a brand name, used by a person who manufactures or distributes any tobacco

product,  
it is to be presumed, until the contrary is proved, that that person displayed the tobacco advertisement, or distributed, sold, hired or supplied the object, for a direct or indirect benefit.

(6) In any proceedings for an offence under this section, if the thing that is alleged to constitute a tobacco advertisement contains the trademark or brand name of a tobacco product, it is to be presumed, until the contrary is proved, to be designed to promote or publicise the tobacco product to which it relates.

(7) In this section: "**book**" includes any printed material in any language. "**newspaper**" includes a copy of any magazine, journal or periodical or any other publication copies of which contain:

- (a) news, information or reports of events, or
- (b) remarks, observations or comments about any news, information or events or about any other matter of interest to the public or to any section of the public, that are printed in any language and published at regular or irregular intervals. "**public place**" includes any place to which the public or a section of the public ordinarily has access, whether or not by payment or by invitation.

### 61C Competitions

(1) A person who, in connection with the sale of a tobacco product or for the purpose of promoting the sale of a tobacco product:

- (a) supplies (whether from inside or outside New South Wales) to a person in New South Wales:
  - (i) a prize, gift or other benefit, or
  - (ii) a stamp, coupon, token, voucher, ticket or other thing by virtue of which any person may become entitled to, or may qualify for, a prize, gift or other benefit (whether that entitlement or qualification is absolute or conditional), or
- (b) conducts (whether from inside or outside New South Wales) a scheme:
  - (i) declared by the regulations to be a scheme to promote the sale of a tobacco product or to promote smoking generally, and
  - (ii) the whole or any part of which is implemented in New South Wales,

is guilty of an offence.

(2) Subsection (1) (a):

- (a) applies whether or not the person supplied with the benefit or thing concerned is a purchaser of a tobacco product, and
- (b) does not apply to the supply of a benefit or thing to a person who is, or is the employee of, a manufacturer or distributor of tobacco products, and
- (c) does not apply to the supply of a benefit or thing to a person who is, or is the employee of, a retailer of tobacco products, unless it is established that the benefit or thing was supplied for resupply to persons who purchase tobacco products from the retailer.

(3) A benefit or thing supplied to a tobacco retailer, or an employee of a tobacco retailer, that is actually resupplied to a purchaser of tobacco products from the retailer (or any employee of the retailer) is taken, for the purposes of subsection (2) (c), to have been so supplied for resupply to such a purchaser.

(4) It is a defence in proceedings for an offence under this section to prove that the benefit or thing supplied, or participation in the relevant scheme, was only incidentally connected with the purchase of a tobacco product and that equal opportunity to receive that benefit or thing, or to participate in that scheme, and to buy products other than tobacco products, was afforded generally to persons who purchased products, whether or not they were tobacco products.

(5) It is no defence in any such proceedings to prove that the benefit or thing concerned

was of negligible or no value.

#### **61D Free samples**

A person who, for the purpose of inducing or promoting the sale of a tobacco product, offers, gives or distributes to another person (not being a person who is, or is the employee of, a manufacturer, distributor or retailer of a tobacco product) a free tobacco product is guilty of an offence.

#### **61E Prohibition of sponsorships**

(1) A person who promotes or publicises, or agrees to promote or publicise, in New South Wales:

- (a) a tobacco product or a trademark or brand name of a tobacco product, or
- (b) the name or interests of a manufacturer or distributor of a tobacco product (whether or not that manufacturer or distributor also manufactures or distributes a product other than the tobacco product) in association directly or indirectly with the tobacco product,

under a contract, or an arrangement (whether or not legally binding), under which a sponsorship is provided, or to be provided, by another person is guilty of an offence.

(2) A person who provides, or agrees to provide, a sponsorship under a contract or arrangement of a kind referred to in subsection (1) is guilty of an offence.

(3) For the purposes of subsection (1) (b), the name or interests of a manufacturer or distributor of a tobacco product are taken to be in association directly or indirectly with the tobacco product if that name or those interests are commonly associated by members of the public in New South Wales with the tobacco product.

(4) This section does not apply in relation to anything to which this section does not apply by virtue of an exemption granted under section 61H.

(5) Nothing in subsection (1), (2) or (3) applies to the giving of, or an agreement to give, a scholarship by a manufacturer or distributor of a tobacco product to an employee, or a member of the family of an employee, of the manufacturer or distributor.

(6) In this section, "**sponsorship**" includes:

- (a) any scholarship, prize, gift or other benefit, and
- (b) any financial arrangement (other than a genuine contract of employment or a genuine contract for services) for the direction, promotion or publicity of one or more of the matters referred to in subsection (1) (a) and (b) through the medium of sporting, arts, youth, educational or other like activities.

#### **61F Tobacco vending machines**

(1) A person who places, or causes or permits to be placed, in any premises in New South Wales a tobacco vending machine for operation by members of the public is guilty of an offence unless the premises are:

- (a) a restricted area within the meaning of the *Liquor Act 1982*, or
- (b) a bar or poker machine area within the meaning of the *Registered Clubs Act 1976*, or
- (c) premises set aside by an employer as a staff amenity area.

(2) A person who:

- (a) owns or is the lessee of a tobacco vending machine in New South Wales, and
- (b) does not ensure that a statement in the prescribed form is kept conspicuously displayed on the front of the vending machine,

is guilty of an offence.

(3) In this section, "**tobacco vending machine**" means a machine, device or contrivance from which tobacco products can be obtained by an operation that involves:

- (a) inserting money, or a token or object, in the machine, device or contrivance, or
- (b) any other action taken without the assistance of the vendor or his or her employee or agent.

### **61G Smokeless tobacco, confectionery and toys**

- (1) A person who manufactures or sells in New South Wales a tobacco product designed for consumption otherwise than by smoking is guilty of an offence.
- (2) Subsection (1) does not apply to the manufacture or sale of prescribed mixtures or products in prescribed circumstances.
- (3) A person who sells:
  - (a) any confectionery or other food, or
  - (b) any toy, amusement or other product,that resembles a tobacco product is guilty of an offence. Maximum penalty (subsection (3)): 25 penalty units.

### **61H Exemptions**

- (1) The Minister may, by notice published in the Gazette:
  - (a) exempt a person or class of persons either wholly or in part from the operation of section 61B or 61E subject to such conditions (if any) as are set out in that notice or prescribed by regulation for the purposes of this paragraph, or
  - (b) amend or revoke an exemption granted under this section.
- (2) An exemption is not to be granted under this section except:
  - (a) to facilitate the promotion and conduct of a sporting, racing or cultural event that the Minister considers to be of international significance, or
  - (b) in any case of significant hardship to persons other than manufacturers or wholesalers of tobacco products.
- (3) An exemption is not to be granted under this section in connection with a sporting, racing or cultural event unless the Minister is satisfied that a failure to grant the exemption would be likely to result in the event not being held in Australia.
- (4) In deciding whether an exemption should be granted under this section in relation to a sporting, racing or cultural event, the Minister is to consult with the Minister responsible for sport, racing or the arts, as the case requires.
- (5) When deciding whether or not to grant an exemption under this section in relation to a sporting, racing or cultural event in respect of which an application is required to be made to the Minister administering the Commonwealth Act for the purposes of section 18 of that Act, the Minister is entitled:
  - (a) to refuse to grant the exemption if that application has been refused, or
  - (b) to defer making a decision on the exemption if that application has not yet been made, or is still awaiting the decision of the Commonwealth Minister, or is the subject of an appeal in accordance with section 30 of the Commonwealth Act.
- (6) In this section, "**event**" includes a series of events.

