



Public Health Act 1997

An Act to protect and promote the health of communities in the State and reduce the incidence of preventable illness

[Royal Assent 14 January 1998]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

1. Short title

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

2. Commencement

This Act commences on a day or days to be proclaimed.

3. Interpretation

In this Act –

activity includes any activity existing, proposed or partly completed or undertaken;

Advisory Committee means the Public Health Advisory Committee established under section 37;

Agency means an Agency within the meaning of the State Service Act 2000;

air-handling system means a system that directs air in a positive and controlled manner to and from specific enclosures by means of air-handling plant, ducts, plenums, air-distribution devices or control devices;

ancillary tobacco product – see section 72A;

Appeal Tribunal means the Resource Management and Planning Appeal Tribunal established under the Resource Management and Planning Appeal Tribunal Act 1993;

approved means approved by the Director;

approved form means a form that –

- (a) is approved by the Director; or
- (b) contains information approved by the Director;

area includes any geographic location;

authorised officer means –

- (a) the Director; or
- (b) a medical officer of health; or
- (c) an environmental health officer;

carton means a package that contains more than one packet of cigarettes;

certificate of authority means a certificate issued under [section 31](#);

certificate of registration as a supplier of water from a private water source means the certificate referred to in [section 136](#);

certificate of registration as a water carrier means the certificate referred to in [section 136H](#);

certificate of registration of premises means the certificate referred to in [section 98](#);

certificate of registration of regulated system means the certificate referred to in [section 116](#);

cervical cancer means the malignant growth of human tissue in the uterine cervix which –

(a) if unchecked, is likely to spread to adjacent tissue and beyond its site of origin; and

(b) has a tendency to recur;

cervical cancer test means a test or procedure which may indicate whether or not a person is suffering from cancer of the uterine cervix or any of its precursors;

Cervical Screening Register means the register maintained under [Division 1](#) of [Part 7](#);

child means a person who has not attained the age of 18 years;

child-care facility means any facility used for the care of children;

cigarette shipper means packaging that contains more than one carton;

clinical assessment means an assessment of the health of a person and includes, but is not limited to including, the following:

- (a) any physical or psychological examination;
- (b) the taking of samples of any substance or secretion from the body of a person;
- (c) an assessment of the health of a person whether by viewing, listening to, or corresponding with, the person or by another method;
- (d) tests to determine the health of the person;
- (e) any other prescribed method of assessing the health of a person;

closure order means a closure order and an interim closure order in force under Division 2 of Part 5;

concealed storage facility means –

- (a) a storeroom, cellar or other enclosed place; or
- (b) a cupboard, locker or drawer –
that –
- (c) is inaccessible to the public; and
- (d) is kept closed, except when there is an immediate need to put things in it or take things from it; and
- (e) when closed, cannot be seen into by the public;

confectionery includes –

- (a) sweets, chocolates and candy; and
- (b) popcorn and other snack foods containing potato, nuts or cereal; and
- (c) confectionery novelties; and
- (d) muesli bars, fruit bars, health food bars and other similar products;

consent means consent given –

- (a) without any force, fraud or threat; and
- (b) with knowledge and understanding of the medical and social consequences of the matter to which the consent relates;

cooling tower means –

(a) a device that lowers the temperature of water by evaporative cooling in which atmospheric air is in contact with falling water thereby exchanging heat; or

(b) a device referred to in paragraph (a) that incorporates a water-refrigerant exchanger or water-water heat exchanger;

corresponding register means a register that –

(a) is established under a law of the Commonwealth, another State or a Territory; and

(b) contains information of a kind held on the Cervical Screening Register;

council fee means a fee imposed by a council under section 185;

designated smoking area means an area that is specified, in an approval under section 67I that is in force, to be a designated smoking area;

Director means the Director of Public Health appointed under section 6;

director, in relation to a body corporate, includes –

(a) a person occupying or acting in the position of a director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position; and

(b) any person in accordance with whose directions or instructions the directors or members of the governing body are accustomed to act;

disease includes –

(a) any sickness or illness which may cause a disruption of human body functions, systems or organs; and

(b) any notifiable disease; and

(c) any symptoms, signs or conditions, associated with a disease;

electronic dispensing unit – see section 71;

emergency declaration means a declaration made under section 14;

enclosed means –

(a) having a ceiling or roof; and

(b) being completely or substantially enclosed by walls or windows, except for doors and passageways;

enclosed public place means a place for the use of the public which –

(a) has a ceiling or roof; and

(b) except for doors and passageways, is completely or substantially enclosed by walls or windows;

environmental health officer means a person appointed under section 10 or 11;

excluded person means a mortgagee, lessor or financial institution not having actual or complete control, access, use or management of a place, vehicle or other thing;

food has the same meaning as in the Food Act 2003;

general manager means a general manager as defined in the Local Government Act 1993;

guidelines means guidelines issued under section 184 and, while an amendment to a guideline under section 17A is in force, means a guideline as so amended;

health officer means –

(a) an environmental health officer; or

(b) a medical officer of health;

HPV vaccination information means information contained in the National HPV Vaccination Program Register;

humidifying system means a system which adds moisture to air;

information register means a register referred to in Division 2 of Part 7;

infringement notice means an infringement notice referred to in Division 6 of Part 8;

interim closure order means an order in force under section 87(2);

laboratory means a laboratory whether associated with a hospital or not;

licensed premises has the meaning assigned to that expression in section 3 of the Liquor Licensing Act 1990;

medical officer of health means a person appointed under section 10 or 11;

Medicare Australia means the body of that name established by the Human Services (Medicare) Act 1973 of the Commonwealth;

multiple-use building means a building used or intended to be used for domestic and other purposes;

National HPV Vaccination Program Register means the register of that name established and kept under section 9BA of the National Health Act 1953 of the Commonwealth;

nominated officer means – see section 13A;

non-domestic building means a building used or intended to be used for purposes other than domestic;

non-tobacco cigarette means a rolled cylinder of a substance, other than tobacco, produced by a commercial process that is intended for smoking;

notifiable contaminant means –

(a) an organism, or substance, that is –

(i) declared in a notice under section 40(b) to be a notifiable contaminant; or

(ii) a member of a class of organisms or substances, members of which are declared in a notice under section 40(b) to be notifiable contaminants; and

(b) a toxin that is produced by –

(i) an organism that is declared in a notice under section 40(b) to be a notifiable contaminant; or

(ii) a member of a class of organisms, members of which are declared in a notice under section 40(b) to be notifiable contaminants;

notifiable disease means –

(a) a disease declared in a notice under section 40 to be a notifiable disease; and

(b) a disease that is a member of a class of diseases, members of which are declared in a notice under section 40 to be notifiable diseases;

occupier, in relation to a place, means –

(a) the holder of any right at law to use or carry on operations at that place other than an excluded person; or

(b) if a place is occupied by different persons in different parts –

(i) the person occupying each part; and

(ii) the holder of any right at law to use or carry on operations in that place other than an excluded person;

outdoor dining area means an area that is not enclosed and that contains tables or seating provided by the occupier of licensed premises, a restaurant, a cafe, a snack bar or a takeaway food shop for the use of its customers to consume solid food;

outdoor smoking area has the meaning given by section 3A;

owner includes –

- (a) an occupier; and
- (b) a person in charge of or operating any premises;

package includes –

- (a) a box, carton, cylinder, packet, pouch, tin and wrapping; and
- (b) the material or substance from which a package is made;

packet means an individual packet containing a tobacco product;

personal information, in relation to a person, means the person's name, address and contact details;

personal quantity, of tobacco product, means a small quantity for personal use, not in any event exceeding –

- (a) a single package of cigarettes; or
- (b) a single package of cigars; or
- (c) a single package of tobacco;

place of assembly includes –

- (a) any place or area used for the entertainment of members of the public; and
- (b) any place or area used for the assembly of members of the public for social and recreational purposes; and
- (c) any school or other place or area used for community or public purposes;

place of assembly licence means a licence in force under Division 1 of Part 5;

plain sales unit means a sales unit that –

- (a) is not displaying any wording or imagery that contravenes the guidelines; and
- (b) does not have any mirror or other reflective device; and
- (c) does not have any interior or exterior lighting; and
- (d) does not have any lighting directed specifically at it, whether from a spotlight, down light or otherwise or whether the illumination is constant or intermittent; and

(e) is not fitted with or connected to any device capable of causing the sales unit (or any part of it) or its contents (or any of its contents) to move in a way that is visible to the public; and

(f) is not displaying any wording, trademarks or colour schemes usually used in the packaging of any tobacco product held in it; and

(g) is not displaying any partial wording or imagery of any packaging of tobacco product held in it; and

(h) has no lines, borders or other visual design effects that make it stand out; and

(i) is not linked to any hologram;

premises includes –

(a) land; and

(b) a building or part of a building; and

(c) a structure or part of a structure; and

(d) fences, walls, outbuildings, service installations and other appurtenances of a structure; and

(e) a tent, stall or other temporary structure; and

(f) a boat or a pontoon;

private water source means a source of water used to supply water for human consumption, other than water infrastructure used by a regulated entity for that purpose;

product line, in relation to a tobacco product, means a kind of tobacco product distinguishable from another kind of tobacco product by any one or more of the following characteristics:

(a) its length, mass or volume;

(b) its content;

(c) its brand name or trade mark;

(d) in the case of a packet of cigarettes or cigars, the number of cigarettes or cigars in the packet;

proof of age means –

(a) a driver's licence; or

(b) a passport; or

(c) a class of document specified in the guidelines for the purpose of this definition;

public includes any person working in an enclosed public place;

public authority means –

(a) any council; or

(b) any body corporate established under an enactment having jurisdiction limited to a district, locality or part of the State; or

(c) any body corporate established under an enactment or in the exercise of prerogative rights of the Crown to administer or control any department, business, undertaking or public institution on behalf of the State;

public health means the physical, mental and social wellbeing of the community;

public health emergency means any situation in which a threat to public health is likely to occur;

public health risk activity means any activity which may result in the transmission of disease;

public notice means a notice published in the *Gazette* and a daily newspaper circulating generally in the State;

public office means the place at which a council carries on its administrative activities;

public place includes a place to which the public ordinarily has access, whether or not by payment or invitation;

public street means a public street as defined in the *Traffic Act 1925*, and includes a part of such a street;

publish includes –

(a) publish material in a printed format which is available to the public; or

(b) publish material by any electronic means; or

(c) publish material by radio or television transmission; or

(d) provide material in a cinematographic film or videotape which is available to the public; or

(e) provide material in a book or sound recording which is available to the public;
or

(f) make known to the public in any other manner or by any other means;

record includes –

(a) a document and register; and

(b) an electronic record;

rectification notice means a notice in force under section 92;

register includes any method or database for the compilation of information;

registered means registered under this Act;

regulated entity means a regulated entity within the meaning of the Water and Sewerage Industry Act 2008;

regulated system means –

(a) an air-handling system; or

(b) a cooling tower; or

(c) a warm-water system; or

(d) a humidifying system; or

(e) any other system or process that may involve a risk of legionnaire's disease (*legionellosis*) required to be registered under section 113;

regulations means regulations made and in force under this Act;

residential care facility means a facility that provides residential care;

roof includes any structure or device, whether fixed or movable, that prevents or impedes upward airflow;

sales unit means –

(a) in the case of specialist tobacconist premises, a receptacle, area of shelving, electronic dispensing unit or other thing from which tobacco products are dispensed when sold; or

(b) in the case of retail premises other than specialist tobacconist premises, a receptacle, area of shelving, vending machine, electronic dispensing unit or other thing from which tobacco products are dispensed when sold;

sell includes –

- (a) dispose by any method for valuable consideration; and
- (b) barter or exchange; and
- (c) dispose to an agent for sale on consignment; and
- (d) offer or expose for sale; and
- (e) keep or have in possession for sale; and
- (f) agree to sell; and
- (g) send, forward or deliver for sale; and
- (h) dispose by way of raffle, lottery or other game of chance; and
- (i) provide a sample;

smoke means to –

- (a) smoke, hold or otherwise have control over an ignited cigarette, cigar or pipe;
or
- (b) permit the release of smoke or fumes from a burning cigarette, cigar or pipe;

smoke-free area means an area or place referred to in section 67B(1) but does not include any part of a smoke-free area that is a designated smoking area;

smoking accoutrement means any of the following tobacco products:

- (a) a cigar cutter;
- (b) a cigarette holder;
- (c) a cigarette roller;
- (d) a packet of cigarette papers;
- (e) a pipe;
- (f) a tobacco filter;

solid food means food other than beverages;

specialist tobacconist premises means –

(a) premises that are operated independently and apart from any other retail business and where only tobacco, tobacco products, matches and cigarette or pipe lighters are sold; or

(b) premises that, under section 72B, are determined to be specialist tobacconist premises;

takeaway food shop means premises where the primary function is the sale of solid food that is ready for immediate consumption with the intention that the food will be consumed elsewhere than in those premises;

threat to public health means any event or circumstance which is likely to –

(a) damage, injure or compromise public health; or

(b) prevent or restrict the improvement of public health;

tobacco advertisement means writing, still or moving picture, sign, symbol or other visual image or message or audible message, or a combination of 2 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 any of the following:

(a) tobacco in any form;

(b) any product of which tobacco is an ingredient;

(c) any device or article designed or intended only for use in connection with tobacco;

(d) any prescribed product;

(e) any package, or cigarette shipper, containing a thing referred to in paragraph (a), (b), (c) or (d) of this definition;

tobacco seller's licence means a tobacco seller's licence in force under Division 3 of Part 4;

vehicle includes any vessel or aircraft;

vending machine – see section 71;

warm-water system means a system that stores water between 30°C – 50°C;

warrant means a warrant issued under section 43;

water includes –

- (a) any potable water; and
- (b) any reticulated water; and
- (c) any ground water; and
- (d) any water supplied from tanks, dams or springs; and
- (e) any recreational water; and
- (f) any man-made, modified or natural body of water; and
- (g) any water used in food processing or manufacturing processes; and
- (h) any water in which shellfish or fish are grown or from which shellfish or fish are taken; and
- (i) any water used in a regulated system;

wharf includes any structure that extends beyond the low-water mark;

workplace means any premises or place where an employee, contractor or self-employed person is employed or engaged in any industry.

3A. Meaning of "outdoor smoking area"

(1) In this Act, an area is an outdoor smoking area if –

(a) it is provided for the use of customers who smoke by the occupier of –

(i) premises to which a licence or permit under the Liquor Licensing Act 1990 applies; or

(ii) premises in which an outdoor dining area is provided; and

(b) it is not serviced; and

(c) it is an area that –

(i) does not have a roof; or

(ii) has a roof and a perimeter where not more than 50% of the perimeter consists of walls and windows (whether open or closed); or

(iii) is of a class determined by the Director by notice in the *Gazette* to be an open area; or

(iv) on the application of an occupier of premises to which a licence or permit under the *Liquor Licensing Act 1990* applies, has been determined by the Director by notice provided to that occupier to be an open area.

(2) For the purposes of subsection (1)(b) – *service*, in relation to an area, includes the delivery of beverages and snacks or other food to customers in that area.

4. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

5. Act prevails

Any provision of this Act which is inconsistent with a provision of any other Act prevails over the latter provision to the extent of that inconsistency.

PART 2 - Administration

Division 1 - Authorised officers, &c.

6. Director of Public Health

(1) A person is to be appointed as Director of Public Health subject to and in accordance with the *State Service Act 2000*.

(2) A person appointed under subsection (1) must –

- (a) be a medical practitioner; and
- (b) have qualifications in the area of public health.

7. General functions and powers of Director

(1) The functions of the Director are –

- (a) to develop and implement strategies to promote and improve public health; and
- (b) to ensure that the provisions of this Act are complied with; and
- (c) to advise the Minister on any changes to this Act that may be necessary or appropriate; and

(d) to carry out any other function for the purpose of this Act the Minister determines.

(2) The Director may do anything necessary or convenient to perform any functions under this Act.

(3) The Minister may give the Director directions in respect of any power or function of the Director under this Act and the Director must comply with the directions.

8. Report on public health

(1) The Director is to submit to the Minister a report on the status of public health in the State –

(a) as soon as practicable after the commencement of this Act; and

(b) at 5-yearly intervals.