### **61I Powers of authorised officers**

- (1) For the purpose of ascertaining whether any of the provisions of this Division or the regulations made under this Division are being or have been complied with or contravened in any premises, an authorised officer may, alone or with such police officers or other persons as may be necessary, enter and inspect the premises.
- (2) On entering any premises, the authorised officer may do any of the following:
  - (a) open and inspect any package on which a tobacco advertisement is displayed or that the officer reasonably believes contains any tobacco product,
  - (b) examine any labelling or advertising material that appears to be intended for use in connection with the sale of any tobacco product,
  - (c) open, or require the opening of, and examine any appliance, cabinet, dispensing unit or other item that appears to be used in connection with the sale of tobacco products,
  - (d) take such photographs, or videotape or other films, as the authorised officer considers necessary,
  - (e) inspect any invoice or record on the premises relating to tobacco products or

advertising or promotional material supplied to the occupier of the premises, and make copies of any such invoice or record or any part of it and, for that purpose, take away and retain (for such time as may, for that purpose, be reasonably necessary) any such invoice or record,

(f) generally make such investigations and inquiries as may be necessary to ascertain whether an offence under this Division or any regulations made under this Division is being or has been committed.

(3) This section does not authorise an authorised officer acting without a search warrant to enter any premises or part of any premises used as a dwelling without the consent of the occupier.

#### **61J Authorised officer may require information**

(1) An authorised officer may at any time require a person by whom the officer reasonably suspects any provision of this Division or the regulations made under this Division is being or has been contravened, or who is apparently in charge of premises where such a contravention is occurring or evidently has occurred, to state his or her name and address and (if the person is not the occupier of the premises) the name of the occupier of the premises.

(2) If the contravention concerns an advertisement or any object containing an advertisement, the authorised officer may require a person referred to in subsection (1) to produce for inspection any invoice or record relating to the advertisement or object or relating to any tobacco products in connection with which the material for the advertisement, or the object, was obtained.

(3) A person who, without a reasonable excuse, refuses or fails to comply with a requirement under this section is guilty of an offence. Maximum penalty: 100 penalty units.

(4) A person is not guilty of an offence under subsection (3) unless, at the time at which the relevant requirement was made:

(a) the authorised officer had identified himself or herself to the person as an authorised officer, and

(b) the person had been warned that a refusal or failure to comply with the request constituted an offence.

#### **61K Removal of certain advertisements**

(1) If a tobacco advertisement is displayed in contravention of this Division or any regulations made under this Division, a Local Court constituted by a Magistrate sitting alone may order:

(a) that the advertisement be removed or obscured by an authorised officer, and

(b) if any person has been convicted of an offence against this Division or any regulations made under this Division in relation to the placement or display of the advertisement, that the person pay the reasonable costs incurred by the authorised officer in removing or obscuring the advertisement.

(2) An authorised officer may enter any premises in order to remove or obscure an advertisement in execution of an order under subsection (1).

(3) Any tobacco advertisement in the form of an article that is removed in accordance with such an order is taken to be the property of such person as is specified in the order.

(4) Any costs payable under such an order may be recovered in a court of competent jurisdiction as a debt due to the Crown or a council, as the case requires.

(5) This section does not apply to a tobacco advertisement for the time being lawfully displayed in accordance with an exemption granted under this Division.

#### **61L Consent required for prosecutions**

(1) Proceedings for an offence against this Division or any regulations made under this Division are not to be commenced without the consent in writing of the Director-General or a person authorised by the Director-General in writing for the purposes of this section.

(2) In any such proceedings, a certificate:

- (a) purporting to be signed by the Director-General, or
- (b) stating that the person who signed it is authorised by the Director-General for the purposes of this section,

is prima facie evidence of the matters stated in it, in so far as they bear on the requirements of this section.

### **61M Proceedings for offences**

- (1) Proceedings for an offence under this Division or the regulations made under this Division may be disposed of in a summary manner before a Local Court constituted by a Magistrate sitting alone or before the Supreme Court in its summary jurisdiction.
- (2) The maximum monetary penalty that can be imposed by a Local Court for any such offence is 100 penalty units or the maximum monetary penalty elsewhere provided in this Division, whichever is less.
- (3) Proceedings for any such offence that are brought before a Local Court may be brought at any time within 12 months after the date on which the offence was committed.

### **61N Penalties**

- (1) A person who is guilty of an offence under section 61B (1) or (2), 61C (1), 61D, 61E (1) or (2), 61F (1) or (2) or 61G (1) is liable:
  - (a) in the case of an individual, to a penalty of not more than:
    - (i) 50 penalty units for a first offence, or
    - (ii) 100 penalty units for a second or subsequent offence, or
  - (b) in the case of a body corporate, to a penalty of not more than:
    - (i) 200 penalty units for a first offence, or
    - (ii) 400 penalty units for a second or subsequent offence.
- (2) If a continuing state of affairs is created by an offence referred to in subsection (1), the offender is liable to a penalty of not more than:
  - (a) 50 penalty units in the case of an individual, or
  - (b) 200 penalty units in the case of a body corporate,in respect of each day on which that offence continues, in addition to the penalty specified in that subsection.

### **61O Certain civil proceedings barred**

An action at law or in equity does not lie against a person for:

- (a) the omission to do any thing the doing of which, or
  - (b) the doing of any thing the omission to do which,
- would constitute an offence under this Division or the regulations made under this Division.

### **61P Regulations**

- (1) The Governor may make regulations, not inconsistent with this Division, for or with respect to any matter that by this Division is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Division, and in particular, for or with respect to any of the following:
  - (a) the labelling of packages in which tobacco products are packed by a manufacturer, including the position of labels on such packages and the size, colour, style and nature of such labels or labelling,
  - (b) statements or warnings for the purpose of labelling of any such packages,
  - (c) any statements or warnings to be displayed inside shops and other retail outlets where tobacco products are offered or exposed for sale,
  - (d) the labelling of tobacco vending machines,
  - (e) the duty of persons packing, or causing other persons to pack, specified tobacco products prepared for smoking to label those tobacco products in a specified manner,
  - (f) prohibiting the sale of packages containing specified tobacco products

prepared for smoking unless those packages are labelled in a specified manner,  
(g) the form of notices to be used in connection with the entry by authorised officers on to any premises, and the manner and occasion of use of such notices,  
(h) generally regulating the form and content of tobacco advertisements and the matter that may appear on packages containing tobacco products,  
(i) creating offences and providing in respect of any such offence a penalty not exceeding 10 penalty units.

(2) In this section, "**specified**" means specified in regulations made under this section.

## **Part 7 – Administration**

### **Division 1 – Medical officers of health**

#### **62 Nomination of medical officers of health**

(1) The Governor may nominate a medical practitioner to be a medical officer of health at such remuneration, if any, as is determined by the Governor.

(2) Part 2 of the *Public Sector Management Act 1988* does not apply to the nomination of a medical officer of health and a medical officer of health is not subject to that Part of that Act.

(3) The regulations may confer or impose functions on a medical officer of health.

#### **62A Appointment of acting medical officers of health**

(1) The Director-General:

(a) may, from time to time, appoint a medical practitioner to act as a medical officer of health during the illness or absence of the officer or while there is a vacancy in the office of such an officer, and

(b) may, at any time, terminate the appointment.

(2) A medical practitioner has, while acting as a medical officer of health, all the functions of the officer and is to be regarded as the officer.

#### **63 Medical districts**

(1) The Governor may, by order published in the Gazette:

(a) describe a medical district (which may include a specified river, lake or harbour, or any specified coastal water or other water), and

(b) nominate a specified medical practitioner as the medical officer of health for the medical district on and from a date stated in the order.

(2) An order under this section may describe a group of medical districts and nominate the same medical practitioner as the medical officer of health for each of them.

(3) The medical officer of health nominated for a medical district may exercise his or her functions under this Act only:

(a) within that medical district, or

(b) with the authority of the Director-General, within any other medical district during the absence, or a vacancy in the office, of its medical officer of health.

(4) With the authority of the Director-General, a medical practitioner who is an officer of the Department of Health and has the prescribed qualifications may, in any medical district, exercise any of the functions of the medical officer of health for the medical district.

#### **64 Inspection of, and extracts from, certain registers**

(1) A medical officer of health (or any person authorised by a medical officer of health) may, at any reasonable time, inspect the registers kept under the *Births, Deaths and Marriages Registration Act 1995*.

(2) With the authority of the Director-General, an officer of the Department of Health may, at any reasonable time, inspect those registers.

(3) The Registrar of Births, Deaths and Marriages is to make such arrangements as may be necessary for an extract from, or a copy of an entry in, a register to be supplied if required by a medical officer of health (or any person authorised by a medical officer of

health), or an officer of the Department of Health, entitled under this section to inspect the register.

### **65 Inspection of premises**

(1) For the purpose of giving effect to this Act, a medical officer of health (or any person authorised by a medical officer of health) may, at any reasonable time, enter and inspect any premises and may make inquiries of any person found on the premises.

(2) Section 72 (Powers of entry) applies in relation to any entry on premises for the purposes of this section and to any inspection or other action that is authorised by this section.

### **66 Reports by medical officers of health**

(1) If:

(a) a matter affecting the health of the public in a medical district comes to the notice of the medical officer of health for the district, or

(b) the Director-General requests the medical officer of health for a medical district to provide a report on a specified matter affecting the health of the public in the district,

the medical officer of health is to provide the Director-General with a report on the matter as soon as possible.

(2) If a matter in respect of which a medical officer of health provides a report under this section is a matter in respect of which a local authority may, or must, exercise a function, the medical officer of health is to send a copy of the report to the local authority.

### **67 Exercise by medical officer of health of functions of environmental health officer**

A medical officer of health (or any person authorised by a medical officer of health) may exercise any functions of an environmental health officer employed by a local authority.

## **Division 2 – Notifications by hospitals**

### **68 Definitions**

In this Division:

**"chief executive officer"**, in relation to a hospital, means the person responsible for the day to day administration of the affairs of the hospital.

**"hospital"** means:

(a) a public hospital within the meaning of the *Health Services Act 1997*, or

(b) (Repealed)

(c) a hospital, or a health care agency, within the meaning of the *Mental Health Act 1990*, or

(d) an establishment within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988*, or

(e) a nursing home, or

(f) any other institution prescribed by the regulations as a hospital for the purposes of this Division.

**"notifiable disease"** means a medical condition listed in Schedule 3.

### **69 Chief executive officer to provide information**

(1) A person who is providing professional care or treatment at a hospital and who has reasonable grounds for believing that:

(a) a patient at the hospital has a notifiable disease, or

(b) a person who was a patient at the hospital had a notifiable disease at any time during the person's stay in the hospital,

has a duty, and is authorised, to ensure that the chief executive officer of the hospital is

aware of the matter.

(2) The chief executive officer of the hospital must provide the Director-General, in accordance with the regulations, with such information as may be prescribed by the regulations in relation to:

- (a) a patient at the hospital who has a notifiable disease, or
- (b) a person who was a patient at the hospital and who had a notifiable disease at any time during the person's stay in the hospital.

Maximum penalty: 50 penalty units.

(3) The chief executive officer's obligation under subsection (2) arises immediately the chief executive officer is made aware, or otherwise has reasonable grounds for believing, that the patient (or person who was a patient) concerned has (or had) the disease.

(4) It is a defence to a prosecution under this section if the chief executive officer satisfies the court that he or she had reasonable cause to believe that the information concerned had been provided to the Director-General.

(5) Proceedings for an offence under this section may be commenced at any time within, but not later than, 2 years after the time at which the offence is alleged to have been committed.

### **Division 3 – Inspections and inquiries**

#### **70 Inspection of records**

(1) The Minister may, at any reasonable time, inspect any written records of a public authority that relate to public health.

(2) It is the duty of a public authority to make available any written record required for inspection in accordance with this section.

(3) If:

- (a) a record kept by a public authority is not a written record, and
- (b) it could have been inspected under this section if it had been a written record, and
- (c) the Minister requires the public authority to produce, and make available for inspection under this section, a written copy of the record,

the public authority has a duty to comply with the requirement.

(4) Section 72 (Powers of entry) applies in relation to an inspection under this section.

#### **71 Inquiries by Director-General**

(1) The Director-General may inquire into:

- (a) any matter relating to the health of the public, or
- (b) any matter that, under this Act, authorises a direction by, or that requires the approval or consent of, the Minister or the Director-General, or
- (c) any alleged offence under this Act.

(2) For the purposes of an inquiry under this section, a person authorised by the Director-General may enter any premises and:

- (a) require the occupier of the premises to make available for inspection any records that are in the possession, or under the control, of the occupier and relate to a matter in respect of which an inquiry is authorised by this section, and
- (b) inspect any records, whether or not made available under paragraph (a), that are on the premises and relate to such a matter, and
- (c) take samples for the purpose of analysis of a substance found on the premises.

(3) If:

- (a) a record kept on any premises is not a written record, and
- (b) a person authorised by the Director-General for the purposes of this section could have inspected the record if it had been a written record, and
- (c) a person so authorised requires the occupier of the premises to make available for inspection a written copy of the record, and
- (d) the occupier refuses or fails to comply with the requirement,

the occupier is guilty of an offence. Maximum penalty: 50 penalty units.

(4) Section 72 (Powers of entry) applies in relation to any entry on premises for the purposes of this section and to any inspection or other action that is authorised by this section.

## Part 8 – Miscellaneous

### 72 Powers of entry

(1) A power conferred by this Act to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the person proposing to exercise the power:

- (a) is in possession of a certificate of authority, and
- (b) gives reasonable notice to the occupier of the premises of intention to exercise the power, unless the giving of notice would defeat the purpose for which it is intended to exercise the power, and
- (c) exercises the power at a reasonable time, unless it is being exercised in an emergency, and
- (d) produces the certificate of authority if required to do so by the occupier of the premises, and
- (e) uses no more force than is reasonably necessary to effect the entry or make the inspection.

(2) A certificate of authority must:

- (a) state that it is issued under the *Public Health Act 1991*, and
- (b) give the name of the person to whom it is issued, and
- (c) describe the nature of the powers conferred and the source of the powers, and
- (d) state the date, if any, on which it expires, and
- (e) describe the kind of premises to which the power extends, and
- (f) bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate.

(3) If damage is caused by a person exercising a power to enter premises, a reasonable amount of compensation is recoverable as a debt owed by the employer of the person to the owner of the premises unless the occupier obstructed the exercise of the power.

(4) If goods are taken from premises by a person who exercises a power to enter the premises, a person otherwise entitled to possession of the goods is, as far as is practicable, to be allowed access to the goods.

(5) This section does not apply to a power conferred by a search warrant issued under the *Law Enforcement (Powers and Responsibilities) Act 2002*.

(6) In this section, "**certificate of authority**" means a certificate that, to enable a person to exercise a power conferred by this Act, is issued to the person:

- (a) by the Minister or the Director-General, unless the power is to be exercised on behalf of a local authority, or
- (b) by a local authority if the power is to be exercised on behalf of the local authority.