(2) The Minister is to cause a report to be tabled in both Houses of Parliament.

9. Delegation by Director

(1) The Director may delegate any of his or her functions or powers, other than this power of delegation, to any person, class of person, public authority or Agency.

(2) The Director is not to delegate any function or power to a council without that council's consent.

(3) The Director is not to revoke a delegation to a council without consulting that council.

10. Health officers

(1) Subject to and in accordance with the *State Service Act 2000*, persons with approved qualifications may be appointed as environmental health officers or medical officers of health for the purpose of this Act.

(2) A person employed by any Agency may be appointed as an environmental health officer or a medical officer of health and holds office in conjunction with that employment.

11. Appointment of officers

(1) The general manager of a council may appoint –

(a) persons who are medical practitioners as medical officers of health; or

(b) persons with approved qualifications as environmental health officers.

(2) The general manager of a council, if required by the Director, must appoint –

(a) persons who are medical practitioners as medical officers of health; or

(b) persons with approved qualifications as environmental health officers.

(3) If the general manager of a council fails to appoint a person within 3 months after being required to do so under subsection (2), the Director may make the appointment on behalf of the general manager on any terms the Director considers appropriate.

(4) If the Director is satisfied that the general manager of a council has reasonable grounds for not appointing a person with approved qualifications as an environmental health officer, the Director may –

(a) allow the general manager to appoint a person who does not have those approved qualifications; or

(b) allow the general manager to appoint a person on any terms and conditions the Director determines; or

(c) exempt the general manager from being required to appoint a person.

12. Approved qualifications

The Director may approve the qualifications required for appointment under section 10 or 11 generally or for a particular appointment.

13. Functions of officers

(1) The general manager of a council is to ensure that a medical officer of health and an environmental health officer carry out any functions the Director directs the council to carry out.

(2) Medical officers of health and environmental health officers are to –

(a) ensure that the provisions of this Act are complied with within the municipal area in respect of which they are appointed; and

(b) assist in the preparation of any reports required to be made by a council under this Act.

13A. Nominated officers

(1) For the purposes of this Act, each of the following is a nominated officer:

(a) the Director;

- (b) a health officer;
- (c) a police officer;
- (d) a person approved by the Director;
- (e) a member of a class of persons approved by the Director.

(2) An approval under paragraph (d) or (e) may –

- (a) impose conditions on the exercise or performance by the relevant person or persons of the powers or functions of a nominated officer under this Act; or
- (b) be unconditional.

Division 2 - Emergency powers

14. Emergency declaration

(1) The Director, by any means the Director considers appropriate, may declare that a public health emergency exists if satisfied that the situation requires it.

(2) The declaration is to specify –

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

(3) The Director is to notify the State Controller, within the meaning of the *Emergency Management Act 2006*, if the existence of a public health emergency is declared under this section.

15. Duration of emergency declaration

(1) An emergency declaration comes into force on the date on which it is made and continues, unless it is sooner revoked under subsection (4), for –

- (a) the period, not exceeding 7 days, specified in the declaration; or
- (b) any further period as provided under subsection (2).

(2) The Director, by any means the Director considers appropriate, may declare that the period during which an emergency declaration is in force is extended by a period, of not more than 7 days, specified in the declaration under this subsection, if the Director is satisfied that the situation requires it.

(3) The Director may declare as many extensions under subsection (2) as he or she thinks the situation requires.

(4) The Director must revoke an emergency declaration as soon as practicable after he or she is satisfied that the situation no longer requires the emergency declaration to be in force.

(5) The Director is to notify the State Controller, within the meaning of the *Emergency Management Act 2006*, if –

(a) the period of an emergency declaration is extended under subsection (2); or

(b) an emergency declaration is revoked under subsection (4).

16. Directions of Director

(1) While an emergency declaration is in force, the Director may take any action or give any directions to –

(a) manage a threat to public health or a likely threat to public health; or

(b) quarantine or isolate persons in any area; or

(c) evacuate any persons from any area; or

(d) prevent or permit access to any area; or

(e) control the movement of any vehicle.

(2) The Director may give any one or more of the following directions while an emergency declaration is in force:

(a) that any specified person undergo –

(i) a clinical assessment specified in the direction; or

(ii) a clinical assessment, specified in the direction, conducted by a person, or a member of a class of persons, specified in the direction;

(b) that any specified person move to, or stay in, a specified area;

(c) that any substance or thing be seized;

(d) that any substance or thing be destroyed;

(e) that any other action be taken the Director considers appropriate.

(2A) A direction given under this section may specify the manner in which the direction is to be complied with.

(3) A person must comply with a direction of the Director given under this section.

Penalty:

Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both.

(4) A person who carries out a clinical assessment for the purpose of a direction given under subsection (2)(a) must provide to the Director a written report in relation to the assessment as soon as practicable after the assessment is completed.

Penalty:

Fine not exceeding 25 penalty units.

(5) A direction given under this section ceases to be in force when the requirements of the direction have been satisfied.

(6) The Director may revoke a direction given under this section.

(7) The Director must revoke under subsection (6) a direction as soon as practicable after he or she is satisfied that it is no longer necessary, for the purposes of managing a threat to public health or a likely threat to public health, for the direction to remain in force.

(8) If a direction given under this section, or an order under section 16C(1)(e), requires a person to be quarantined or isolated or to stay in a specified area, the Director, at the required intervals, must –

(a) consider whether it is necessary for the person to continue to be subject to the direction or order; and

(b) if necessary in order to determine whether it is necessary for the person to continue to be subject to the direction or order, arrange for the clinical assessment of the person.

(9) The required intervals are intervals that the Director considers reasonable, but not less than once in every successive period of 7 days.

16A. Warrant may be issued if person fails to comply with direction under section 16

(1) The Director may apply to a magistrate for the issue under this section of a warrant in relation to a person, if –

(a) the person has failed to comply with a direction of the Director given under section 16; and

(b) in the opinion of the Director, it is necessary, for the purposes of managing a threat to public health or a likely threat to public health, for the direction to be complied with.

(2) A magistrate may, on the application of the Director, issue a warrant –

(a) authorising the apprehension, by –

(i) a person authorised by the Director to execute the warrant; or

(ii) a police officer –

of a person who is specified in the warrant (the *specified person*); and

(b) authorising the entry of any premises by a person referred to in paragraph (a)(i) or (ii), if the person believes on reasonable grounds that the specified person is in the premises; and

(c) authorising the specified person to be detained, isolated, or quarantined, until the specified person may be brought before a magistrate.

(3) A magistrate may only issue a warrant under subsection (2) in relation to a specified person if the magistrate is satisfied that –

(a) the specified person has failed to comply with a direction of the Director given under section 16; and

(b) in the opinion of the Director, it is necessary, for the purposes of managing a threat to public health or a likely threat to public health, for the direction to be complied with.

(4) The Director may apply under subsection (1) for a warrant by telephone if the Director is of the opinion that the situation is an emergency.

16B. Person apprehended under warrant to be brought before magistrate

(1) A person who is apprehended under a warrant issued under section 16A is to be brought before a magistrate as soon as practicable.

(2) Despite subsection (1), if a risk to the health of a person who is apprehended under a warrant issued under section 16A, or to the health of other persons, may occur if the person were to be brought before a magistrate, that subsection is taken to be satisfied if –

(a) the person is represented by another person who is appointed by the person, or a magistrate or court, to represent the person in proceedings under this Part; and

(b) a magistrate or court agrees to the person not being brought before a magistrate in accordance with subsection (1).

16C. Orders of magistrate

(1) A magistrate may take one or more of the following actions in relation to a person who is apprehended under a warrant issued under section 16A and brought before the magistrate:

(a) order the person to comply with a direction of the Director given to the person under section 16;

(b) by order, vary any direction of the Director, if the direction as so varied could have been given by the Director under section 16;

(c) order the person –

(i) to comply with a requirement, determined by the magistrate and specified in the order, that the Director could have imposed on the person in a direction given under section 16 or section 42; and

(ii) to continue to comply with the requirement either until the requirement has been satisfied or the Director gives a declaration under subsection (4) in relation to the order;

(d) order that a clinical assessment of the person be carried out;

(e) order that the person be placed and remain in quarantine, or isolation, for a period that is to end when the Director gives a declaration under subsection (4) in relation to the order.

(2) A magistrate may only make an order under subsection (1) if he or she is of the opinion that it is necessary to do so for the purposes of managing a threat to public health or a likely threat to public health.

(3) A magistrate before whom a person apprehended under a warrant issued under section 16A is brought may, by order, revoke a direction given to the person under section 16, if the magistrate is of the opinion that it is not necessary, for the purposes of managing a threat to public health or a likely threat to public health, for the direction to be complied with.

(4) The Director may, by notice to a person to whom an order made under subsection (1)(c) or (e) relates, declare that the Director is of the opinion that it is no longer necessary, for the purposes of managing a threat to public health or a likely threat to public health, for the order to continue in force.

(5) An order under this section that requires a person to comply with a direction given under section 16 is revoked, or ceases to be in force, as soon as the direction is revoked, or ceases to be in force, under that section.

(6) An order under subsection (1)(c) or (e) ceases to be in force as soon as the requirement is satisfied or the Director issues a notice under subsection (4).

(7) A person to whom an order under this section relates, or the Director, may appeal to the Supreme Court against the making of the order.

17. Special powers

(1AA) In this section –
authorised person means a person who is –

(a) authorised under subsection (1); or

(b) a member of a class of persons that is authorised under subsection (1).

(1) The Director may authorise persons or a class of persons for the purposes of this Division.

(2) The Director may require any authorised person to assist in carrying out a direction under this Division.

(3) An authorised person or police officer, in assisting in carrying out the direction, may –

(a) enter, by reasonable force if necessary, any place it is reasonably necessary to do so to enable the direction to be carried out or to –

(i) save human life; or

(ii) prevent injury to any person; or

(iii) rescue any injured or endangered person; and

(b) close any area, premises or vehicle; and

(c) close to traffic any road, street or other way on which traffic passes; and

(d) remove by reasonable force any person who fails to comply with the direction.

17A. Emergency amendment of guidelines

(1) The Director, while an emergency declaration is in force, may amend or revoke, under this subsection, a guideline.

(2) The Director may only amend or revoke under subsection (1) a guideline if he or she is of the opinion that it is necessary to do so for the purposes of managing a threat to public health, or a likely threat to public health, to which the emergency declaration relates.

(3) The Director may revoke under this subsection an amendment, to a guideline, made under subsection (1).

(4) The Director may only revoke under subsection (3), an amendment to a guideline made under subsection (1), while an emergency declaration is in force, if the revocation occurs before the end of the period of 30 days after the emergency declaration ceases to be in force.

(5) The Director may, if he or she is of the opinion that a guideline that was revoked under subsection (1) should continue in force, declare the revocation to be of no effect on and from a specified day.

(6) The Director may only issue a declaration under subsection (5) in relation to a revocation of a guideline that occurred while an emergency declaration is in force, if the declaration under subsection (5) is issued before the end of the period of 30 days after the emergency declaration ceases to be in force.

(7) If a declaration is issued under subsection (5) in relation to a revocation of a guideline, the revocation ceases to be in effect on the day specified in the declaration as the day on which the revocation is to cease to be of effect.

(8) Section 184(4) and section 196(2) do not, until the end of the period of 30 days after an emergency declaration ceases to be in force, apply in relation to an amendment of any guideline, or a revocation of any guideline, made under subsection (1) while the emergency declaration was in force.

(9) If section 196(2) applies in relation to an amendment or revocation made under subsection (1) of this section while an emergency declaration is in force, section 196(2) applies in relation to the amendment or revocation as if the reference in that section to the day on which the amendment or revocation takes effect were a reference to the first day after the end of the period of 30 days after the emergency declaration ceases to be in force.

(10) Section 184(4) and section 196(2) do not, despite subsection (8), apply in relation to –

(a) an amendment made under subsection (1) that is revoked under subsection (3);
or

(b) a revocation under subsection (3); or

(c) a revocation under subsection (1) to which a declaration under subsection (5) relates; or

(d) a declaration under subsection (5).

(11) Nothing in this section is to be taken to prevent the amendment or revocation of a guideline under section 184.

17B. Notification of taking of actions under section 17A

(1) The Director, as soon as practicable after amending or revoking a guideline under section 17A(1), must take reasonable steps to ensure that persons who the Director considers ought to be notified of the amendment or revocation are so notified.

(2) The Director, as soon as practicable after a revocation under section 17A(3), or a declaration under section 17A(5), is made must take reasonable steps to ensure that persons who the Director considers ought to be notified of the revocation or declaration are so notified.

(3) If, for the purposes of subsection (1) or (2), a notification by electronic message is sent by or on behalf of the Director to an electronic address of a person (the *notified person*) who has advised –

(a) the Director; or

(b) a person acting on behalf of the Director –

that electronic messages in relation to public health matters may be sent to that address, the notified person is to be taken to have been notified of the contents of the message.

(4) Subsection (3) does not limit the means by which, for the purposes of this section, a person may be notified of an amendment, revocation or declaration under section 17A.

17C. Defences to certain offences in relation to guidelines

(1) If an amendment to a guideline is made under section 17A(1), a person does not commit an offence under –

(a) section 184(5) by failing to comply with the guideline; or

(b) another provision, of this Act, an element of which consists of failing to comply with the guideline –

if the person is an unnotified person in respect of the offence.

(2) For the purposes of subsection (1), a person is an unnotified person in respect of an offence if –

(a) the person commits the offence only by failing to comply with a provision, of a guideline, to which an amendment under section 17A(1) relates; and

(b) had the amendment not come into force, the act, or failure of the person to act, that constituted in whole or in part the failure to comply with the provision of the guideline would not have constituted a failure to comply with the provision; and

(c) the offence is alleged to have been committed after the amendment came into force but before –

(i) the day on which public notice of the amendment of the guideline is given under section 184(4); or

(ii) the day on which notice of the revocation of the amendment is given to the person under section 17B(2); and

(d) notice of the amendment was not given to the person under section 17B(1).

(3) If a guideline is revoked under section 17A(1), a person does not commit an offence under –

(a) section 184(5) by failing to comply with the guideline; or

(b) another provision, of this Act, an element of which consists of failing to comply with a guideline –

if the person is an unnotified person in respect of the offence.

(4) For the purposes of subsection (3), a person is an unnotified person in respect of an offence if –

(a) the person commits the offence only by complying with a provision, of a guideline, to which a revocation under section 17A(1) relates; and

(b) had the revocation not come into force, the act, or failure of the person to act, that constituted in whole or in part the failure to comply with the provision of the guideline would not have constituted a failure to comply with the provision; and

(c) the offence is alleged to have been committed after the revocation came into force but before –

(i) the day on which public notice of the revocation of the guideline is given under section 184(4); or

(ii) the day on which notice is given to the person under section 17B(2) that the revocation is of no effect; and

(d) notice of the revocation was not given to the person under section 17B(1).

(5) If an amendment to a guideline made under section 17A(1) is revoked under section 17A(3), a person does not commit an offence under –

(a) section 184(5) by failing to comply with the guideline; or

(b) another provision, of this Act, an element of which consists of failing to comply with the guideline –

if the person is an unnotified person in respect of the offence.

(6) For the purposes of subsection (5), a person is an unnotified person in respect of an offence if –

(a) the person only commits the offence by failing to comply with a provision, of a guideline, to which an amendment under section 17A(1) relates; and

(b) had the amendment not been revoked under section 17A(3), the act, or failure of the person to act, that constituted in whole or in part the failure to comply with the provision of the guideline would not have constituted a failure to comply with the provision; and

(c) the offence is alleged to have been committed after the amendment was revoked under section 17A(3) but before the end of the period of 30 days after the emergency declaration that was in force when the amendment was made ceases to be in force; and

(d) notice of the revocation was not given to the person under section 17B(2).

(7) If a revocation under section 17A(1) of a guideline is declared to be of no effect under section 17A(5), a person does not commit an offence under –

(a) section 184(5) by failing to comply with the guideline; or

(b) another provision, of this Act, an element of which consists of failing to comply with the guideline –

if the person is an unnotified person in respect of the offence.