### 73 Search warrants

(1) In this section: "**authorised officer**" has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

(2) A person who has the written authority of the Minister, the Director-General or a local authority to do so may apply to an authorised officer for a search warrant in relation to premises if admission to the premises has been refused, or an attempt to obtain admission has been, or is likely to be, unsuccessful, and:

- (a) there are reasonable grounds for believing that an offence under this Act or the regulations has been, or is being, committed on the premises, or
- (b) the search warrant is sought in order to exercise a power to enter or inspect

conferred by this Act.

(3) An authorised officer to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a person named in the warrant to enter the premises.

(4) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

#### **74 Obstruction or assault of officers and others**

(1) A person who intimidates or wilfully obstructs or hinders another person exercising, or attempting to exercise, a function conferred or imposed on the other person by this Act is guilty of an offence. Maximum penalty: 50 penalty units.

(2) A person who assaults an authorised officer in the course of the exercise by the officer of his or her duties under this Act or the regulations is guilty of an offence. Maximum penalty: 50 penalty units or imprisonment for a term not exceeding 6 months, or both.

#### **75 Disclosure of information**

(1) A person who discloses information obtained in connection with the administration of this Act is guilty of an offence unless the court is satisfied that there was a lawful excuse for the disclosure. Maximum penalty: 50 penalty units.

(2) The reference in this section to a lawful excuse for the disclosure of information includes a reference to disclosure of the information:

- (a) with the consent of the person to whom it relates, or
- (b) in connection with the administration or execution of this Act, or
- (c) for the purposes of legal proceedings arising out of this Act or of a report of any such legal proceedings, or
- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
- (e) in any other prescribed circumstances.

#### **76 Service of notices and other documents**

(1) The giving of notice to, or service of a notice or other document on, a person for the purposes of this Act may be effected by delivering it, or a true copy, to the residence of the person.

(2) The giving of notice to, or service of a notice or other document on, the owner or occupier of premises in that capacity may be effected for the purposes of this Act:

- (a) by delivering it to a person on the premises, or
- (b) if there is no person on the premises to whom it can be delivered--by fixing it to some conspicuous part of the premises.

(3) Instead of giving a notice, or serving a notice or other document, as is otherwise provided by this section, it may be served by post.

#### **77 Exclusion of personal liability**

(1) A person who exercises a function under this Act in good faith and for the purpose of executing this Act is not to be subjected personally to any action, liability, claim or demand based on the exercise of the function.

(2) Without affecting the generality of subsection (1), a person is not to be subjected personally to any legal proceedings, civil or criminal, for sending, giving or serving, in good faith, without negligence and for the purposes of this Act, a certificate, notice or other communication.

#### **78 Offences by corporations**

(1) If a corporation commits an offence under this Act or the regulations, each person who is a director of the corporation, or who is concerned in the management of the corporation, is to be taken to have committed the same offence if the person knowingly authorised or permitted the act or omission constituting the offence.

(2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

### **79 Proceedings for offences**

(1) Proceedings for an offence under this Act are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

(2) This section does not affect the operation of section 10AB, 10L, 50, 61M or 69.

### **80 Amendment of Schedules**

(1) The regulations may amend Schedule 1:

(a) by inserting the name of a medical condition in Category 1, 2, 3, 4 or 5 in the Schedule, or

(b) by omitting the name of a medical condition from Category 1, 2, 3, 4 or 5 in the Schedule.

(2) The regulations may amend or substitute Schedule 2.

(3) The regulations may amend Schedule 3 by inserting or omitting the name of a notifiable disease or a reference by means of which a notifiable disease may be identified.

### **81 Act binds the Crown**

(1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

(2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

### **82 Regulations**

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to any of the following:

(a) the prevention, mitigation and eradication of risks to public health,

(b) (Repealed)

(c) the places at which, and the conditions subject to which, a person may be detained under a public health order,

(c1) the closure of public swimming pools and public spas for any period during which they are a risk to public health,

(d) the installation, operation, maintenance and inspection of a regulated system within the meaning of Part 4,

(e) the functions (including powers of entry and inspection) of local authorities and authorised officers in relation to a regulated system within the meaning of Part 4,

(f) the directions that, in relation to a regulated system within the meaning of Part 4, may be given by a local authority or an authorised officer during, or as a result of, an investigation of an occurrence of Legionnaires' disease,

(g) compliance with directions referred to in paragraph (f),

(h) the provision of information by the owner or occupier of premises in relation to a regulated system within the meaning of Part 4 which is installed on the premises,

(i) the provision and keeping of operation manuals, and maintenance manuals, for a regulated system within the meaning of Part 4,

(j) the keeping of records, and the making of reports, in relation to a regulated system within the meaning of Part 4,

(k) the preparation rooms, equipment and apparatus in mortuaries, crematories and cemeteries, and any other matter relating to mortuaries, crematories and cemeteries that is for the protection of the health of the public,

(l) the inspection of mortuaries, crematories and cemeteries and of premises that may reasonably be suspected of being mortuaries, crematories or cemeteries,

- (m) the records to be kept in relation to mortuaries, crematories and cemeteries, and the inspection of records (including the making of copies or extracts from such records by or for environmental health officers and the public), equipment and apparatus in mortuaries, crematories and cemeteries or premises that may reasonably be suspected of being mortuaries, crematories or cemeteries,
- (n) the cases in which, the manner in which, and the conditions under which, cremations of human remains may take place,
- (o) matters preliminary to, and consequential upon, cremations of human remains,
- (p) the fees that may be charged for the cremation of human remains, for the preservation or disposal of the ashes and for related services,
- (q) the registration of cremations and burials and (with any necessary modifications) the application to the registration of cremations of the provisions of any other Act, or of any law, in force in relation to the registration of a burial of the body of a deceased person,
- (r) the embalming, interment, disposal and exhumation of the bodies of deceased persons,
- (s) the payment of specified fees in relation to applications made, approvals given, and other matters arising, under this Act.

(3) Section 72 (Powers of entry) applies in relation to any entry on, or inspection of or on, premises in accordance with a regulation.

(4) A regulation may apply, adopt or incorporate a publication as in force for the time being.

(5) The regulations may create offences punishable by a penalty not exceeding 20 penalty units.

### **83 Repeal of Public Health (Amendment) Act 1989 No 86**

The *Public Health (Amendment) Act 1989* is repealed on the day on which Part 4 of this Act commences.

### **84 Savings and transitional provisions**

Schedule 4 has effect.