(8) For the purposes of subsection (7), a person is an unnotified person in respect of an offence if –

(a) the person only commits the offence by failing to comply with a provision, of a guideline, to which a revocation under section 17A(1) relates; and

(b) had a declaration not been made under section 17A(5) in relation to the revocation, the act, or failure of the person to act, that constituted in whole or in

part the failure to comply with the provision of the guideline would not have constituted a failure to comply with the provision; and

(c) the offence is alleged to have been committed after the declaration was made under section 17A(5) but before the end of the period of 30 days after the emergency declaration, that was in force when the amendment was made, ceases to be in force; and

(d) notice of the declaration under section 17A(5) was not given to the person under section 17B(2).

18. Compensation

(1) A person may apply to the Minister for reasonable compensation for any loss or damage suffered as a result of anything done under this Division.

(2) Compensation is payable at an amount the Minister considers appropriate.

(3) Compensation is not payable to any person who suffered any loss or damage because –

(a) of any action or inaction by that person that is not the result of a direction under this Division; or

(b) the loss or damage caused or contributed to the public health emergency.

19. Report by Director

After an emergency declaration ceases to be in force, the Director is to submit to the Minister a report containing full details of –

(a) the events resulting in the making of the declaration; and

(b) any action taken under this Division; and

(c) any directions given under this Division.

Division 3 - Public health inquiries and investigations

20. Holding of inquiry

The Director, with the approval of the Minister, may hold an inquiry in respect of –

(a) any matter concerning public health; or

(b) the administration of this Act.

21. Procedure at inquiry

(1) An inquiry is to be conducted –

(a) with as little formality and technicality as a proper consideration of the matter permits; and

(b) in accordance with any relevant guidelines.

(2) The Director –

(a) is not bound by the rules of evidence; and

(b) must observe the rules of natural justice.

22. Powers at inquiry

For the purpose of an inquiry, the Director may –

(a) require a person to appear and give evidence at the inquiry; and

(b) require a person to answer any relevant question; and

(c) take evidence on oath or affirmation; and

(d) require a person to take an oath or make an affirmation; and

(e) take statements and receive affidavits; and

(f) require the production of any relevant document.

23. Report on inquiry

(1) The Director is to submit to the Minister a report of the findings of an inquiry.

(2) The Minister is to cause a copy of the Director's report to be tabled in both Houses of Parliament.

24. Investigation

(1) If a matter does not, in the opinion of the Director, justify an inquiry, the Director may carry out any necessary investigation into the matter.

(2) In carrying out an investigation, the Director –

(a) has the powers specified in section 22; and

(b) may take any action the Director considers necessary to protect public health.

25. Protection of Director

(1) The Director, in exercising any power or performing any function under this Division, has the same protection and immunity as a judge of the Supreme Court.

(2) A person required to attend at an inquiry or investigation as a witness has the same protection as a witness in a proceeding in the Supreme Court.

26. Offences relating to inquiries and investigations

(1) A person, without reasonable excuse, must not fail to –

(a) appear or give evidence if required to do so; or

(b) answer a question; or

(c) take an oath or make an affirmation; or

(d) produce a document.

Penalty:

Fine not exceeding 50 penalty units.

(2) A person appearing at an inquiry or investigation must not knowingly give evidence that is false or misleading.

Penalty:

Fine not exceeding 50 penalty units.

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

Penalty:

Fine not exceeding 50 penalty units.

Division 4 - Councils

27. General functions of councils

(1) A council, within its municipal area, must –

(a) develop and implement strategies to promote and improve public health; and

(b) ensure that the provisions of this Act are complied with; and

(c) carry out any other function for the purpose of this Act the Minister or Director determines.

(2) A council must carry out any function under this Act in accordance with any relevant guidelines.

28. Orders relating to functions

(1) The Director may order –

(a) a council to exercise any power or perform any function under this Act; or

(b) any authorised officer to carry out in urgent circumstances a specified function of a council under this Act; or

(c) any authorised officer to perform any function under this Act in any municipal area.

(2) If a council fails to exercise any power or perform any function, the Director may exercise the power or perform the function at the council's expense.

(3) Before the Director makes an order or takes any action under this section in relation to a council, the Director, unless the circumstances require immediate action, is to –

(a) consult with the general manager of the council; or

(b) hold an inquiry to establish why the council has failed to perform any function.

(4) A council may request the Director to exercise any of its powers or perform any of its functions at the council's expense.

29. Power over wharves

A power or function of a council under this Act extends to any wharf that is in, or adjacent to, its municipal area.

Division 5 - Powers of councils and authorised officers

30. Entry, inspection and seizure

(1) For the purpose of this Act, an authorised officer may at any reasonable time –

(a) enter, remain in and inspect any area, premises, body of water or vehicle; and

(b) inspect any thing found in or on any area, premises, body of water or vehicle; and

(c) mark, fasten, secure, take and remove a sample of any thing found in or on any area, premises, body of water or vehicle; and

(d) open any container, receptacle or package found in or on any area, premises, body of water or vehicle; and

(e) weigh, count, measure or gauge any thing found in or on any area, premises, body of water or vehicle; and

(f) seize any thing or record found in or on any area, premises, body of water or vehicle; and

(g) take any record found in or on any area, premises, body of water or vehicle for the purpose of copying it; and

(h) seal any area, premises, body of water or vehicle.

(2) A person, other than the Director, may exercise a power under this section only if the person –

(a) provides a certificate of authority when requested by the owner of the area, premises, body of water or vehicle; and

(b) gives reasonable notice unless notice would defeat the purpose of the intended exercise of the power; and

(c) uses no more force than is necessary to exercise the power.

(3) A person may require a police officer to assist in exercising any power under this section.

(4) A person who seized any thing under subsection (1)(f), by notice in writing served on the owner of the thing, must specify –

(a) the details of the thing seized; and

(b) the place to which the thing has been taken.

30A. Powers of certain nominated officers

The Director may authorise a nominated officer to exercise any specified power referred to in Division 5 of Part 2 for the purpose of Part 4 as if the officer were an authorised officer.

31. Certificate of authority

(1) The Director or a council is to issue a certificate of authority to an authorised officer or a nominated officer authorised under section 30A.

(2) A certificate of authority is to –

(a) state that it is issued for the purposes of this Act; and

(b) specify the powers which the authorised officer or nominated officer authorised under section 30A may exercise under it; and

(c) specify any expiry date.

32. Production of records

(1) A council or an authorised officer may require a person to produce any record required to be kept under this Act.

(2) A council or an authorised officer may –

(a) examine any record produced under subsection (1); and

(b) remove the record for the purpose of paragraph (c); and

(c) take extracts from, or copies of, the record by any means.

33. Production of things

A council or an authorised officer may require a person to produce for inspection any thing in the person's possession if –

(a) the council or the officer reasonably believes that it may disclose evidence of the commission of an offence under this Act; or

(b) it is otherwise necessary for the purposes of this Act.

34. Production of licence

A council or an authorised officer may –

(a) require a person to produce for inspection any licence the person holds or should hold; and

(b) examine, remove and take photographs or copies of, or extracts or notes from, any licence.

35. Photographs, sketches, measurements and recordings

For the purposes of this Act, a council or an authorised officer may –

- (a) take any photograph, film or video recording; and
- (b) take any copy of, or extract from, any record; and
- (c) take any measurements; and
- (d) make any sketches or drawing; and
- (e) make any other recording by any other means.

36. Information requirements

(1) A council or an authorised officer may require a person to –

- (a) give his or her full name and residential address; and
- (b) give details of any licence, permit or exemption under this Act; and
- (c) provide any information relating to public health reasonably required for the purposes of this Act.

(2) A council or an authorised officer may require any person to give information about that person's or another person's activities in respect of any matter under this Act.

(3) A person must comply with a requirement made under this section.

Penalty:

Fine not exceeding 50 penalty units.

Division 6 - Public Health Advisory Committee

37. Public Health Advisory Committee

- (1) The Public Health Advisory Committee is established.
- (2) The Advisory Committee consists of 5 persons with appropriate expertise in the area of public health appointed by the Minister.
- (3) The Minister is to appoint one of the members as chairperson of the Advisory Committee.
- (4) Schedule 1 has effect with respect to membership and meetings of the Advisory Committee.

38. Functions and powers of Advisory Committee

- (1) The Advisory Committee is to provide advice to the Minister and the Director on any matter relating to public health as the Minister and Director may determine.
- (2) The Advisory Committee may do anything necessary or convenient to perform its functions.

39. Staff

- (1) State Service officers and State Service employees may be appointed to assist the Advisory Committee to carry out its functions.
- (2) A person appointed under subsection (1) holds office in conjunction with State Service employment.

PART 3 - Prevention and control of disease

Division 1 - Notifiable diseases and notifiable contaminants

40. Notifiable diseases and contaminants

The Director, by public notice, may declare –

- (a) a disease, whether communicable or non-communicable, that is specified in the notice, or all diseases, whether communicable or non-communicable, that are members of a class of diseases specified in the notice, to be notifiable diseases; and
- (b) an organism, or substance, that is specified in the notice, or all organisms or substances that are members of a class of organisms or substances specified in the notice, to be notifiable contaminants.

41.

42. Directions of Director

- (1) The Director, by notice served on a person who the Director is aware or suspects on reasonable grounds has, or may have been exposed to, a notifiable disease, may require the person to comply with any one or more of the following directions:
 - (a) that the person be isolated in any place the Director determines;
 - (b) that the person be placed in quarantine in any place the Director determines;
 - (c) that the person be placed under the supervision of a specified person;
 - (d) that the person submit to clinical assessment, medical treatment or counselling;

(e) that the person disclose to a specified person the name and address of any other person with whom contact by that person may result or may have resulted in the transmission of the disease;

(f) that the person refrain from performing any specified work;

(g) that the person do anything or refrain from doing anything the Director determines.

(1A) A direction given under subsection (1) may specify the manner in which the direction is to be complied with.

(2) A person must comply with a direction given under subsection (1).

Penalty:

Fine not exceeding 50 penalty units.

(3) A direction given under subsection (1)(d) may require a person to submit to clinical assessment, medical treatment, or counselling, by a person, or a member of a class of persons, specified in the direction.

(4) A person who carries out a clinical assessment for the purpose of a direction given under subsection (1) must provide to the Director a written report in relation to the assessment as soon as practicable after the assessment is completed.

Penalty:

Fine not exceeding 25 penalty units.

(5) A direction given under this section ceases to be in force when the requirements of the direction have been satisfied.

(6) The Director may revoke a direction given under this section.

(7) The Director must revoke under subsection (6) a direction as soon as practicable after he or she is satisfied that it is no longer necessary, for the purposes of managing a threat to public health or a likely threat to public health, for the direction to remain in force.

(8) If a direction given under this section, or an order under section 45(1)(e), requires that a person be quarantined or isolated, the Director, at the required intervals, must –

(a) consider whether it is necessary for the person to continue to be subject to the direction or order; and

(b) if necessary in order to determine whether it is necessary for the person to continue to be subject to the direction or order, arrange for the clinical assessment of the person.

(9) The required intervals are intervals that the Director considers reasonable, but not less than once in every successive period of 7 days.

43. Warrant may be issued if person fails to comply with direction

(1) The Director may apply to a magistrate for the issue under this section of a warrant in relation to a person, if –

(a) the person has failed to comply with a direction of the Director given under section 42; and

(b) in the opinion of the Director, it is necessary, for the purposes of managing a threat to public health or a likely threat to public health, that the person comply with the direction.

(2) A magistrate may, on the application of the Director, issue a warrant –

(a) authorising the apprehension, by –

(i) a person authorised by the Director to execute the warrant; or

(ii) a police officer –

of a person who is specified in the warrant (the *specified person*); and

(b) authorising the entry of any premises by a person referred to in paragraph (a)(i) or (ii), if the person believes on reasonable grounds that the specified person is in the premises; and

(c) authorising the specified person to be detained, isolated, or quarantined, until the specified person may be brought before a magistrate.

(3) A magistrate may only issue a warrant under subsection (2) in relation to a specified person if the magistrate is satisfied that –

(a) the specified person has failed to comply with a direction of the Director given under section 42; and

(b) in the opinion of the Director, it is necessary, for the purposes of managing a threat to public health or a likely threat to public health, that the specified person comply with the direction.

(4) The Director may apply under subsection (1) for a warrant by telephone if the Director is of the opinion that the situation is an emergency.

44. Person apprehended under warrant to be brought before magistrate as soon as practicable

(1) A person who is apprehended under a warrant issued under section 43 is to be brought before a magistrate as soon as practicable.

(2) Despite subsection (1), if a risk to the health of a person who is apprehended under a warrant issued under section 43, or to the health of other persons, may occur if the person were to be brought before a magistrate, that subsection is taken to be satisfied if –

(a) the person is represented by another person who is appointed by the person, a magistrate or a court to represent the person in proceedings under this Part; and

(b) a magistrate or court agrees to the person not being brought before a magistrate in accordance with subsection (1).

45. Orders of magistrate

(1) A magistrate may take one or more of the following actions in relation to a person who is apprehended under a warrant issued under section 43 and brought before the magistrate:

(a) order the person to comply with a direction of the Director given to the person under section 42;

(b) by order, vary any direction of the Director, if the direction as so varied could have been given by the Director under section 42;

(c) order the person –

(i) to comply with a requirement, determined by the magistrate and specified in the order, that the Director could have imposed on the person in a direction given under section 16 or section 42; and

(ii) to continue to comply with the requirement either until the requirement has been satisfied or the Director gives a declaration under subsection (4) in relation to the order;

(d) order that a clinical assessment of the person be carried out;

(e) order that the person be placed and remain in quarantine, or isolation, for a period that is to end when the Director gives a declaration under subsection (4) in relation to the order.

(2) A magistrate may only make an order under subsection (1) if he or she is of the opinion that it is necessary to do so for the purposes of managing a threat to public health or a likely threat to public health.

(3) A magistrate before whom a person apprehended under a warrant issued under section 43 is brought may, by order, revoke a direction given to the person under section 42, if the magistrate is of the opinion that it is not necessary, for the purposes of managing a threat to public health or a likely threat to public health, for the direction to be complied with.

(4) The Director may, by notice to the person to whom an order made under subsection (1)(c) or (e) relates, declare that the Director is of the opinion that it is no longer necessary, for the purposes of managing a threat to public health or a likely threat to public health, for the order to continue in force.

(5) An order under this section that requires a person to comply with a direction given under section 42 is revoked, or ceases to be in force, as soon as the direction is revoked, or ceases to be in force, under that section.

(6) An order under subsection (1)(c) or (e) ceases to be in force as soon as the requirement is satisfied or the Director issues a notice under subsection (4).

(7) A person to whom an order under this section relates, or the Director, may appeal to the Supreme Court against the making of the order.

46. Notification of notifiable diseases and contaminants

(1) The guidelines may require a person, Agency or public authority to notify the Director if the person, or a person acting on behalf of the Agency or public authority –

(a) becomes aware that any notifiable disease or notifiable contaminant is present, or may have occurred, in any water or food or any tissue, substance or secretion of the human body; or

(b) suspects, or is, under the guidelines, to suspect, that any notifiable disease or notifiable contaminant may be present, or may have occurred, in any water or food or any tissue, substance or secretion of the human body.

(2) Without limiting the matters to which guidelines for the purposes of this section may relate, such guidelines may do any one or more of the following things:

(a) require notification of the presence or occurrence, or suspected presence or occurrence, of any notifiable disease, or notifiable contaminant, only in certain circumstances;

(b) set out the information that is required to be included in a notification of the presence or occurrence, or suspected presence or occurrence, of any notifiable disease or notifiable contaminant;

- (c) specify the persons who are required to give notification;
- (d) require notification to be made in a particular manner or form.

47.

48.

49. Reports and information by Director

(1) The Director –

(a) may provide a council with a report on the presence or occurrence of –

- (i) any notifiable disease within its municipal area; and
- (ii) any notifiable contaminant in food or water within its municipal area; and

(b) is to inform the council of any threat to public health as a consequence of that presence or occurrence.

(2)

50. Medical practitioner to provide information

(1) A medical practitioner who believes on reasonable grounds that a person whom he or she is attending has, may have, or may have been exposed to, a notifiable disease must –

(a) give the person –

- (i) information about the transmission and prevention of that disease; and
- (ii) any information that is specified in the relevant guidelines as required to be given by a medical practitioner to such a person, including, but not limited to including, information relating to the transmission and prevention of disease; and

(b) require the person to give to the medical practitioner the information that the medical practitioner is, in accordance with the requirements of the relevant guidelines, to attempt to obtain from the person; and

(c) advise the Director, as soon as practicable after the response is received, of the response of a person to a requirement imposed on the person under paragraph (b).

Penalty:

Fine not exceeding 25 penalty units.

(2) It is a defence in any proceedings –

(a) for an offence under subsection (1) in relation to subsection (1)(a), for a medical practitioner to prove that the relevant information had already been given, to the person whom the medical practitioner was attending, by –

(i) the medical practitioner while the medical practitioner was attending the person on a previous occasion; or

(ii) a person acting on behalf of the medical practitioner; or

(iii) another medical practitioner or a person acting on behalf of another medical practitioner; or

(b) for an offence under subsection (1) in relation to subsection (1)(b), for a medical practitioner to prove that –

(i) the medical practitioner had attempted to obtain the relevant information while the medical practitioner was attending the person on a previous occasion; or

(ii) a person acting on behalf of the medical practitioner had attempted to obtain the relevant information from the person whom the medical practitioner was attending; or

(iii) the information had been obtained by another medical practitioner or a person acting on behalf of that other medical practitioner; or

(c) for an offence under subsection (1) in relation to subsection (1)(c), for a medical practitioner to prove that the relevant information was provided to the Director by –

(i) a person acting on behalf of the medical practitioner; or

(ii) another medical practitioner or a person acting on behalf of another medical practitioner.

51. Transmitting disease

(1) A person who is aware of having a notifiable disease –

(a) must take all reasonable measures and precautions to prevent the transmission of the disease; and

(b) must not knowingly or recklessly place another person at risk of contracting the disease.

Penalty:

Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months, or both.

(2) It is a defence in any proceedings for an offence under subsection (1) for a person to prove that the other person knew of, and voluntarily accepted, the risk of getting the disease.

52. Investigation into occurrence of disease and contamination

(1) The Director may carry out any investigation or inquiry into the presence or occurrence, or suspected presence or occurrence, of –

(a) any notifiable disease; or

(b) any notifiable contaminant.

(2) The Director may give any directions the Director considers necessary or appropriate in carrying out an investigation or inquiry.

(3) A person must comply with a direction of the Director.

Penalty:

Fine not exceeding 100 penalty units.

53. Orders to prevent spread of disease

(1) The Director, by order, may require any person or class of person, Agency or public authority to take any specified action to stop, limit or prevent the spread of any notifiable disease to humans.

(2) An order is to be carried out in accordance with any relevant guidelines.

(3) An Agency, a public authority or a person must comply with an order.

Penalty:

Fine not exceeding 100 penalty units.

54. Outbreak of disease

The Director, by public notice, may declare –

(a) that there is an outbreak of a notifiable disease in an area; or

(b) that the outbreak is over.

55. Use of certain materials

The Director may require any Agency, public authority or person to keep, use or dispose of any notifiable contaminant and any other material or substance capable of causing disease in humans in accordance with any relevant guidelines.

56. Burial or removal of body to morgue

(1) A medical officer of health or the Director may order a person to bury or remove a dead person's body to the nearest morgue if –

(a) the person is dead because of any notifiable disease and is lying in a dwelling in which persons live or sleep; or

(b) whatever the cause of death, the body is in such a state as to be dangerous to health.

(2) Upon the certificate of a medical practitioner of the existence of the facts mentioned in subsection (1), a justice may make an order as provided by that subsection.

(3) If a body is not buried or removed as ordered, the relevant council is to cause the body to be buried or removed to a morgue, whichever is the more convenient.

Division 1A - Supply and use of needles and syringes

56A. Interpretation of Division 1A

In this Division –

certificate means a certificate of attainment of a relevant qualification that is issued under section 56I and is valid under that section;

certified person, in relation to a permit, means a person who is the holder of a certificate and who is an employee of, or a person acting on behalf of, the holder of the permit;

community organisation means a body of persons, whether incorporated or unincorporated, who provide services, in relation to health or welfare, whether or not for fee or reward, and includes a needle and syringe service;

dispensing machine means a machine by which needles or syringes may be dispensed;

government entity means the Crown or a body established by or under a law of the State;

needle and syringe service means a body of persons, whether incorporated or unincorporated, whose primary functions include the offering of needles or syringes to members of the public, whether or not for fee or reward;

organised distributor means –

- (a) a body corporate; and
- (b) a partner in a partnership within the meaning of the Partnership Act 1891; and
- (c) a pharmacist, or a pharmacy business, within the meaning of the Pharmacy Control Act 2001; and
- (d) a council; and
- (e) a community organisation; and
- (f) a government entity; and
- (g) any other prescribed person or body of persons;

permit means a permit issued and in force under this Division;

permitted premises, in relation to a permit, means premises specified under section 56E(1) in a term of the permit as premises from which needles and syringes may be supplied under the permit.

56B. Meaning of supply

(1) Except in sections 56K and 56L, a reference in this Division to the supply of a needle or syringe does not include a reference to the supply of a needle or syringe –

- (a) for lawful medical treatment purposes or veterinary treatment purposes; or
- (b) to or by a wholesaler of needles or syringes; or
- (c) to a person for the purpose of enabling the disposal of the needle or syringe; or
- (d) to a member of a class of persons prescribed for the purposes of this section.

(2) For the purposes of this Division, apart from subsection (1) and section 56L(2), the supply to a person of a needle or syringe –

- (a) at premises of an organised distributor, including by way of a dispensing machine at premises of an organised distributor; or
- (b) by post, or personal delivery, by a certified person acting on behalf of an organised distributor –

is to be taken to be a supply to the person by the organised distributor.

(3) For the purposes of this Division, other than subsection (1), the supply of a needle or syringe by a person, to another person, by post is to be taken to be a supply to the other person by a certified person if the supply is carried out at the direction of a certified person.

56C. Organised distributors not to supply needles or syringes except under permits

An organised distributor must not supply a needle or syringe to a person unless the organised distributor holds a permit.

Penalty:

Fine not exceeding 100 penalty units.

56D. Permits

(1) An organised distributor may, in an approved form, apply to the Director for a permit.

(2) The Director may issue a permit to an organised distributor that has made an application under subsection (1).

(3) The Director may only issue a permit to an organised distributor if the Director is satisfied –

(a) that it is in the interests of public health for needles or syringes to be able to be supplied –

(i) by the organised distributor; and

(ii) at the premises that are to be the permitted premises; and

(b) that needles or syringes will only be supplied under the permit at the permitted premises; and

(c) that needles or syringes will only be supplied under the permit –

(i) by a certified person in relation to the permit; or

(ii) by a dispensing machine; and

(d) that the organised distributor has not committed an offence under this Division and the Director is not of the opinion that, in all the circumstances, the organised distributor ought to be disqualified from holding a permit.

(4) If the Director intends to specify on a permit a term referred to in section 56E(3), the Director may issue the permit despite subsection (3)(b), but only if he or she is satisfied that –

(a) it is in the interests of public health for needles or syringes to be able to be supplied –

(i) at the permitted premises; or

(ii) by post, or personal delivery, by a certified person in relation to the permit; and

(b) needles or syringes will not be supplied by the organised distributor to a person other than –

(i) at the premises that are to be the permitted premises; or

(ii) by post, or personal delivery, by a certified person in relation to the permit.

(5) The Director may refuse to issue a permit to an organised distributor if the Director is satisfied that the organised distributor has contravened or failed to comply with a condition of a permit.

(6) A permit remains in force –

(a) for the period of not more than 3 years specified in the permit; or

(b) until it is revoked; or

(c) if the permit is renewed, for the period specified in the notice of renewal issued under section 56H(3).

(7) Despite subsection (6), if an application for renewal of a permit is made under section 56H(2) before the permit expires, the permit remains in force until it is revoked or renewed or notice of a refusal to renew the permit is given under section 56H(3).

(8) A permit may not be transferred to another organised distributor or a person.

56E. Terms of permits

(1) The Director must specify on a permit that it is a term of the permit that the supply, at the premises specified on the permit, by the organised distributor that holds the permit, of needles or syringes is authorised under the permit.

(2) The Director may specify on a permit that it is a term of the permit that the supply of needles and syringes by way of a dispensing machine, situated at the permitted premises, is authorised under the permit.

(3) The Director may specify on a permit that it is a term of the permit that the supply of needles and syringes by post, or personal delivery, by a certified person in relation to the permit is authorised under the permit.

56F. Conditions of permits

(1) It is a condition of a permit that a needle or syringe must not be supplied, by the organised distributor that holds the permit, except as authorised by the terms specified on the permit in accordance with section 56E.

(2) It is a condition of a permit that a needle or syringe must not be supplied to a person, by the organised distributor that holds the permit, unless –

(a) the person supplying the needle or syringe is a certified person in relation to the permit; or

(b) the supply is made by way of a dispensing machine, such a supply is authorised in accordance with a term specified on the permit in accordance with section 56E(2) and a certified person in relation to the permit will be responsible for the day-to-day operation of the machine.

(3) It is a condition of a permit that the holder of the permit must comply with a requirement of the Director under subsection (4).

(4) The Director, by notice in writing to the holder of a permit, may require the holder of the permit to provide to the Director, at the time, or times, specified in the notice, information specified in the notice.

(5) It is a condition of a permit that the organised distributor that holds the permit must ensure that the service standards approved under section 56J are complied with in relation to the supply of a needle or syringe by the organised distributor.

(6) The Director may specify on a permit conditions, in addition to the other conditions referred to in this section, to which the permit is subject, including, but not limited to including, conditions in relation to supply by post or personal delivery or by a dispensing machine.

56G. Variation, &c., of terms and conditions of permits

(1) A holder of a permit may apply to the Director –

(a) for the variation or revocation of a condition specified on the permit under section 56F(6); or

(b) for the variation of a term specified on the permit under section 56E; or

(c) for the revocation of a term specified on the permit under section 56E(2) or (3);
or

(d) for a term to be specified on the permit under section 56E(2) or (3).

(2) The Director, by notice in writing to the holder of a permit, may –

(a) vary or revoke a condition specified on the permit in accordance with section 56F(6); or

(b) vary a term specified on the permit under section 56E; or

(c) revoke a term specified on the permit under section 56E(2) or (3); or

(d) specify a term on the permit under section 56E(2) or (3).

(3) The Director may, under subsection (2), only vary, revoke or specify a term or condition if the Director is satisfied that it is in the interests of public health to do so.

(4) The Director may, under subsection (2), only vary a term, specified under section 56E(1) on a permit, so as to change the reference from one premises to another or so as to specify on the permit additional permitted premises.

56H. Revocation and renewal of permits

(1) The Director, by notice to the holder of a permit, may revoke the permit, if the Director –

(a) is no longer satisfied, in relation to the permit, as to the matters referred to in section 56D(3) and, if applicable, the matters referred to in section 56D(4); or

(b) is of the opinion that the holder of the permit has contravened or failed to comply with a condition of the permit.

(2) The holder of a permit may apply to the Director on the approved form for the renewal of the permit.

(3) The Director may, by notice to the holder of the permit to which an application under subsection (2) relates –

(a) renew the permit for the period of not more than 3 years specified in the notice, if he or she is satisfied, in relation to the permit, as to the matters referred to in section 56D(3) and, if applicable, the matters referred to in section 56D(4); or

(b) refuse to renew the permit, if he or she is not satisfied, in relation to the permit, as to the matters referred to in section 56D(3) and, if applicable, the matters referred to in section 56D(4).

56I. Certificates of relevant qualifications

- (1) The Director may approve one or more courses of training as to the manner in which needles and syringes are to be supplied.
- (2) The Director may only approve a course under subsection (1) if he or she is satisfied that the course is likely to train participants in the course to supply needles and syringes in a manner that is likely to enable the safe supply, or use, or both, of needles and syringes.
- (3) The Director may issue to a person a certificate of attainment of a relevant qualification if the person has successfully completed a course of training approved under subsection (1).
- (4) A certificate is valid for a period of 3 years unless it is cancelled earlier under subsection (5).
- (5) The Director, by notice to a person to whom a certificate has been issued, may cancel the certificate, if the Director is satisfied that –
- (a) the training to which the certificate relates was inadequate or is no longer adequate; or
 - (b) the person is not a suitable person to be authorised to supply needles or syringes; or
 - (c) the person has not supplied needles or syringes in accordance with the training to which the certificate relates.

56J. Service standards

- (1) The Director may approve service standards in relation to the supply of needles and syringes by an organised distributor.
- (2) The following matters may be specified in service standards approved under subsection (1):
- (a) the information that must be supplied to a person to whom a needle or syringe is supplied;
 - (b) the manner or form in which a needle or syringe is to be supplied;
 - (c) the hours during which a needle or syringe may be supplied;
 - (d) any other matter that the Director thinks fit in respect of the supply of needles or syringes.

56K. Possession, &c., of needle or syringe does not constitute offence under certain Acts

(1) A person who is in possession of a needle or syringe, water for injection or an alcohol swab does not, by reason only of that possession, commit, and is not to be taken, by reason only of that possession, to have committed, any crime, or any offence, under the Misuse of Drugs Act 2001 or the Poisons Act 1971.

(2) A person who is in possession of any trace element of a substance that is contained in a needle or syringe does not, by reason only of that possession, commit, and is not to be taken, by reason only of that possession, to have committed, any crime, or any offence, under the Misuse of Drugs Act 2001 or the Poisons Act 1971.

(3) A person who supplies a needle, or syringe, to another person so that the other person may dispose of the needle or syringe does not, by reason only of that supply, commit, and is not to be taken, by reason only of that supply, to have committed, any crime, or any offence, under the Misuse of Drugs Act 2001 or the Poisons Act 1971.

(4) A person who supplies –

(a) an unused needle or unused syringe; or

(b) other equipment associated with the use of an unused needle or an unused syringe; or

(c) information –

under a permit does not, by reason only of that supply, commit, aid, abet or instigate, and is not to be taken, by reason only of that supply, to have committed, aided, abetted or instigated, any crime, or any offence, under the Misuse of Drugs Act 2001 or the Poisons Act 1971 or Chapters II or XXXV of the *Criminal Code*.

(5) A person who supplies –

(a) an unused needle or unused syringe; or

(b) other equipment associated with the use of an unused needle or an unused syringe; or

(c) information –

that was supplied under a permit does not, by reason only of that supply, commit, aid, abet or instigate, and is not to be taken, by reason only of that supply, to have committed, aided, abetted or instigated, any crime, or any offence, under the Misuse of Drugs Act 2001 or the Poisons Act 1971 or Chapters II or XXXV of the *Criminal Code*.

(6) In this section –

trace element of a substance means any element, of the substance, that remains in a needle or syringe in such a quantity as to be unlikely to be usable for the purpose of injecting the substance.

56L. Persons with possession of needle or syringe to avoid risk to life and safety of other persons

(1) A person who is in possession of a needle or syringe must take all reasonable care and precautions to avoid risk to the life, safety or health of another person that may be caused by the needle or syringe.

Penalty:

Fine not exceeding 10 penalty units.

(2) A person who –

(a) abandons, discards or disposes of a needle or syringe; or

(b) supplies to another person a needle or syringe to dispose of –

must take all reasonable care and precautions to avoid risk to the life, safety or health of another person that may be caused by the abandonment, discarding or disposal of the needle or syringe or the supply by the person of the needle to the other person.

Penalty:

Fine not exceeding 10 penalty units.

Division 2 - Immunisation

57. Council immunisation programs

(1) A council must develop and implement an approved program for immunisation in its municipal area.

(2) The Director may require a council to provide any information the Director determines relating to its immunisation program.

58. Immunisation record at schools

(1) A person in charge of a school or child-care facility must require the parent or guardian of a child about to attend that school or facility for the first time to produce, in respect of each notifiable disease specified by the Director –

(a) an immunisation certificate stating that the child –

- (i) has been immunised against that disease; or
 - (ii) has not been immunised against that disease; or
 - (iii) has not been immunised against that disease because the person certifying the certificate believes on reasonable grounds that the child may suffer an adverse reaction to the immunisation; or
 - (iv) has not been immunised against that disease because tests indicate that the child has a natural immunity to that disease; or
- (b) a statutory declaration stating that the parent or guardian has a conscientious objection to immunisation against that disease; or
- (c) a statutory declaration stating that the parent or guardian believes that the child has been immunised against that disease but cannot produce any immunisation certificate or other proof of immunisation.
- (2) A person in charge of a school or child-care facility is to maintain a record of all information relating to the immunisation of each child at that school or facility in accordance with any relevant guidelines.