## **Schedule 1 Scheduled medical conditions**

(Section 3)

### **Category 1**

Birth

Congenital malformation (as described in the "Manual of the International Statistical Classification of Diseases, Injuries, and Causes of Death" published by the World Health Organization, Geneva) in a child under the age of 1 year

Cystic fibrosis in a child under the age of 1 year

Hypothyroidism in a child under the age of 1 year

Perinatal Death

Phenylketonuria in a child under the age of 1 year

Pregnancy with a child having a congenital malformation (as described in the "Manual of the

International Statistical Classification of Diseases, Injuries, and Causes of Death" published by the World Health Organization, Geneva), cystic fibrosis, hypothyroidism, thalassaemia major or phenylketonuria

Sudden Infant Death Syndrome

Thalassaemia major in a child under the age of 1 year

**Category 2**

To be notified by medical practitioners

Acquired immunodeficiency syndrome (AIDS)

Acute viral hepatitis

Adverse event following immunisation

Avian influenza in humans

Creutzfeldt-Jakob disease (CJD) and variant Creutzfeldt-Jakob disease (vCJD)

Foodborne illness in two or more related cases

Gastroenteritis among people of any age in an institution (eg among persons in educational or residential institutions)

Leprosy

Measles

Pertussis (Whooping cough)

Severe Acute Respiratory Syndrome

Smallpox

Syphilis

Tuberculosis

**Category 3**

To be notified by laboratories

Anthrax

Arboviral infections

Avian influenza in humans

Botulism

Brucellosis

Cancer

Chancroid

Chlamydia

Cholera

Congenital malformation (as described in the "Manual of the International Statistical Classification of Diseases, Injuries, and Causes of Death" published by the World Health Organization, Geneva)

Creutzfeldt-Jakob disease (CJD) and variant Creutzfeldt-Jakob disease (vCJD)

Cryptosporidiosis

Cystic fibrosis

Diphtheria

Donovanosis

Giardiasis

Gonorrhoea

Haemophilus influenzae type b

Hepatitis A

Hepatitis B

Hepatitis C

Hepatitis D (delta)

Hepatitis E

Human immunodeficiency virus (HIV) infection

Hypothyroidism

Invasive pneumococcal infection

Influenza

Lead poisoning (as defined by a blood lead level of or above 15  $\mu\text{g}/\text{dL}$ )

Legionella infections

Leptospirosis

Listeriosis

Lymphogranuloma venereum

Lyssavirus

Malaria

Measles

Meningococcal infections

Mumps

Pertussis (Whooping Cough)

Phenylketonuria

Plague

Poliomyelitis

Pregnancy with a child having a congenital malformation (as described in the "Manual of the International Statistical Classification of Diseases, Injuries, and Causes of Death" published by the World Health Organization, Geneva), cystic fibrosis, hypothyroidism, thalassaemia major or phenylketonuria

Psittacosis

Q fever

Rabies

Rubella

Salmonella infections

Severe Acute Respiratory Syndrome

Shigellosis

Smallpox

Syphilis

Thalassaemia major

Tuberculosis

Tularaemia

Typhus (epidemic)

Verotoxin-producing *Escherichia coli* infection

Viral haemorrhagic fevers

Yellow fever

#### **Category 4**

Avian influenza in humans

Severe Acute Respiratory Syndrome

Tuberculosis

Typhoid

#### **Category 5**

Acquired Immune Deficiency Syndrome

Human Immunodeficiency Virus infection

## **Schedule 2 Health warnings**

(Sections 55, 56)

Health warnings must meet the requirements of Part 3 of the *Trade Practices (Consumer Product Information) (Tobacco) Regulations* made under the *Trade Practices Act 1974* of the Commonwealth, as in force from time to time, in so far as they relate to marking, display, position, prominence and rotation.

## **Schedule 3 Notifiable diseases**

(Section 68)

Acquired immunodeficiency syndrome (AIDS)

Acute viral hepatitis

Adverse event following immunisation

Avian influenza in humans

Botulism

Cancer

Cholera

Congenital malformation (as described in the "Manual of the International Statistical Classification of Diseases, Injuries, and Causes of Death" published by the World Health

Organization, Geneva) in a child under the age of 1 year

Creutzfeldt-Jakob disease (CJD) and variant Creutzfeldt-Jakob disease (vCJD)

Cystic fibrosis in a child under the age of 1 year

Diphtheria

Foodborne illness in two or more related cases

Gastroenteritis among people of any age, in an institution (eg among persons in educational or residential institutions)

Haemolytic Uraemic Syndrome

Haemophilus influenzae type b

Hypothyroidism in a child under the age of 1 year

Legionnaires' disease

Leprosy

Lyssavirus

Measles

Meningococcal disease

Paratyphoid

Pertussis (Whooping cough)

Phenylketonuria in a child under the age of 1 year

Plague

Poliomyelitis

Pregnancy with a child having a congenital malformation (as described in the "Manual of the International Statistical Classification of Diseases, Injuries, and Causes of Death" published by the World Health Organization, Geneva), cystic fibrosis, hypothyroidism, thalassaemia major or phenylketonuria

Rabies

Severe Acute Respiratory Syndrome

Smallpox

Syphilis

Tetanus

Thalassaemia major in a child under the age of 1 year

Tuberculosis

Typhoid

Typhus (epidemic)

Viral haemorrhagic fevers

Yellow fever

## **Schedule 4 Savings and transitional provisions**

(Section 84)

### **Part 1 – Preliminary**

#### **1 Regulations**

(1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the repeal of the *Public Health Act 1902* or later.

(2A) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Health Legislation Amendment Act 1995* or any of the following Acts:

*Public Health Amendment (Tobacco Advertising) Act 1997.*

*Health Legislation Further Amendment Act 2004* (but only to the extent that it amends this Act or repeals the *Nursing Homes Act 1988*)

*Health Legislation Amendment (Unregistered Health Practitioners) Act 2006*

(2B) A provision referred to in subclause (2A) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(2C) The regulations may also contain provisions of a savings or transitional nature consequent on the enactment of the *Water Legislation Amendment (Drinking Water and Corporate Structure) Act 1998*, but only in relation to the amendments made to this Act. Any such provision may, if the regulations so provide, take effect from the date of assent to that Act or a later date.

(3) To the extent that a provision referred to in subclause (1), (2A) or (2C) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the date of publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before that date of publication.

### **Part 2 – Provisions consequent on enactment of this Act**

#### **2 Definitions**

In this Part:

**"appointed day"** means the day appointed for the repeal of the *Public Health Act 1902*.

**"former Act"** means the *Public Health Act 1902* as in force immediately before the commencement of this Part.

### **3 Effect of proclamation under former Act**

If a proclamation in force under the former Act immediately before the appointed day had an effect that could be achieved under this Act by an order, the proclamation continues on that day to have effect as if it were such an order.

### **4 Medical districts and medical officers of health**

(1) A notification of a district in force under section 16 of the former Act immediately before the appointed day continues to have effect as if it were an order published on that day under section 63 of this Act.

(2) The appointment under section 18 of the former Act of a medical officer of health holding office immediately before the appointed day for a district continues to have effect as if it were a nomination made on that day under section 63 of this Act for that medical district.

### **5 Failure of local authority to exercise power**

(1) If, immediately before the appointed day, the Director-General was entitled under section 24 or 26A of the former Act to exercise a power, or to recover the cost of exercising a power, following a failure on the part of a local authority to comply with a requirement under that section to exercise the power, the failure to comply with the requirement has effect as a failure on the appointed day to comply with the same requirement made in a notice under section 10 of this Act given to the local authority.

(2) If, immediately before the appointed day, the time for compliance with a requirement made under section 24 or 26A of the former Act had not expired, the requirement has effect on the appointed day as if it were a requirement of a notice under section 10 of this Act to be complied with no later than the latest time for compliance fixed by the former Act.

### **6 School closure**

If, immediately before the appointed day, a school or college was still closed in accordance with a notice published under section 41 of the former Act, the notice has effect on the appointed day as an order in force under section 8 of this Act.

### **7 Public health orders**

A public health order in force immediately before the appointed day under Division 3A of Part 3B of the former Act continues to have effect as if it were a public health order:

- (a) made on the appointed day under Division 6 of Part 3 of this Act, and
- (b) expiring when it would have expired if the former Act had not been repealed.

### **8 Approval relating to crematory**

An approval in force immediately before the appointed day under section 51 (3) or (4) of the former Act takes effect on the appointed day as if it had been made on that day under section 52 of this Act.