59. Immunisation certificate

An immunisation certificate –

- (a) is to be in an approved form; and
- (b) is to be completed by an approved person or a person of an approved class of person; and
- (c) is conclusive proof of the facts stated in it.

60. Attendance at and closure of school

- (1) A person in charge of a school or child-care facility which is located in an area to which a declaration of an outbreak of a notifiable disease relates must ensure, in accordance with the relevant guidelines, that a child enrolled at that school or facility who is not immunised against that disease does not attend the school or facility until the outbreak is declared to be over.
- (2) The Director may order the closure of a school or child-care facility if satisfied that it is necessary to do so to limit or prevent the spread of a notifiable disease.

Division 3 - Confidentiality

61.

62. Prohibition and restriction on publication

(1) In any proceedings relating to a notifiable disease, a court of its own motion, or on the application of a person under subsection (2), may make an order prohibiting or restricting the publication of any part of the proceedings if satisfied that it is in the best interest of a party to the proceedings, or a witness in respect of the proceedings, to do so.

(2) The Director, or a party to or witness in respect of, any proceedings may apply to a court for an order referred to in subsection (1).

(3) In any proceedings relating to a notifiable disease, a court, of its own motion or on the application of a person under subsection (4), may make an order closing the court if satisfied that it is in the public interest to do so.

(4) The Director, or a party to, or witness in respect of, any proceedings may apply to a court for an order referred to in subsection (3).

PART 4 - Tobacco products

Division 1 - Under-age smoking

63. Smoking, &c., by children

(1) A child must not –

(a) smoke; or

(b) use a tobacco product; or

(c) possess a tobacco product.

(2) However, subsection (1)(c) does not apply to the possession of a tobacco product by a child if the possession is reasonably incidental to the child's employment with the holder of a tobacco seller's licence.

64. Sale to children

(1) A person must not sell, lend, give or supply or offer to sell, lend, give or supply any tobacco product to, or for the use of, any child.

Penalty:

Fine not exceeding –

(a) for a first offence, 50 penalty units; and

(b) for a subsequent offence, 100 penalty units.

(2) A person who is the holder of a tobacco seller's licence must not permit the sale, loan, gift or supply of any tobacco product to, or for the use of, any child.

Penalty:

Fine not exceeding –

(a) for a first offence, 50 penalty units; and

(b) for a subsequent offence, 100 penalty units.

(3) An employer who is not the holder of a tobacco seller's licence must not permit any employee on or within 100 metres of any premises owned or occupied by the employer to sell, lend, give or supply any tobacco product to, or for the use of, any child.

Penalty:

Fine not exceeding –

(a) for a first offence, 50 penalty units; and

(b) for a subsequent offence, 100 penalty units.

(4)

(5) In any proceedings for an offence under subsection (1) it is a defence for a person to prove that proof of age was provided.

(6) A person in charge of any premises which sells or supplies any tobacco product must provide to persons employed at the premises information according to the relevant guidelines about the sale and supply of tobacco products to children.

Penalty:

Fine not exceeding 5 penalty units.

(7) Subsections (1), (2) and (3) do not apply to a person who has taken reasonable steps to prevent the supply of tobacco products to any child.

(8) An allegation in a complaint in proceedings for an offence under this section that on a specified date a person was a child is evidence of that fact.

64A. Sale of non-tobacco cigarettes to children

A person must not sell, lend, give or supply or offer to sell, lend, give or supply any non-tobacco cigarette to, or for the use of, a child.

Penalty:

Fine not exceeding 50 penalty units.

65.

66. Seizure of tobacco products

(1) A nominated officer may seize any tobacco product being smoked or used by a child or in a child's possession.

(1A) However, in exercising power under subsection (1), a nominated officer is not entitled to –

(a) use force against a child; or

(b) conduct a personal search of a child or of a child's clothing or possessions.

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

(3) The Minister may destroy or dispose of any tobacco product forfeited under subsection (2) in any manner that the Minister considers appropriate.

67. Warnings and information

(1) A nominated officer who reasonably believes that a child has contravened a provision of this Division may –

(a) give the child a warning or a caution; and

(b) provide the child with approved information.

(2) To exercise a power under subsection (1), a nominated officer, with the approval of a parent or guardian of a child, may require the child to attend a specified place at a specified time as is reasonable in the circumstances.

(3) A nominated officer may require a child to give –

(a) his or her name and address; and

(b) the name and address of his or her parent or guardian; and

(c) information relating to the identity of any person who supplied a tobacco product to the child.

(4) A nominated officer may –

(a) notify a parent or guardian of a child of a contravention of this Part by the child; and

(b) provide the parent or guardian with approved information.

(5)

67A. Monitoring compliance

(1) The Director may authorise persons or a class of persons to carry out approved activities in order to monitor compliance with this Part.

(2) A person authorised under subsection (1) who carries out approved activities under that subsection is not guilty of an offence under section 73 of the *Justices Act 1959* in relation to an offence under section 64.

Division 1A - Smoke-free areas

67B. Smoke-free areas

(1) A smoke-free area is any of the following:

(a) an enclosed public place;

(b) an enclosed workplace;

(c) any area, including, but not limited to including, a public street, that is not within private premises and is designated by the occupier of the area as a smoke-free area;

(d) at an outdoor sporting venue during an organised sporting event being held at that venue, anywhere within 20 metres of –

(i) any permanently or temporarily erected public seating; or

(ii) any seating, marshalling area, warm-up area, podium or other part of the venue reserved for the use of competitors or officials; or

(iii) any part of the venue used to conduct the actual organised sporting event;

(e) anywhere within 3 metres of an entrance to or exit from any non-domestic building or multiple-use building;

(f) anywhere within 10 metres of any air intake for ventilation equipment on or in a multiple-use building or a non-domestic building;

(g) anywhere within 10 metres of any play equipment erected at a children's playground in a public place;

(h) on a beach at which a surf-lifesaving organisation has temporarily erected a pair of red and yellow flags for the safety of beach users, the area "between the flags" (being the rectangular area bordered by the flags, the water's edge and the landward fringe of the beach);

(i) anywhere at a public swimming pool, including the curtilage of the public swimming pool;

(j) anywhere that the Director, by public notice, designates as a smoke-free area in connection with a public event or class of public events specified in that public notice;

(k) anywhere in an outdoor dining area;

(l) anywhere within 3 metres of an outdoor dining area that is not surrounded by a screen, or other barrier, that is at least 2.1 metres high and impervious to smoke;

(m) a public street that the regulations declare to be a pedestrian mall;

(n) a public street that the regulations declare to be a bus mall;

(o) anywhere within 3 metres of a bus shelter on a public street.

(2) The following are not smoke-free areas unless designated as such:

(a) any open deck area of a ship or vessel;

(b) any personal living area of any place providing accommodation for a fee, residential care facility or prison from which smoke drift to any smoke-free area cannot reasonably occur;

(c)

(d) an outdoor smoking area;

(e)

(f)

(2A) For the purposes of subsection (1)(c), private premises are –

(a) if no multiple-use building is situated on the premises – premises on which is situated a building that is used exclusively for domestic purposes; or

(b) if a multiple-use building is situated on the premises – so much of the premises as is used exclusively for domestic purposes –

but does not include any part of the premises that consists of common property within the meaning of the *Strata Titles Act 1998*.

(3) For the purposes of subsection (1)(d) –

(a) an organised sporting event is a sporting event planned in advance and conducted, according to established rules, by an established professional or amateur sporting body or by an educational institution, whether as a one-off event or as a part of a round of events; and

(b) an informal or impromptu sporting event is not an organised sporting event; and

(c) the duration of an organised sporting event is taken to include the 30-minute period leading up to the official start of the event and the 30-minute period immediately following the official finish of the event.

67C. Smoking in smoke-free areas prohibited

(1) A person must not smoke in a smoke-free area.

Penalty:

Fine not exceeding 20 penalty units.

(2) It is a defence in proceedings for an offence under subsection (1) for a person to prove that he or she –

(a) did not know, and could not reasonably be expected to have known, that the place where the person was smoking was a smoke-free area; or

(b)

(c) in the case of a smoke-free area referred to in section 67B(1)(e), was unable to comply because there were less than 6 metres between entrances or exits of the building.

(3) A nominated officer may require a person who is smoking in a smoke-free area to stop smoking.

(4) A person must not fail or refuse to comply with a requirement of the nominated officer under subsection (3).

Penalty:

Fine not exceeding 5 penalty units.

67D. Offence by occupiers of smoke-free areas

(1) If a person smokes in a smoke-free area, the occupier of the smoke-free area is guilty of an offence.

Penalty:

Fine not exceeding –

(a) in the case of a natural person, 10 penalty units; or

(b) in the case of a body corporate, 50 penalty units.

(2) It is a defence in proceedings for an offence under subsection (1) for a person to prove that he or she or any of his or her employees or agents did not provide (otherwise than by sale) any ashtray, match or lighter or do any other thing to facilitate smoking in the smoke-free area and that the person or any of his or her employees or agents –

(a) did not know, or could not reasonably be expected to have known, that the person concerned was smoking in the smoke-free area; or

(b) took all of the following actions:

(i) requested the person to stop smoking in the smoke-free area;

(ii) informed the person that the person was committing an offence by smoking in the smoke-free area;

(iii) if the person continued to smoke after having been requested to stop, requested the person to leave the smoke-free area.

(3) A request under subsection (2)(b)(iii) that a person leave a smoke-free area does not affect any liability of the person to pay for any food or beverage supplied to, or ordered by, the person.

67E. Signs

(1) The occupier of a smoke-free area must display within that area any sign approved by the Director or containing wording or images approved by the Director for display in a smoke-free area or class of smoke-free area.

Penalty:

Fine not exceeding –

(a) in the case of a natural person, 5 penalty units; or

(b) in the case of a body corporate, 20 penalty units.

(2)

67F. Amenity of smoke-free areas

The occupier of an outdoor dining area must ensure that it is not of inferior amenity to any outdoor smoking area provided by that occupier.

Penalty:

Fine not exceeding –

(a) in the case of a natural person, 10 penalty units; or

(b) in the case of a body corporate, 50 penalty units.

67G. Minimising risk to health

An occupier of an area who requires persons to work in a personal living area that is not a smoke-free area must develop and implement procedures to minimise the risk to the health of those persons.

Penalty:

Fine not exceeding 5 penalty units.

67H. Restrictions on smoking in vehicles

(1) A person must not smoke inside a vehicle being used in the course of any employment if another person is inside the vehicle.

Penalty:

Fine not exceeding 20 penalty units.

(2) A person must not smoke inside a vehicle if a child is inside the vehicle.

Penalty:

Fine not exceeding 20 penalty units.

(3) A nominated officer who reasonably suspects that subsection (2) has been contravened may –

(a) require any person inside, on or near the relevant vehicle who appears to the nominated officer to have attained the age of 16 years to state their name, age and

address and disclose what they know about the identity of any other person inside, on or near the vehicle; and

(b) require a person inside or apparently entering the relevant vehicle to cease, or not start, smoking; and

(c) if the nominated officer is a police officer, require a person apparently in charge or control of the relevant vehicle to stop the vehicle or keep it stationary.

(4) A nominated officer who is a police officer may arrest a person without warrant if the nominated officer reasonably believes that the person –

(a) is not a child; and

(b) has, in respect of this section, committed an offence against section 154(2) or section 193.

(5) An allegation in a complaint in proceedings for an offence under subsection (2) that on a specified date a person was a child is evidence of that fact.

67I. Designated smoking areas in relation to public events

(1) A person who intends to conduct a public event may apply to the Director to have the Director approve as a designated smoking area a part of an area that has been declared to be a smoke-free area in connection with –

(a) the public event; or

(b) a class of public events of which the public event is a member.

(2) The Director may, after receiving an application under subsection (1) from a person, issue an approval to the person in respect of a public event.

(3) The Director may only issue an approval under subsection (2) in respect of a public event if the area specified in the approval to be a designated smoking area –

(a) is within an area that has been declared to be a smoke-free area in connection with –

(i) the public event; or

(ii) a class of public events of which the public event is a member; and

(b) is not an enclosed area.

(4) An approval in respect of a public event is to –

- (a) specify the person to whom the approval has been issued; and
 - (b) specify the public event or events to which the approval relates; and
 - (c) specify the area, within a smoke-free area, that is the designated smoking area to which the approval relates; and
 - (d) specify the conditions in relation to the approval that the Director thinks fit.
- (5) A person to whom an approval is issued under subsection (2) must take all reasonable steps to ensure that the conditions imposed on the approval are complied with.

Penalty:

In relation to –

- (a) a body corporate, a fine not exceeding 250 penalty units; or
 - (b) an individual, a fine not exceeding 50 penalty units.
- (6) The Director may, by notice to the person to whom an approval has been issued –
- (a) revoke the approval; or
 - (b) vary, revoke or add to any condition of the approval.

Division 2 - Display, advertising, packaging, &c.

68. Cigarette packaging

(1) A person must not supply cigarettes to the public otherwise than in a package.

Penalty:

Fine not exceeding –

- (a) for a first offence, 50 penalty units; and
 - (b) for a subsequent offence, 200 penalty units.
- (2) A person must not supply cigarettes to the public in a package that –
- (a) contains fewer than 20 cigarettes; or

(b) is designed to be, or is readily able to be, divided into packets any of which contains fewer than 20 cigarettes.

Penalty:

Fine not exceeding –

(a) for a first offence, 50 penalty units; and

(b) for a subsequent offence, 200 penalty units.

68A. Restrictions regarding toys and confections, &c.

A person must not display, sell or supply any of the following things to another person:

(a) a toy that resembles, or is intended to represent, a tobacco product;

(b) a confection that resembles, or is intended to represent, a tobacco product;

(c)

(d) a tobacco product that is –

(i) confectionery-flavoured or confectionery-scented; or

(ii) fruit-flavoured or fruit-scented;

(e) cigarette papers that are –

(i) confectionery-flavoured or confectionery-scented; or

(ii) fruit-flavoured or fruit-scented.

Penalty:

Fine not exceeding –

(a) for a first offence, 50 penalty units; and

(b) for a subsequent offence, 200 penalty units.

69. Marketing device, plan or scheme

(1) A person must not utilise any marketing device, plan or scheme, other than price discounting, which is dependent on the purchase of any tobacco product.

Penalty:

Fine not exceeding –

(a) for a first offence, 50 penalty units; and

(b) for a subsequent offence, 200 penalty units.

(2) If a person uses price discounting as a marketing device, plan or scheme in connection with the sale of any tobacco product, that person must not advertise the price discounting.

Penalty:

Fine not exceeding –

(a) for a first offence, 50 penalty units; and

(b) for a subsequent offence, 200 penalty units.

69A. Notice to be displayed

A person who sells any tobacco product must display a notice in the approved form in a conspicuous position in the place where it is sold.

Penalty:

Fine not exceeding –

(a) for a first offence, 50 penalty units; and

(b) for a subsequent offence, 100 penalty units.

70. Display of tobacco advertisements, &c.

(1) A person must not display, publish or broadcast a tobacco advertisement so that it can be seen or heard in or from a public place.

Penalty:

Fine not exceeding –

(a) for a first offence, 50 penalty units; and

(b) for a subsequent offence, 200 penalty units.

(2) Subsection (1) does not apply to –

(a) a tobacco advertisement in or on a newspaper or book, the sole or main purpose of which is not the promotion or publicising of the purchase or use of a tobacco product or a trademark or brand name of a tobacco product; or

(b) a tobacco advertisement –

(i) on a packet containing a tobacco product, if the packet forms part of the packaging and labelling of the tobacco product in accordance with any relevant guidelines for the purposes of section 73; or

(ii) that is in accordance with any relevant guidelines; or

(c) a tobacco advertisement that is –

(i) part of a live stage performance; or

(ii) an incidental accompaniment to a film or video tape that is not wholly or mainly concerned with the promotion of tobacco products; or

(d) any other matter or activity or class of matter or activity declared by the Minister by order.

(3)

(4)

(5) Unless the contrary is proved, a tobacco advertisement is presumed to be designed to promote or publicise a tobacco product if it contains the trademark or brand name of a tobacco product.

70A.

71. Restrictions on holding tobacco products, &c., in specialist tobacconist premises and general retail premises

(1) This section applies to premises in or from which tobacco products are sold, including specialist tobacconist premises.

(2) A person must not hold any tobacco products in the premises except in –

(a) plain sales units; or

(b) concealed storage facilities.

Penalty:

Fine not exceeding 50 penalty units.

(3) A person is not to be taken to have contravened subsection (2) merely by reason of any fleeting incidental handling of tobacco products reasonably attaching to –

(a) the stocking or replenishment of plain sales units in the premises; or

(b) the removal of tobacco products from plain sales units in the premises to make immediate sales of the tobacco products; or

(c) the stocktaking of tobacco products held in the premises; or

(d) the removal of tobacco products from plain sales units in the premises to concealed storage facilities in the premises, or to places off site, for the purposes of –

(i) cleaning, servicing, repairing, remounting, relocating or replacing the plain sales units; or

(ii) repairing or refurbishing the premises; or

(e) the removal of tobacco products from concealed storage facilities in the premises to places off site; or

(f) where a consignment of tobacco products is delivered to the premises, the immediate placement of that consignment in concealed storage facilities in the premises.

(4) A person must not –

(a) cause or allow a sales unit to be located in the premises anywhere outside of a service area of the premises; or

(b) cause or allow a sales unit to be located in the premises within 75 centimetres of –

(i) any confectionery; or

(ii) any product designed or marketed for the use of children; or

(c) cause or allow a sales unit to be so located in the premises in such a way that any of the tobacco product held in the sales unit faces more or less towards a public entrance or external window unless –

(i) the direction faced is perpendicular to the plane of the public entrance or external window; or

(ii) the public entrance or external window is at least 2 metres away from the sales unit; or

(d) cause or allow a tobacco product to be held in a sales unit in the premises if the premises are colour coded, within 5 metres of the sales unit, in colours that form part of the packaging of the tobacco product.

Penalty:

Fine not exceeding 50 penalty units.

(5) If the premises are not licensed premises, a person must not cause or allow a vending machine to be located in the premises.

Penalty:

Fine not exceeding 50 penalty units.

(6) If the premises are licensed premises, a person must not cause or allow more than one vending machine to be located in the premises.

Penalty:

Fine not exceeding 50 penalty units.

(7) If the premises are licensed premises and a vending machine is located therein, a person must not –

(a) cause or allow the vending machine to be located anywhere other than in a restricted area of the premises; or

(b) cause or allow the vending machine to be operated by any member of the public.

Penalty:

Fine not exceeding 50 penalty units.

(8) If an electronic dispensing unit is located in the premises, a person must not cause or allow the electronic dispensing unit to be operated by any member of the public.

Penalty:

Fine not exceeding 50 penalty units.

(9) Nothing in this section makes it an offence for a person visiting or working at the premises to be in possession of a personal quantity of tobacco product (and relevant smoking accoutrements) for his or her own use.

(10) In this section –

electronic dispensing unit means a machine that is designed to dispense tobacco products and be operated by means of an electronic keypad, whether or not, at a given time, the machine is in working order;

external window, of premises, means a window through which a person standing outside the premises can see into the premises (or any part thereof);

hold means hold for sale;

restricted area, of licensed premises, means an area of the premises that is designated under section 84(1) of the *Liquor Licensing Act 1990* as an area in which a person under the age of 18 years cannot enter or remain;

service area, of premises, means an area of the premises –

(a) from where sales of tobacco products are ordinarily effected; and

(b) to which the public does not normally have access;

vending machine means a machine, other than an electronic dispensing unit, that is designed to dispense tobacco products, whether or not, at a given time, the machine is in working order.

72. Restrictions on display, &c., of tobacco products in general retail premises

(1) This section applies to premises in or from which tobacco products are sold, other than specialist tobacconist premises.

(2) A person must not display any tobacco products in the premises.

Penalty:

Fine not exceeding 50 penalty units.

(3) A person is not to be taken to have contravened subsection (2) merely by reason of any fleeting incidental display of tobacco products reasonably attaching to –

(a) the stocking or replenishment of plain sales units in the premises; or

(b) the removal of tobacco products from plain sales units in the premises to make immediate sales of the tobacco products; or

(c) the stocktaking of tobacco products held in the premises; or

(d) the removal of tobacco products from plain sales units in the premises to concealed storage facilities in the premises, or to places off site, for the purposes of –

(i) cleaning, servicing, repairing, remounting, relocating or replacing the plain sales units; or

(ii) repairing or refurbishing the premises; or

(e) the removal of tobacco products from concealed storage facilities in the premises to places off site; or

(f) where consignments of tobacco products are delivered to the premises, the immediate placement of those consignments in concealed storage facilities in the premises –

provided the total area of tobacco products so incidentally displayed does not at any time exceed, for the entire premises, one square metre.

(4) Nothing in this section makes it an offence for –

(a) a person visiting the premises to inadvertently display a personal quantity of tobacco product (or relevant smoking accoutrement) that the person has in his or her possession for his or her own use; or

(b) a person working at the premises to inadvertently and fleetingly display a personal quantity of tobacco product (or relevant smoking accoutrement) that the person has in his or her possession for his or her own use.

(5) In this section –

tobacco product includes a tobacco product package that has been emptied of its contents.

72A. Restrictions on display, &c., of tobacco products in specialist tobacconist premises

(1) This section applies to specialist tobacconist premises.

(2) A person must not display any tobacco products in the premises other than ancillary tobacco products.

Penalty:

Fine not exceeding 50 penalty units.

(3) A person who displays an ancillary tobacco product in the premises must –

(a) confine the display to a single area of the premises; and

(b) ensure that the total area of all ancillary tobacco products displayed in the premises does not at any time exceed 4 square metres.

Penalty:

Fine not exceeding 50 penalty units.

(4) A person who displays an ancillary tobacco product in the premises must not enhance the display by means of any of the following:

- (a)** wording, trademarks or colour schemes usually used in the packaging of the ancillary tobacco product;
- (b)** partial wording or imaging of any packaging of the ancillary tobacco product;
- (c)** mirrors or other reflective devices that reflect images of the ancillary tobacco product;
- (d)** holograms linked to the display;
- (e)** lines, borders or other visual design effects that make the display stand out;
- (f)** empty packages of any ancillary tobacco products.

Penalty:

Fine not exceeding 50 penalty units.

(5) A person must not, in the premises, display more than one example of each product line of the ancillary tobacco products held in the premises.

Penalty:

Fine not exceeding 50 penalty units.

(6) A person is not to be taken to have contravened subsection (2) or (5) merely by reason of any fleeting incidental display of tobacco products reasonably attaching to –

- (a)** the stocking or replenishment of plain sales units in the premises; or
- (b)** the removal of tobacco products from plain sales units in the premises to make an immediate sale of the tobacco products; or
- (c)** the stocktaking of tobacco products held in the premises; or
- (d)** the removal of tobacco products from plain sales units in the premises to concealed storage facilities in the premises, or to places off site, for the purposes of –

(i) cleaning, servicing, repairing, remounting, relocating or replacing the plain sales units; or

(ii) repairing or refurbishing the premises; or

(e) the removal of tobacco products from concealed storage facilities in the premises to places off site; or

(f) where consignments of tobacco products are delivered to the premises, the immediate placement of the consignments in concealed storage facilities in the premises –

provided the total area of tobacco products so incidentally displayed does not at any time exceed, for the entire premises, one square metre.

(7) Nothing in this section makes it an offence for –

(a) a person visiting the premises to inadvertently display a personal quantity of tobacco product (or relevant smoking accoutrement) that the person has in his or her possession for his or her own use; or

(b) a person working at the premises to inadvertently and fleetingly display a personal quantity of tobacco product (or relevant smoking accoutrement) that the person has in his or her possession for his or her own use.

(8) In this section –

ancillary tobacco product means a tobacco product other than –

(a) tobacco in any form; or

(b) a product of which tobacco is an ingredient; or

(c) a package or cigarette shipper containing a thing referred to in paragraph (a) or (b) of this definition.

72B. Specialist tobacconist premises

(1) The Director, by notice in writing, may determine that specified premises are or are not specialist tobacconist premises.

(2) In making the determination, the Director may take into account whether or not products at the premises are able to be purchased lawfully by a child.

(3) A person may apply to the Magistrates Court (Administrative Appeals Division) for a review of the determination of the Director that premises are not specialist tobacconist premises.

73. Packaging of tobacco products

The manufacturer or distributor of any tobacco product must ensure that the tobacco product is packaged and labelled in accordance with any relevant guidelines.

Penalty:

Fine not exceeding –

(a) for a first offence, 50 penalty units; and

(b) for a subsequent offence, 200 penalty units.

74. False information relating to legislation

A manufacturer or supplier of any tobacco product must not provide to any person information regarding any legislation or enactment of any jurisdiction relating to tobacco control that is false.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 2 500 penalty units for the first offence and 10 000 penalty units for a subsequent offence; or

(b) a natural person, a fine not exceeding 250 penalty units for the first offence and 500 penalty units for a subsequent offence.

74AA. Incorrect information relating to health effects of tobacco products

A manufacturer or supplier of any tobacco product must not provide incorrect information regarding the health effects of tobacco products.

Penalty:

In the case of –

(a) a body corporate, a fine not exceeding 2 500 penalty units for the first offence and 10 000 penalty units for a subsequent offence; or

(b) a natural person, a fine not exceeding 250 penalty units for the first offence and 500 penalty units for a subsequent offence.

Division 3 - Tobacco seller's licence

74A. Licence to sell tobacco product

A person must not sell a tobacco product unless –

- (a) the person is the holder of a tobacco seller's licence; or
- (b) the person is an employee of the holder of a tobacco seller's licence and the sale is effected in the course of that employment.

Penalty:

Fine not exceeding –

- (a) for a first offence, 50 penalty units; and
- (b) for a subsequent offence, 100 penalty units.

74B. Application for tobacco seller's licence

(1) A person who is 18 years or older may apply to the Director for a licence to sell a tobacco product.

(2) An application is to be –

- (a) in an approved form; and
- (b) accompanied by the prescribed fee.

74C. Grant or refusal of licence

(1) The Director may –

- (a) grant an application for a tobacco seller's licence subject to any conditions; or
- (b) refuse to grant the application.

(2) In determining the application, the Director is to –

- (a) consider whether the applicant is likely to comply with the Act; and
- (b) be satisfied that the applicant is 18 years of age or older; and
- (c) have regard to any relevant guidelines.

(2A) The Director must not grant an application for a tobacco seller's licence if the licence is to be used primarily for the purpose of supplying tobacco to persons attending a public event.

(3) The Director, by notice in writing served on the applicant, is to notify –

- (a) the granting of the application; or
- (b) the refusal to grant the application.

(4) Without limiting the generality of subsection (1)(a), a tobacco seller's licence may be granted subject to conditions relating to –

- (a) the provision of information or returns by the licensee; and
- (b) the display of the licence.

74D. Issue of licence

If the Director grants an application for a tobacco seller's licence, the Director is to –

- (a) issue the licence in an approved form; and
- (b) endorse the licence with any conditions; and
- (c) specify on the licence –
 - (i) the name and address of the holder of the licence; and
 - (ii) the date of issue of the licence; and
 - (iii) the addresses of the premises in respect of which the licence is issued.

74E. Duration of tobacco seller's licence

A tobacco seller's licence remains in force for whichever of the following periods is the lesser:

- (a) the period specified in the licence;
- (b) a period of 12 months from the date of issue of the licence.

74F. Renewal of tobacco seller's licence

(1) The holder of a tobacco seller's licence may apply to the Director to renew the licence.

(2) An application is to be –

- (a) in an approved form; and
- (b) accompanied by the prescribed fee.

(3) The Director may –

- (a) grant the application subject to any conditions; or
- (b) refuse to grant the application.

(4) If an application to renew a tobacco seller's licence is lodged and not determined before the licence expires, the period of the licence is extended until the application is determined.

(5) The Director, by notice in writing served on the applicant, is to notify –

- (a) the granting of the application; or
- (b) the refusal to grant the application.

(6)

(7) This Division, except section 74E, applies to the renewal of a tobacco seller's licence as if it were the original application.

(8) A licence renewed under this section is subject to any conditions the Director determines.

(9) A licence renewed under this section takes effect from the expiry of the previous licence and remains in force, unless extended pursuant to subsection (4), until whichever of the following occurs first:

- (a) the date specified in the renewed licence;
- (b) the expiry of 12 months from the expiry of the previous licence.

(10) A tobacco seller's licence is not, on renewal under this section, capable of being varied with respect to the premises specified on the licence.

74G. Variation of tobacco seller's licence

(1) The Director, on his or her own volition or on application, may vary a tobacco seller's licence by adding, omitting, substituting or amending any condition of the licence.

(2) The Director, by notice in writing served on the holder of a tobacco seller's licence, is to notify any variation of the licence.

(3) The variation of a tobacco seller's licence takes effect –

- (a) if an application for a review is not made under section 160A(d), 28 days after service of the notice; or

(b) if an application for a review is made under section 160A(d) and the Magistrates Court (Administrative Appeals Division) makes a decision affirming the decision under review, on the day the decision was affirmed.

74GA. Other features of tobacco seller's licence

(1) A tobacco seller's licence –

(a) is only valid for and in respect of the premises specified on the licence; and

(b) does not confer authority on the holder of the licence, or any person acting on that licensee's behalf, to sell tobacco products from any other premises.

(2) A tobacco seller's licence is not capable of being transferred to any other person.

(3) The holder of a tobacco seller's licence may, by notice to the Director, surrender the licence at any time, but the licence has no surrender value.

74H. Cancellation of tobacco seller's licence

(1) The Director may cancel a tobacco seller's licence if the holder of the licence or a person acting on behalf of the holder –

(a) fails to comply with a condition of the licence; or

(b) fails to comply with any relevant guidelines or regulations; or

(c) fails to comply with this Part; or

(ca) purports to transfer the licence to another person; or

(d) is convicted of an offence under this Part.

(2) The Director, by notice in writing served on the holder of a tobacco seller's licence, is to notify the cancellation of the licence.

(3) The cancellation of a tobacco seller's licence takes effect –

(a) if an application for a review is not made under section 160A(e), 28 days after service of the notice; or

(b) if an application for a review is made under section 160A(e) and the Magistrates Court (Administrative Appeals Division) makes a decision affirming the decision under review, on the day the decision was affirmed.

74I. Selling tobacco and tobacco products

The holder of a tobacco seller's licence must sell tobacco products in accordance with –

- (a) any condition of the licence; and
- (b) any relevant guidelines or regulations; and
- (c) this Part.

Penalty:

Fine not exceeding 50 penalty units.

74J. Register of tobacco seller's licences

- (1) The Director is to keep a register of tobacco seller's licences.
- (2) The register is to contain the following details:
 - (a) the names and addresses of holders of tobacco seller's licences;
 - (b) the date of issue of those licences;
 - (c) the addresses of the premises to which the licences relate.
- (3)

74K.

74L. Offences relating to tobacco seller's licence

(1) The holder of a tobacco seller's licence or a person acting on behalf of the holder must not sell a tobacco product from any premises other than those specified in the licence.

Penalty:

Fine not exceeding –

- (a) for a first offence, 50 penalty units; and
- (b) for a subsequent offence, 100 penalty units.
- (2)

74M. Tobacco products not to be included in business loyalty programs

(1) A person must not offer a tobacco product as an inducement or reward in a business loyalty program.

Penalty:

Fine not exceeding 50 penalty units.

(2) In this section –

business loyalty program means a program or arrangement, other than a business transactions program, that rewards the customers or clients of a business for their patronage;

business transactions program means a program or arrangement that rewards the customers or clients of a business for –

(a) using a particular means of payment to purchase its goods or services; or

(b) not using a particular means of payment to purchase its goods or services;

means of payment includes, but is not limited to the following:

(a) cash;

(b) cheque;

(c) credit card;

(d) debit card;

tobacco product includes –

(a) a discount on a tobacco product; and

(b) a coupon, voucher or other instrument that may be redeemed for a tobacco product.