### **9 Closure of water supply**

If, immediately before the appointed day, a well, dam, tank, stream or other source of water supply was still closed in accordance with a direction given in a notification published under section 72 of the former Act, the notification has effect on that day as an order in force under

section 7 of this Act.

### **Part 3 – Provisions consequent on enactment of the Health Legislation Amendment Act 1995**

#### **10 Definition**

In this Part, "**the Act**" means the *Health Legislation Amendment Act 1995*.

#### **11 Proceedings for offences under Part 4 (section 50)**

Section 50 (4), as replaced by Schedule 3 (1) to the Act, does not apply in respect of an offence alleged to have been committed before the replacement of that subsection. Section 50 (4), as in force immediately before its replacement by Schedule 3 (1) to the Act, continues to apply in respect of any such offence as if it had not been replaced.

#### **12 Chief executive officer to provide information (section 69)**

(1) The duty, under section 69 (1), as inserted by Schedule 3 (2) to the Act, of a person who is providing professional care or treatment at a hospital does not apply in respect of a period during which a person was a patient at the hospital before the commencement of Schedule 3 (2) to the Act.

(2) The obligation, under section 69 (2), as inserted by Schedule 3 (2) to the Act, of the chief executive officer of a hospital does not apply in respect of a period during which a person was a patient at the hospital before the commencement of Schedule 3 (2) to the Act. However, section 69, as in force immediately before the commencement of Schedule 3 (2) to the Act, continues to apply in relation to information, concerning persons suffering from a notifiable disease who are, or who have been, patients at the hospital, that the chief executive officer possessed immediately before that commencement.

### **Part 4 – Provisions consequent on enactment of the Public Health Amendment (Tobacco) Act 1996**

#### **13 Sale of tobacco to persons under 18**

(1) Section 59, as amended by the *Public Health Amendment (Tobacco) Act 1996*, does not apply in respect of proceedings for an offence under that section alleged to have been committed before the commencement of that amendment.

(2) Section 59, as in force immediately before the commencement of that amendment, continues to apply in respect of any such proceedings as if the amendment had not been made.

#### **14 Liability of employers**

Section 59A, as inserted by the *Public Health Amendment (Tobacco) Act 1996*, does not apply in respect of a contravention of section 59 that occurred before the commencement of section 59A.

### **Part 5 – Provisions consequent on enactment of the Public Health Amendment (Tobacco Advertising) Act 1997**

#### **15 Saving of certain exemptions**

An exemption under section 12 of the *Tobacco Advertising Prohibition Act 1991* that was in force immediately before the repeal of that section continues to have effect as though that section were still in force, and despite the provisions of section 61H.

#### **16 Termination of agreement**

(1) The agreement dated 14 April 1989 made between the Minister for Health and Phillip Morris (Aust) Limited, Rothmans of Pall Mall (Aust) Limited, W D and H O Wills

(Aust) Limited and R J Reynolds Tobacco (Aust) Inc., is terminated.

(2) No person is entitled to compensation, and no action or proceedings at law or in equity may be instituted or maintained by any person in respect of the termination of the agreement.

### **17 Tobacco Advertising Prohibition Committee**

(1) The Tobacco Advertising Prohibition Committee is dissolved.

(2) No compensation or remuneration is payable to a former member of the Tobacco Advertising Prohibition Committee for loss of office as a consequence of the enactment of this clause.

### **18 Tobacco vending machines**

Despite section 61F, a tobacco vending machine that, on the day before the *Public Health Amendment (Tobacco Advertising) Bill 1997* was introduced into the Legislative Assembly, was lawfully placed on licensed premises (within the meaning of the *Liquor Act 1982*) that do not include a restricted area (within the meaning of that Act) may continue to be placed there until the close of business on 31 December 1998.

## **Part 6 – Provision consequent on the repeal of the Nursing Homes Act 1988**

### **19 Reference to nursing homes in other Acts, instruments or documents**

A reference in any other Act, statutory instrument or other document to a nursing home within the meaning of the *Nursing Homes Act 1988* is taken to include a reference to a nursing home within the meaning of this Act.

## **Part 7 – Provisions consequent on enactment of the Health Legislation Amendment (Unregistered Health Practitioners) Act 2006**

### **20 De-registered health practitioners**

Division 3 of Part 2A, as inserted by the *Health Legislation Amendment (Unregistered Health Practitioners) Act 2006*, extends to a health practitioner whose registration is, immediately before that Division commences, cancelled (within the meaning of that Division) or suspended.

### **Historical notes**

The following abbreviations are used in the Historical notes:

Am	amended	No	number	Schs	Schedules
Cl	clause	p	page	Sec	section
Cll	clauses	pp	pages	Secs	sections
Div	Division	Reg	Regulation	Subdiv	Subdivision
Divs	Divisions	Regs	Regulations	Subdivs	Subdivisions
GG	Government Gazette	Rep	repealed	Subst	substituted
Ins	inserted	Sch	Schedule		

Table of amending instruments *Public Health Act 1991 No 10*. Assented to 26.4.1991. Date of commencement, 18.11.1991, sec 2 and GG No 159 of 15.11.1991, p 9520. This Act has been amended as follows:

1991	No 92	<i>Search Warrants (Amendment) Act 1991</i> . Assented to 17.12.1991. Date of commencement, 20.9.1992, sec 2 and GG No 116 of 18.9.1992, p 6837.
	No	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 1991</i> . Assented to 17.12.1991.

	94	Date of commencement of the provision of Sch 2 relating to the <i>Public Health Act 1991</i> , assent, Sch 2.
199 2	No 34	<i>Statute Law (Miscellaneous Provisions) Act 1992</i> . Assented to 18.5.1992. Date of commencement of the provisions of Sch 1 relating to the <i>Public Health Act 1991</i> , assent, Sch 1.
	No 110	<i>Public Health (Amendment) Act 1992</i> . Assented to 8.12.1992. Date of commencement, 14.5.1993, sec 2 and GG No 47 of 14.5.1993, p 2254.
199 3	No 32	<i>Local Government (Consequential Provisions) Act 1993</i> . Assented to 8.6.1993. Date of commencement of Sch 2, 1.7.1993, sec 2 (1) and GG No 73 of 1.7.1993, p 3342.
199 4	No 19	<i>Health Legislation (Miscellaneous Amendments) Act 1994</i> . Assented to 16.5.1994. Date of commencement of Sch 1, 1.7.1994, sec 2 and GG No 88 of 1.7.1994, p 3240. Sch 2 was not commenced and was repealed by the <i>Public Health Amendment Act 1996 No 1</i> .
	No 32	<i>Statute Law (Miscellaneous Provisions) Act 1994</i> . Assented to 2.6.1994. Date of commencement of the provisions of Sch 1 relating to the <i>Public Health Act 1991</i> , 24.2.1995, Sch 1 and GG No 18 of 24.2.1995, p 918.
199 5	No 9	<i>Health Legislation Amendment Act 1995</i> . Assented to 9.6.1995. Date of commencement, 14.6.1995, sec 2 and GG No 72 of 14.6.1995, p 3113.
	No 11	<i>Statute Law Revision (Local Government) Act 1995</i> . Assented to 9.6.1995. Date of commencement of the provisions of Sch 1 relating to the <i>Public Health Act 1991</i> , 23.6.1995, sec 2 (1) and GG No 77 of 23.6.1995, p 3279.
	No 62	<i>Births, Deaths and Marriages Registration Act 1995</i> . Assented to 12.12.1995. Date of commencement, 1.1.1996, sec 2 and GG No 156 of 22.12.1995, p 8682.
199 6	No 1	<i>Public Health Amendment Act 1996</i> . Assented to 8.5.1996. Date of commencement, 29.7.1996, sec 2 and GG No 71 of 14.6.1996, p 2995.
	No 33	<i>Public Health Amendment (Tobacco) Act 1996</i> . Assented to 24.6.1996. Date of commencement, 1.10.1996, sec 2 and GG No 110 of 27.9.1996, p 6524.
199 7	No 77	<i>Administrative Decisions Legislation Amendment Act 1997</i> . Assented to 10.7.1997. Date of commencement of Sch 5.25, 6.10.1998, sec 2 and GG No 143 of 2.10.1998, p 7889.
	No 109	<i>Business Franchise Licences (Repeal) Act 1997</i> . Assented to 9.12.1997. Date of commencement, assent, sec 2.
	No 129	<i>Public Health Amendment (Tobacco Advertising) Act 1997</i> . Assented to 16.12.1997. Date of commencement, 31.8.1999, sec 2 and GG No 98 of 27.8.1999, p 6687.
	No 154	<i>Health Services Act 1997</i> . Assented to 19.12.1997. Date of commencement, 1.7.1998, sec 2 and GG No 97 of 26.6.1998, p 4423.
199 8	No 137	<i>Justices Legislation Amendment (Appeals) Act 1998</i> . Assented to 8.12.1998. The amendment made by Sch 2.22 was not commenced and was repealed by the <i>Statute Law (Miscellaneous Provisions) Act (No 2) 2000 No 93</i> .
	No 145	<i>Water Legislation Amendment (Drinking Water and Corporate Structure) Act 1998</i> . Assented to 8.12.1998. Date of commencement, 1.1.1999, sec 2 and GG No 176 of 18.12.1998, p 9726.
199 9	No 76	<i>Health Legislation Amendment Act 1999</i> . Assented to 3.12.1999. Date of commencement, 14.1.2000, sec 2 and GG No 3 of 14.1.2000, p 167.
	No 85	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 1999</i> . Assented to 3.12.1999. Date of commencement of Sch 2.51, assent, sec 2 (2).
200 0	No 64	<i>Medical Practice Amendment Act 2000</i> . Assented to 5.7.2000. Date of commencement, 1.10.2000, sec 2 and GG No 125 of 22.9.2000, p 10679.
200 1	No 15	<i>Chiropractors Act 2001</i> . Assented to 30.4.2001. Date of commencement of Sch 6, 1.8.2002, sec 2 and GG No 124 of 31.7.2002, p 5696.
	No	<i>Dental Practice Act 2001</i> . Assented to 11.10.2001. Date of commencement,

	64	15.8.2004, sec 2 and GG No 134 of 13.8.2004, p 6449.
	No 67	<i>Physiotherapists Act 2001</i> . Assented to 11.10.2001. Date of commencement of Sch 6.7, 1.12.2002, sec 2 and GG No 237 of 29.11.2002, p 10062
200 2	No 30	<i>Optometrists Act 2002</i> . Assented to 21.6.2002. Date of commencement of Sch 6.7, 16.6.2004, sec 2 and GG No 97 of 16.6.2004, p 3723.
	No 91	<i>Public Health Amendment (Juvenile Smoking) Act 2002</i> . Assented to 28.11.2002. Date of commencement, assent, sec 2.
	No 103	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i> . Assented to 29.11.2002. Date of commencement of Sch 4, 1.12.2005, sec 2 and GG No 45 of 15.4.2005, p 1356.
200 3	No 40	<i>Statute Law (Miscellaneous Provisions) Act 2003</i> . Assented to 22.7.2003. Date of commencement of Sch 2.25, assent, sec 2 (2).
	No 45	<i>Nurses Amendment Act 2003</i> . Assented to 30.9.2003. Date of commencement of Sch 2.18 [1] and [2], 1.6.2004, sec 2 (1) and GG No 91 of 28.5.2004, p 3221; date of commencement of Sch 2.18 [3] and [4], 1.8.2004, sec 2 (1) and GG No 126 of 30.7.2004, p 6114.
	No 69	<i>Podiatrists Act 2003</i> . Assented to 20.11.2003. Date of commencement of Sch 6.6, 9.12.2005, sec 2 (1) and GG No 154 of 9.12.2005, p 10028.
200 4	No 40	<i>State Water Corporation Act 2004</i> . Assented to 30.6.2004. Date of commencement of Sch 3.12 [1] [3] and [4], 1.7.2004, sec 2 and GG No 110 of 1.7.2004, p 4983; date of commencement of Sch 3.12 [2], 1.1.2005, sec 2 and GG No 204 of 24.12.2004, p 9667.
	No 87	<i>Health Legislation Further Amendment Act 2004</i> . Assented to 30.11.2004. Date of commencement, 1.1.2005, sec 2 and GG No 200 of 17.12.2004, p 9305.
200 5	No 82	<i>Health Legislation Amendment Act 2005</i> . Assented to 17.11.2005. Date of commencement of Sch 6, 9.12.2005, sec 2 (2) and GG No 154 of 9.12.2005, p 10028.
	(842 )	<i>Public Health Amendment (Avian Influenza) Regulation 2005</i> . GG No 157 of 16.12.2005, p 10954. Date of commencement, on gazettal.
200 6	No 124	<i>Health Legislation Amendment (Unregistered Health Practitioners) Act 2006</i> . Assented to 4.12.2006. Date of commencement, assent, sec 2.

This Act has also been amended by regulations under sec 80. This update does not include amendments made by Gazette No 168 of 22.12.2000, p 13554 which were published in error--see erratum in Gazette No 170 of 29.12.2000, p 13954.

#### Table of amendments

Sec 3	Am 1992 No 110, Sch 2 (1); 1995 No 11, Sch 1; 1995 No 62, Sch 2; 1997 No 77, Sch 5.25 [1]; 1997 No 154, Sch 6.40 [1]; 2004 No 87, Sch 5 [1]; 2006 No 124, Sch 1 [1].
Part 2, heading	Subst 1998 No 145, Sch 1 [1].
Sec 4	Am 1992 No 34, Sch 1.
Sec 6	Am 1992 No 110, Sch 2 (2).
Sec 7	Am 1992 No 110, Sch 2 (3). Rep 1998 No 145, Sch 1 [2].
Part 2A	Ins 2000 No 64, Sch 2.2 [2]. Subst 2006 No 124, Sch 1 [2].
Part 2A, Div 1, heading	Ins 2006 No 124, Sch 1 [2].
Secs 10AA, 10AB	Ins 2000 No 64, Sch 2.2 [2]. Subst 2006 No 124, Sch 1 [2].
Part 2A, Div 2,	Ins 2006 No 124, Sch 1 [2].