PART 5 - Premises

Division 1 - Places of assembly

75. Licence to operate place of assembly

A person, without a place of assembly licence and in respect of a place or class of place specified in a notice under section 75A, must not –

(a) operate, use or manage a place as a place of assembly; or

- (b) conduct any entertainment at a place of assembly; or
- (c) lease or offer for lease a place as a place of assembly.

Penalty:

Fine not exceeding 100 penalty units.

75A. Specified places requiring licences

The Director, by public notice, may specify a place or a class of place as a place or class of place in respect of which a place of assembly licence is required.

76. Application for licence

- (1) A person may apply to the relevant council for a place of assembly licence.
- (2) An application is to be –
 - (a) in an approved form; and
 - (b) lodged with the public office of the council; and
 - (c) accompanied by the applicable council fee.

77. Grant or refusal of licence

- (1) A council may –
 - (a) grant an application for a place of assembly licence for a specific event or for general purposes subject to any conditions; or
 - (b) refuse to grant the application.
- (2) In determining an application, a council is to consider the following matters:
 - (a) the maintenance of peace and good order;
 - (b) the prevention of noise, smell, pollution or other nuisances;
 - (c) the effect of traffic on highways;
 - (d) whether the place of assembly is capable of being operated, used or managed in accordance with any relevant guidelines;
 - (e) the protection of public health.

(3) The council, by notice in writing served on the applicant, must notify –

- (a) the granting of the application; or
- (b) the refusal to grant the application.

78. Issue of licence

If a council grants an application for a place of assembly licence, it is to –

- (a) issue the licence; and
- (b) endorse the licence with any conditions; and
- (c) specify on the licence –
 - (i) the place to which it relates; and
 - (ii) the name of the person to whom it is issued; and
 - (iii) the date of issue of the licence.

79. Operating place of assembly

The holder of a place of assembly licence must operate, use or manage the place –

- (a) in accordance with –
 - (i) any condition of the licence; and
 - (ii) any relevant guidelines; and
- (b) in a manner that does not pose a threat to public health.

Penalty:

Fine not exceeding 50 penalty units.

80. Duration of licence

A place of assembly licence remains in force for whichever of the following periods is the lesser:

- (a) the period specified in the licence;
- (b) a period of 12 months from the date of issue of the licence.

81. Renewal of licence

(1) The holder of a place of assembly licence may apply to the relevant council to renew the licence.

(2) An application is to be –

(a) in an approved form; and

(b) lodged with the public office of the council before the licence ceases to be in force; and

(c) accompanied by the applicable council fee.

(3) In determining an application, the council is to consider –

(a) the matters referred to in section 77(2); and

(b) the manner in which the place of assembly operated under the licence.

(4) A council may –

(a) grant the application subject to any conditions; or

(b) refuse to grant the application.

(5) If an application to renew a place of assembly licence is lodged and not determined before the licence expires, the period of the licence is extended until the application is determined.

(6) The council, by notice in writing served on the applicant, must notify –

(a) the granting of the application; or

(b) the refusal to grant the application.

(7) The provisions of sections 78 and 79 apply to the renewal of a licence as if it were an original licence.

(8) A licence renewed under this section is subject to any conditions the council determines.

(9) A licence renewed under this section takes effect from the expiry of the previous licence and remains in force, unless extended pursuant to subsection (5), until whichever of the following occurs first:

(a) the date specified in the renewed licence;

(b) the expiry of 12 months from the expiry of the previous licence.

82. Variation of licence

(1) A council, on its own volition or on application, may vary a place of assembly licence by omitting, adding, substituting or amending any condition of the licence.

(2) Before varying a place of assembly licence, the council is to consider –

(a) the matters referred to in section 77(2); and

(b) the manner in which the place of assembly operated under the licence.

(3) The council, by notice in writing served on the holder of a place of assembly licence, must notify any variation of the licence.

(4) The variation of a place of assembly licence takes effect –

(a) if an appeal is not lodged under section 161(1)(d), 30 days after service of the notice; or

(b) if an appeal is lodged under section 161(1)(d) and the Appeal Tribunal makes an order affirming the decision, on the day the order was made.

83. Cancellation of licence

(1) A council may cancel a place of assembly licence if –

(a) the holder of the licence fails to comply with a condition; or

(b) the holder of the licence fails to comply with any relevant guidelines; or

(c) the holder of the licence is convicted of an offence in respect of the place to which the licence relates; or

(d) the place to which the licence relates has undergone substantial alteration so that –

(i) compliance with any condition of the licence or this Act is significantly affected; or

(ii) the use of the place has substantially changed.

(2) The council, by notice in writing served on the holder of a place of assembly licence, must notify the cancellation of the licence.

(3) The cancellation of a place of assembly licence takes effect –

(a) if an appeal is not lodged under section 161(1)(e), 14 days after service of the notice; or

(b) if an appeal is lodged under section 161(1)(e) and the Appeal Tribunal makes an order affirming the decision, on the day the order was made.

84. Overcrowding

(1) A person must not admit or allow to be admitted into a place of assembly a number of persons that exceeds the total number of persons that, as a condition of the place of assembly licence relating to that place, may be admitted to that place.

Penalty:

Fine not exceeding 100 penalty units.

(2) A council, an authorised officer, a police officer, a person authorised by the Commissioner for Licensing under the Liquor Licensing Act 1990 or a person authorised by the State Fire Commissioner under the Fire Service Act 1979 may –

(a) cause the doors of a place of assembly to be closed if –

(i) there are sufficient persons to occupy the place completely; or

(ii) the total number of persons admitted to the place is the number of persons that, under a place of assembly licence relating to the place, may be admitted to the place; or

(b) evacuate the place of assembly if –

(i) there are more than sufficient persons to occupy the place completely awaiting entry and the situation is likely to pose a threat to public health; or

(ii) the total number of persons admitted to the place exceeds the number that, under such a licence, may be admitted to the place; or

(c) cause any event occurring at that place of assembly to be cancelled in circumstances referred to in paragraph (b).

85. Proof and evidence in proceedings

(1) In any proceedings for an offence under this Division, the defendant must prove that –

(a) a place of assembly licence is in force in respect of a place of assembly; or

(b) a place is, or is not, a place of assembly; or

(c) a condition of the licence was complied with.

(2) A statement in a complaint alleging that a place was being operated, used or managed as a place of assembly without a place of assembly licence is evidence of that fact.

Division 2 - Unhealthy premises

86. Unhealthy premises

(1) An environmental health officer may issue a certificate to a relevant council stating that specified premises are so unhealthy that no person can safely occupy them.

(2) The Director may issue directions as to the matters which may be taken into account in determining whether or not occupied premises are unhealthy for the purpose of subsection (1).

(3) A building surveyor may provide a relevant council with a report in respect of specified premises stating –

(a) the state of the premises; and

(b) whether, how and at what cost the premises can be put in reasonable order.

87. Closure order

(1) A council may make a closure order upon receipt of –

(a) the certificate from an environmental health officer under section 86(1); and

(b) a report from a building surveyor under section 86(3).

(2) On receipt of a certificate under section 86(1) but before receipt of a report under section 86(3), a council may make an interim closure order if satisfied that it is necessary for the health of any person.

(3) A closure order may –

(a) require the owner of premises, within a specified period of not less than 21 days, to do any works the council considers necessary to put the premises in a state safe for human occupation; and

(b) forbid human occupation or habitation of the premises after a date specified in the order.

(4) In determining whether premises can be put in a state safe for human occupation at a reasonable cost, the council is to have regard to –

(a) the estimated cost of what is ordered or proposed to be done to the premises;
and

(b) the estimated value of the premises if that were done.

(5) If within the period specified in the closure order or within any further period the council allows the owner does not complete the specified works, the council may cause the works to be completed at the owner's expense.

(6) If the council is satisfied that the premises cannot be put in a state safe for human occupation at a reasonable cost or that the owner is unlikely to comply with the closure order, it may –

(a) forbid human occupation or habitation; or

(b) at the owner's expense, cause the premises to be demolished.

(7) The owner of premises to which a closure order relates must not –

(a) require any occupier of the premises to carry out any works specified in the order; or

(b) require the occupier to pay the cost of those works.

Penalty:

Fine not exceeding 100 penalty units.

88. Service of closure order

A council is to cause a copy of a closure order to be –

(a) served on the owner and the occupier of the premises; and

(b) affixed to a conspicuous part of the premises.

89. Revocation of closure order

The council, on its own motion or on the application of any person and by notice in writing, may revoke a closure order if –

(a) the building surveyor or a person approved by the building surveyor certifies that the works required for the order have been properly carried out; or

(b) the environmental health officer certifies that the premises have become safe for human occupation or habitation.

90. Occupation or habitation during order

A person, contrary to a closure order, must not –

- (a) let for human occupation or habitation premises which are subject to the order; or
- (b) occupy or inhabit the premises; or
- (c) knowingly allow human occupation or habitation of the premises.

Penalty:

Fine not exceeding 100 penalty units.

91. Defective and unhealthy premises

Premises used, intended to be used or capable of being used for human habitation or occupation have a defect and are unhealthy if the premises are in a condition which an authorised officer reasonably believes is, or is likely to become, offensive, injurious or prejudicial to health.

92. Rectification notice

(1) A council, on the advice of an environmental health officer or building surveyor, is to serve a rectification notice in an approved form on –

- (a) a person by whose act or default any defect in premises arises or continues or, if that person cannot be ascertained or found, the owner of the premises; or
- (b) the owner of premises if –
 - (i) any defect in the premises arises from any fault of the components of the premises; and
 - (ii) the premises are unoccupied.

(2) A rectification notice requires the person on whom it is served to rectify any defect –

- (a) in a specified manner; and
- (b) within a specified period.

(3) A person, without reasonable excuse, must not fail to comply with the notice.

Penalty:

Fine not exceeding 75 penalty units and a daily fine not exceeding 5 penalty units.

(4) If a person fails to comply with a notice, the council may cause any necessary work to be carried out at that person's expense.

(5) The person to whom a rectification notice in respect of premises is served must not –

(a) require any occupier of the premises to carry out anything specified in the notice; or

(b) require the occupier to pay the cost of carrying out anything specified in the notice.

(6) A council, upon the certificate of an environmental health officer or building surveyor that the condition of the premises is no longer, or is not likely to become, offensive, injurious or prejudicial to health, is to revoke a rectification notice.

93. Notice of closure order or rectification notice

A council is to specify in a certificate under section 337 of the *Local Government Act 1993* the existence of any closure order or rectification notice affecting any land to which the certificate relates.

Division 3 - Registration of premises

94. Application of Division 3

(1) This Division applies to any premises or class of premises which are used for any public health risk activity by a person who is not a registered person.

(2) A registered person means a person carrying out an activity under any of the following Acts:

(a) the Health Practitioner Regulation National Law (Tasmania);

(b) *Hospitals Act 1918*;

(c) *Health Service Establishments Act 2006*.

(d)

(e)

(f)

(g)

(h)

(i)

(j)

(k)

95. Registration of premises

(1) The Director, by public notice, may require any premises or class of premises in which a specified public health risk activity is carried out to be registered.

(2) A person must comply with a requirement under subsection (1).

Penalty:

Fine not exceeding 100 penalty units.

96. Application to register premises

(1) A person may apply to the relevant council for premises to be registered under this Division.

(2) An application is to be –

(a) in an approved form; and

(b) lodged with the public office of the council; and

(c) accompanied by the applicable council fee.

97. Grant or refusal of registration of premises

(1) A council may –

(a) grant an application for the registration of premises where a public risk activity may be carried out subject to any conditions; or

(b) refuse to grant the application.

(2) In determining an application, the council is to consider –

(a) whether the premises are capable of being operated in accordance with any relevant guidelines; and

(b) the protection of public health.

(3) The council, by notice in writing served on the applicant, must notify –

(a) the granting of the application; or

(b) the refusal to grant the application.

98. Issue of certificate of registration of premises

If a council grants an application for the registration of premises under section 97, it is to –

(a) issue a certificate of registration in an approved form; and

(b) endorse the certificate with any conditions; and

(c) specify on the certificate –

(i) the premises to which it relates; and

(ii) the date of issue of the certificate.

99. Operation of registered premises

The owner and occupier of registered premises must ensure that the premises are operated –

(a) in accordance with –

(i) any condition of the registration; and

(ii) the relevant guidelines; and

(b) in a manner that does not pose a threat to public health.

Penalty:

Fine not exceeding 50 penalty units.

100. Duration of registration of premises

The registration of premises under this Division remains in force for whichever of the following periods is the lesser:

(a) the period specified in the certificate of registration of premises;

(b) a period of 12 months from the date of issue of that certificate.

101. Renewal of registration of premises

(1) A person may apply to the relevant council to renew the registration of premises.

(2) An application is to be –

(a) in an approved form; and

(b) lodged with the public office of the council before the registration ceases to be in force; and

(c) accompanied by the applicable council fee.

(3) The council may –

(a) grant the application subject to any conditions; or

(b) refuse to grant the application.

(4) In determining an application, the council is to consider –

(a) the manner in which the premises have been operated during its registration; and

(b) the protection of public health.

(5) If an application to renew the registration of premises is lodged and not determined before the registration expires, the period of the registration is extended until the application is determined.

(6) The council, by notice in writing served on the applicant, must notify –

(a) the granting of the application; or

(b) the refusal to grant the application.

(7) Sections 98 and 99 apply to the renewal of registration of premises as if it were the original registration.

(8) Registration renewed under this section is subject to any conditions the council determines.

(9) Registration renewed under this section takes effect from the expiry of the previous registration and remains in force, unless extended pursuant to subsection (5), until whichever of the following occurs first:

- (a) the date specified in the renewed certificate of registration;
- (b) the expiry of 12 months from the expiry of the previous registration.

102. Variation of registration of premises

(1) A council, on its own volition or on application, may vary the registration of premises by omitting, adding, substituting or amending any condition of the registration.

(2) Before varying the registration of premises, the council is to consider –

(a) the manner in which the premises are being operated; and

(b) the protection of public health.

(3) The council, by notice in writing served on the holder of the certificate of registration of premises, must notify any variation of the registration.

(4) The variation of the registration of premises takes effect –

(a) if an appeal is not lodged under section 162(1)(d), 30 days after service of the notice; or

(b) if an appeal is lodged under section 162(1)(d) and the Appeal Tribunal makes an order affirming the decision, on the day the order was made.

103. Cancellation of registration of premises

(1) A council may cancel the registration of premises if –

(a) a condition of the registration has not been complied with; or

(b) the person who applied for the registration is convicted of an offence in respect of the premises to which the registration relates; or

(c) the premises to which the registration relates has undergone substantial alteration so that –

(i) compliance with this Act or any condition of the registration is significantly affected; or

(ii) the use of the premises has substantially changed.

(2) The council, by notice in writing served on the holder of the certificate of registration of premises, must notify the cancellation of the registration.

(3) The cancellation of the registration of premises takes effect –

(a) if an appeal is not lodged under section 162(1)(e), 14 days after service of the notice; or

(b) if an appeal is lodged under section 162(1)(e) and the Appeal Tribunal makes an order affirming the decision, on the day the order was made.

Division 4 - Public health risk activities

104. Licence to carry out public health risk activity

(1) The Director, by public notice, may require any person or class of person who carries out a specified public health risk activity to be licensed.

(2) A person must comply with a requirement under subsection (1).

Penalty:

Fine not exceeding 100 penalty units.

105. Application for licence

(1) A person may apply to the relevant council for a licence to carry out a public health risk activity.

(2) An application is to be –

(a) in an approved form; and

(b) lodged with the public office of the council; and

(c) accompanied by the applicable council fee.

106. Grant or refusal of licence

(1) A council may –

(a) grant an application for a licence to carry out any public health risk activity subject to any conditions; or

(b) refuse to grant the application.

(2) In determining an application, the council is to consider –

(a) whether the applicant is competent to undertake the activity in accordance with any relevant guidelines; and

(b) the protection of public health.

(3) The council, by notice in writing served on the applicant, must notify –

- (a) the granting of the application; or
- (b) the refusal to grant the application.

(4) A condition of a licence may require the holder of the licence to provide information in accordance with any relevant guidelines.