heading	
Sec 10AC	Ins 2001 No 15, Sch 6.5. Am 2001 No 67, Sch 6.7 [1]; 2003 No 45, Sch 2.18 [1]. Subst 2006 No 124, Sch 1 [2].
Sec 10AD	Ins 2001 No 67, Sch 6.7 [2]. Am 2003 No 45, Sch 2.18 [2]; 2003 No 69, Sch 6.6 [1]. Subst 2006 No 124, Sch 1 [2].
Sec 10AE	Ins 2002 No 30, Sch 6.7. Subst 2006 No 124, Sch 1 [2].
Sec 10AF	Ins 2001 No 64, Sch 6.5. Subst 2006 No 124, Sch 1 [2].
Sec 10AG	Ins 2003 No 45, Sch 2.18 [3]. Subst 2006 No 124, Sch 1 [2].
Sec 10AH	Ins 2003 No 69, Sch 6.6 [2]. Am 2005 No 82, Sch 6 [1] [2]. Subst 2006 No 124, Sch 1 [2].
Sec 10AI	Ins 2006 No 124, Sch 1 [2].
Part 2A, Divs 3, 4 (secs 10AJ- 10AN)	Ins 2006 No 124, Sch 1 [2].
Part 2B (previously Part 2A)	Ins 1998 No 145, Sch 1 [3]. Renumbered 2000 No 64, Sch 2.2 [1].
Part 2B, Div 1	Ins 1998 No 145, Sch 1 [3].
Sec 10A	Ins 1998 No 145, Sch 1 [3]. Am 2004 No 40, Sch 3.12 [1] [2].
Part 2B, Divs 2, 3 (secs 10B- 10H)	Ins 1998 No 145, Sch 1 [3].
Part 2B, Div 4	Ins 1998 No 145, Sch 1 [3].
Sec 10I	Ins 1998 No 145, Sch 1 [3]. Am 2004 No 40, Sch 3.12 [3] [4].
Secs 10J, 10K	Ins 1998 No 145, Sch 1 [3].
Sec 10L, heading	Ins 1998 No 145, Sch 1 [3]. Am 2000 No 64, Sch 2.2 [3].
Sec 10L	Ins 1998 No 145, Sch 1 [3].
Sec 10M, heading	Ins 1998 No 145, Sch 1 [3]. Am 2000 No 64, Sch 2.2 [3].
Sec 10M	Ins 1998 No 145, Sch 1 [3].
Sec 14	Am 1992 No 34, Sch 1; 1992 No 110, Sch 2 (4).
Sec 16	Am 1992 No 110, Sch 2 (5).
Sec 17	Am 1994 No 19, Sch 1 (1).
Sec 20	Am 1995 No 62, Sch 2.
Sec 21	Am 1997 No 77, Sch 5.25 [2] [3].
Sec 23	Am 1994 No 19, Sch 1 (2).
Sec 24	Am 1997 No 77, Sch 5.25 [5].
Secs 25, 26	Subst 1997 No 77, Sch 5.25 [6].
Sec 30	Am 1997 No 77, Sch 5.25 [4] [7].
Sec 31	Am 1997 No 77, Sch 5.25 [4].
Sec 32	Am 1997 No 77, Sch 5.25 [8].
Sec 36	Am 1997 No 77, Sch 5.25 [4].
Part 3, Div 8	Subst 1997 No 77, Sch 5.25 [9].

Secs 40, 41	Subst 1997 No 77, Sch 5.25 [9].
Sec 42	Rep 1997 No 77, Sch 5.25 [9].
Part 3A (secs 42A-42D)	Ins 1992 No 110, Sch 1.
Part 3B, Div 1	Ins 1996 No 1, Sch 1.
Sec 42E	Ins 1996 No 1, Sch 1. Am 2003 No 45, Sch 2.18 [4].
Part 3B, Divs 2, 3 (secs 42F-42P)	Ins 1996 No 1, Sch 1.
Sec 50	Am 1995 No 9, Sch 3 (1).
Part 5, heading	Subst 1999 No 76, Sch 1 [1].
Sec 51	Rep 1993 No 32, Sch 2. Ins 1999 No 76, Sch 1 [2].
Sec 52	Subst 2004 No 87, Sch 5 [2].
Part 6, heading	Subst 1999 No 76, Sch 1 [3].
Sec 53	Am 1997 No 129, Sch 1 [1]-[3]; 1999 No 76, Sch 1 [4].
Sec 53A	Ins 1997 No 129, Sch 1 [4].
Sec 54	Subst 1997 No 129, Sch 1 [4].
Sec 58	Rep 1997 No 129, Sch 1 [5]. Ins 2002 No 91, Sch 1 [1].
Sec 58A	Ins 2002 No 91, Sch 1 [1].
Sec 59	Am 1996 No 33, Sch 1 (1); 1997 No 129, Sch 1 [6]-[9]; 1999 No 76, Sch 1 [5]-[9]; 2002 No 91, Sch 1 [2]; 2003 No 40, Sch 2.25.
Sec 59AA	Ins 2002 No 91, Sch 1 [3].
Sec 59A	Ins 1996 No 33, Sch 1 (2). Am 1997 No 109, Sch 1.5 [1].
Sec 60	Rep 1997 No 109, Sch 1.5 [2]. Ins 2002 No 91, Sch 1 [4].
Sec 61	Am 1997 No 129, Sch 1 [9].
Part 6, Div 4	Ins 1997 No 129, Sch 1 [10].
Secs 61A-61L	Ins 1997 No 129, Sch 1 [10].
Sec 61M	Ins 1997 No 129, Sch 1 [10]. Am 1999 No 85, Sch 2.51.
Secs 61N-61P	Ins 1997 No 129, Sch 1 [10].
Sec 62A	Ins 1992 No 110, Sch 2 (6).
Sec 64	Am 1992 No 34, Sch 1; 1995 No 62, Sch 2.
Sec 65	Am 1992 No 34, Sch 1; 1992 No 110, Sch 2 (7).
Sec 67	Am 1992 No 34, Sch 1.
Sec 68	Am 1997 No 154, Sch 6.40 [2]; 2004 No 87, Sch 5 [3].
Sec 69	Subst 1995 No 9, Sch 3 (2).
Sec 71	Am 2006 No 124, Sch 1 [3].
Sec 72	Am 1991 No 94, Sch 2; 2002 No 103, Sch 4.75 [1].
Sec 73	Am 1991 No 92, Sch 2; 2002 No 103, Sch 4.75 [2]-[4].
Sec 74	Am 1997 No 129, Sch 1 [11] [12].
Sec 75	Am 1992 No 34, Sch 1.
Sec 79	Am 1995 No 9, Sch 3 (3); 1997 No 129, Sch 1 [13]; 1998 No 145, Sch 1 [4]; 2006 No 124, Sch 1 [4].
Sec 82	Am 1992 No 110, Sch 2 (8); 1994 No 32, Sch 1; 1997 No 77, Sch 5.25 [10].

Sch 1	Am GG No 159 of 15.11.1991, p 9528; GG No 47 of 14.5.1993, p 2260; GG No 23 of 3.3.1995, p 1080; GG No 119 of 25.10.1996, p 7122; GG No 117 of 31.10.1997, p 8826; GG No 139 of 25.9.1998, p 7693; GG No 162 of 15.12.2000, p 13176; GG No 170 of 29.12.2000, p 13951; GG No 73 of 16.4.2003, p 4485; GG No 95 of 6.6.2003, p 5032; GG No 74 of 16.4.2004, p 2106; 2005 (842), Sch 1 [1].
Sch 2	Subst GG No 98 of 27.8.1999, p 7357.
Sch 3	Am GG No 159 of 15.11.1991, p 9528; GG No 47 of 14.5.1993, p 2260; GG No 23 of 3.3.1995, p 1080; GG No 119 of 25.10.1996, p 7122; GG No 117 of 31.10.1997, p 8826; GG No 170 of 29.12.2000, p 13951; GG No 95 of 6.6.2003, p 5032; GG No 74 of 16.4.2004, p 2106; 2005 (842), Sch 1 [2].
Sch 4	Am 1992 No 34, Sch 1; 1995 No 9, Sch 3 (4)-(6); 1996 No 33, Sch 1 (3); 1997 No 129, Sch 1 [14]-[16]; 1998 No 145, Sch 1 [5] [6]; 2004 No 87, Sch 5 [4] [5]; 2006 No 124, Sch 1 [5] [6].