107. Issue of licence

If a council grants an application for a licence to carry out any public health risk activity, it is to –

- (a) issue the licence in an approved form; and
- (b) endorse the licence with any conditions; and
- (c) specify on the licence –
 - (i) the name of the person to whom it is issued; and
 - (ii) the date of issue of the licence.

108. Duration of licence

A licence to carry out any public health risk activity remains in force for whichever of the following periods is the lesser:

- (a) the period specified in the licence;
- (b) a period of 12 months from the date of issue of the licence.

109. Carrying out public health risk activities

The holder of a licence to carry out public health risk activities must carry out those activities –

- (a) in accordance with –
 - (i) any condition of the licence; and
 - (ii) any relevant guidelines; and
- (b) in a manner that does not pose a threat to public health.

Penalty:

Fine not exceeding 50 penalty units.

110. Renewal of licence

(1) The holder of a licence to carry out any public health risk activity may apply to the relevant council to renew the licence.

(2) An application is to be –

(a) in an approved form; and

(b) lodged with the public office of the council before the licence ceases to be in force; and

(c) accompanied by the applicable council fee.

(3) The council may –

(a) grant the application subject to any conditions; or

(b) refuse to grant the application.

(4) In determining an application, the council is to consider –

(a) the manner in which the applicant undertook the activity under the licence; and

(b) the protection of public health.

(5) If an application to renew a licence to carry out a public health risk activity is lodged and not determined before the licence expires, the period of the licence is extended until the application is determined.

(6) The council, by notice in writing served on the applicant, must notify –

(a) the granting of the application; or

(b) the refusal to grant the application.

(7) Sections 107 and 109 apply to the renewal of a licence to carry out any public health risk activity.

(8) A licence renewed under this section is subject to any conditions the council determines.

(9) A licence renewed under this section takes effect from the expiry of the previous licence and remains in force, unless extended pursuant to subsection (5), until whichever of the following occurs first:

(a) the date specified in the renewed licence;

(b) the expiry of 12 months from the expiry of the previous licence.

111. Variation of licence

(1) A council, on its own volition or on application, may vary a licence to carry out any public health risk activity by omitting, adding, substituting or amending any condition of the licence.

(2) Before varying a licence, the council is to consider –

(a) the manner in which the holder of the licence carried out the activity; and

(b) the protection of public health.

(3) The council, by notice in writing served on the holder of the licence, must notify variation of the licence.

(4) The variation of a licence takes effect –

(a) if an application for a review is not made under section 163(d), 28 days after service of the notice; or

(b) if an application for a review is made under section 163(d) and the Magistrates Court (Administrative Appeals Division) makes a decision affirming the decision under review, on the day the decision was affirmed.

112. Cancellation of licence

(1) A council may cancel a licence to carry out any public health risk activity if –

(a) a condition of the licence has not been complied with; and

(b) a provision of any relevant guidelines has not been complied with.

(2) The council, by notice in writing served on the holder of the licence, must notify the cancellation of the licence.

(3) The cancellation of a licence takes effect –

(a) if an application for a review is not made under section 163(e), 28 days after service of the notice; or

(b) if an application for a review is made under section 163(e) and the Magistrates Court (Administrative Appeals Division) makes a decision affirming the decision under review, on the day the decision was affirmed.

Division 5 - Systems for air and water

113. Registration of regulated system

The Director, by public notice, may require a regulated system or a class of regulated system to be registered.

114. Application to register regulated system

(1) The owner of any premises may apply to the relevant council for the registration of any regulated system.

(2) An application is to be –

(a) in an approved form; and

(b) lodged with the public office of the council; and

(c) accompanied by the applicable council fee.

115. Grant or refusal of registration of regulated system

(1) A council may –

(a) grant the application subject to any conditions; or

(b) refuse to grant the application.

(2) In determining an application, the council is to consider –

(a) whether the system may be operated and maintained in accordance with any directions under section 118, relevant guidelines or regulations; and

(b) the protection of public health.

(3) The council, by notice in writing served on the applicant, must notify –

(a) the granting of the application; or

(b) the refusal to grant the application.

116. Issue of certificate of registration

If a council grants an application for the registration of a regulated system, it is to –

(a) issue a certificate of registration in an approved form; and

(b) endorse the certificate with any conditions; and

(c) specify on the certificate –

(i) the premises to which it relates; and

(ii) the details of the regulated system to which it relates; and

(iii) the date of issue of the certificate.

117. Operation of registered regulated system

(1) The owner of any premises where any registered system is installed must ensure that the system is operated and maintained –

(a) in accordance with –

(i) any condition of the registration; and

(ii) any directions under section 118 or relevant guidelines; and

(b) in a manner that does not pose a threat to public health.

Penalty:

Fine not exceeding 100 penalty units.

(2) In any proceedings for an offence under subsection (1), it is a defence for the owner to prove that he or she engaged a person to operate or maintain the registered system in accordance with –

(a) any condition of the registration; or

(b) any direction under section 118 or relevant guidelines.

(3) A person who is engaged by an owner of premises to operate or maintain a registered system on the premises must do so in accordance with any directions under section 118 or relevant guidelines.

Penalty:

Fine not exceeding 100 penalty units.

118. Directions on operating system

(1) The Director may give any directions to a person or a council the Director considers necessary in respect of the operation and maintenance of a registered regulated system.

(2) A direction which is inconsistent with any provision of any relevant guidelines prevails over the latter provision to the extent of that inconsistency.

(3) A person must comply with a direction.

Penalty:

Fine not exceeding 100 penalty units.

(4) A person who fails to comply with any relevant guidelines in order to comply with a direction is not guilty of any offence relating to that non-compliance.

119. Notice to comply with direction

(1) A council may serve a notice on the owner of premises where a registered system is installed requiring that the owner –

(a) comply with a specified direction under section 118 or any relevant guidelines relating to the system within a specified period; and

(b) does not operate the system until the council is satisfied that the specified direction or relevant guidelines have been complied with.

(2) A person must comply with a notice.

Penalty:

Fine not exceeding 100 penalty units.

(3) If the owner of premises does not comply with a notice the council or any other person on behalf of the council may –

(a) do anything necessary to comply with the notice at the owner's expense; and

(b) for that purpose, enter the premises at any reasonable time.

120. Duration of registration

The registration of a regulated system remains in force for whichever of the following periods is the lesser:

(a) the period specified in the certificate of registration of the regulated system;

(b) a period of 12 months from the date of issue of the certificate of registration.

121. Renewal of registration

- (1)** A person may apply to the relevant council to renew the registration of any regulated system.
- (2)** An application is to be –
 - (a)** in an approved form; and
 - (b)** lodged with the public office of the council before the registration ceases to be in force; and
 - (c)** accompanied by the applicable council fee.
- (3)** The council may –
 - (a)** grant the application subject to any conditions; or
 - (b)** refuse to grant the application.
- (4)** In determining an application, the council is to consider –
 - (a)** the manner in which the premises, vehicle or equipment have been operated during the period of registration; and
 - (b)** the protection of public health.
- (5)** If an application to renew the registration of a regulated system is lodged and not determined before the registration expires, the period of the registration is extended until the application is determined.
- (6)** The council, by notice in writing served on the applicant, must notify –
 - (a)** the granting of the application; or
 - (b)** the refusal to grant the application.
- (7)** Sections 116, 117, 118 and 119 apply to the renewal of registration as if it were the original registration.
- (8)** Registration renewed under this section is subject to any conditions the council determines.
- (9)** Registration renewed under this section takes effect from the expiry of the previous registration and remains in force, unless extended pursuant to subsection (5), until whichever of the following occurs first:
 - (a)** the date specified in the renewed certificate of registration;
 - (b)** the expiry of 12 months from the expiry of the previous registration.

122. Variation of registration

(1) A council, on its own volition or on application, may vary the registration of any regulated system by omitting, adding, substituting or amending any condition of the registration.

(2) Before varying registration of any regulated system, the council is to consider –

(a) the manner in which the premises where they are installed are being operated; and

(b) the protection of public health.

(3) The council, by notice in writing served on the holder of the certificate of registration of a regulated system, must notify any variation of the registration.

(4) The variation of the registration takes effect –

(a) if an application for a review is not made under section 164(d), 28 days after service of the notice; or

(b) if an application for a review is made under section 164(d) and the Magistrates Court (Administrative Appeals Division) makes a decision affirming the decision under review, on the day the decision was affirmed.

123. Cancellation of registration

(1) A council may cancel the registration of any regulated system if –

(a) any condition of the registration, directions or relevant guidelines has not been complied with; or

(b) the premises have undergone substantial alteration so that –

(i) compliance with this Act or any condition of the registration is significantly affected; or

(ii) the use of the premises has substantially changed.

(2) The council, by notice in writing served on the holder of the certificate of registration of a regulated system, must notify the cancellation of the registration.

(3) The cancellation of the registration takes effect –

(a) if an application for a review is not made under section 164(e), 28 days after service of the notice; or

(b) if an application for a review is made under section 164(e) and the Magistrates Court (Administrative Appeals Division) makes a decision affirming the decision under review, on the day the decision was affirmed.

Division 6 - Miscellaneous

124. Occupied premises

For the purposes of this Part, premises which have been occupied and which may again be occupied are taken to be occupied.

125. Agreements and contracts

Any agreement or contract made with the purpose or effect of evading or preventing the operation of this Part is of no effect.

126. Inspection and assessment of premises

The inspection and assessment of premises under this Part are to be carried out in accordance with any relevant guidelines.

127. Safeguards for public use of premises

The owner and occupier of any premises to which the public has access must comply with any relevant guidelines relating to the safeguards of the health of any person likely to use the premises.

Penalty:

Fine not exceeding 50 penalty units.

PART 6 - Water

Division 1 - Interpretation

Division 1A - Orders and notices

127A. Interpretation of Part 6

(1) In this Part –

approval means an approval, granted under section 129C, that is in force;

water carrier means a person who carries on the undertaking of a water carrier as referred to in section 136D(2);

water quality auditor means a person to whom an approval relates;

water quality management plan means a plan prepared for the purposes of complying with a requirement of a guideline referred to in section 129B(1).

(2) For the purposes of this Act, an Agency, public authority or person is only to be taken to supply water that is obtained from a private water source if the Agency, public authority or person –

(a) supplies the water for human consumption; or

(b) ought reasonably be expected to know that the water so supplied is intended by the person to whom it is supplied to be used for human consumption.

128. Notification of quality of water

(1) An Agency or a public authority (other than a council) that, in the course of carrying out its functions, becomes aware that the quality of water is a threat to public health or is likely to become a threat to public health, must, in the manner and form specified in the guidelines, give to the council in whose municipal area the water is situated the information required by the guidelines to be given to the council.

Penalty:

Fine not exceeding 100 penalty units.

(1A) A person (other than a regulated entity) who –

(a) manages or is in control of water, other than a private water source; and

(b) becomes aware that the quality of the water is a threat to public health or is likely to become a threat to public health –

must, in the manner and form specified in the guidelines, give to the council in whose municipal area the water is situated the information required by the guidelines to be given to a council.

Penalty:

Fine not exceeding 100 penalty units.

(1B) A person, other than a water carrier, who –

(a) supplies, intends to supply, or has supplied, water that is obtained from a private water source; and

(b) becomes aware that the quality of the water is a threat to public health or is likely to become a threat to public health –

must, in the manner and form specified in the guidelines, give to the council in whose municipal area the water is situated the information required by the guidelines to be given to the council.

Penalty:

Fine not exceeding 100 penalty units.

(1C) A water carrier who –

(a) supplies, intends to supply, or has supplied, water; and

(b) becomes aware that the quality of the water is a threat to public health or is likely to become a threat to public health –

must, in the manner and form specified in the guidelines, give to the council in respect of the municipal area in which the water carrier is required under section 136E to be registered the information required by the guidelines to be given to the council.

Penalty:

Fine not exceeding 100 penalty units.

(1D) A council that is of the opinion that the quality of water is a threat to public health or is likely to become a threat to public health must give to the Director, in the manner and form specified in the guidelines, the information required by the guidelines to be given to the Director.

Penalty:

Fine not exceeding 100 penalty units.

(1E) A regulated entity that becomes aware that the quality of water that it manages or controls is a threat to public health or is likely to become a threat to public health must give to the Director, in the manner and form specified in the guidelines, the information required by the guidelines to be given to the Director.

Penalty:

Fine not exceeding 100 penalty units.

(2) If the Director receives a notification this section, the Director is to notify any relevant public authority or regulated entity if the notification relates to water it is managing or in control of.

(3) If a council receives a report from an environmental health officer that the quality of water is a threat to public health or is likely to become a threat to public

health, the council must take any action, to prevent the threat, that is specified in any relevant guidelines and is necessary and practicable.

(4) If a regulated entity receives a report from an environmental health officer or the Director, or itself identifies, that the quality of water that the regulated entity is managing or is in control of is a threat to public health or is likely to become a threat to public health, the regulated entity must take any action, to prevent the threat, that is specified in any relevant guidelines and is necessary and practicable.

(5) Action that the relevant guidelines may specify for the purposes of subsection (3) or (4) includes, but is not limited to including, any actions for any of the following purposes:

(a) restricting or preventing the use of the water;

(b) restricting or preventing the use of any food product in which the water has been used;

(c) rendering the water safe;

(d) giving warnings and information to the public about the safe use of the water or risk of using the water.

129. Orders relating to water quality

(1) The Director or a council may make any one or more of the following orders if satisfied that the quality of water is, or is likely to become, a threat to public health:

(a) an order closing the supply of the water;

(b) an order restricting or preventing the use of the water;

(c) an order restricting or preventing the use of any food products in which the water has been used;

(d) an order restricting or preventing the taking, harvesting or public supply of fish or shellfish from the water or which have been in the water;

(e) an order requiring the water to be brought to an approved standard;

(f) an order requiring the relevant Agency, public authority, regulated entity or person to provide a temporary alternative supply of water.

(2) A person must not fail to comply with an order.

Penalty:

Fine not exceeding 100 penalty units.

(3) The Director, an environmental health officer or a public authority may –

(a) give warnings and information to the public about the safe use of the water; and

(b) do anything necessary and practicable to render the water safe.

Division 1B - Water quality management

129A. Water to be managed so as not to be threat to public health

An Agency, public authority, regulated entity, or other person, that is managing or in control of water must manage the water in a manner that does not pose a threat to public health.

Penalty:

Fine not exceeding 100 penalty units.

129B. Guidelines in relation to water quality management

(1) The guidelines may –

(a) require a person managing or in control of water that is intended for human consumption to prepare, in relation to the water, a plan (a *water quality management plan*) to promote and maintain the quality of the water; and

(b) specify the matters that are to be included in a water quality management plan; and

(c) require a person to review, and provide reports in respect of, the operation of a water quality management plan; and

(d) require a person to take steps to ensure that a water quality management plan is implemented; and

(e) specify that the Director may require a person to vary the provisions of a water quality management plan.

(2) A water quality management plan may, if permitted by the guidelines, relate to one or more sources, or bodies, of water that is intended for human consumption.

(3) The guidelines may require a person managing or in control of water that is intended for human consumption –

(a) to prepare and implement plans to ensure that the requirements of this Act, or of any water quality management plan, in relation to the water are met; and

(b) to provide to the Director the reports, in relation to the management or control of the water or the implementation of a water quality management plan, that the Director requires.

(4) The guidelines may –

(a) require a person to ensure that a water quality auditor audits –

(i) a water quality management plan; and

(ii) the management and control of each of the sources of the water to which such a plan relates or the bodies of the water that contain the water to which such a plan relates; and

(b) specify the matters to which such an audit is to relate and that are to be contained in any reports in relation to such audits; and

(c) require a water quality auditor to provide to the Director reports in relation to audits conducted by the auditor.

129C. Approval of water quality auditors

(1) A natural person may apply to the Director for approval as a water quality auditor.

(2) An application is to be –

(a) in the approved form; and

(b) accompanied by the prescribed fee, if any.

(3) The Director may refuse to consider an application by a person unless the person has provided to the Director the information the Director requires in order for the application to be determined.

(4) The Director may, after considering an application by a person –

(a) grant an approval to the person in writing, either on conditions specified in the approval or without conditions; or

(b) refuse to grant an approval to the person.

(5) The Director may only grant an approval to a person if –

(a) the Director is satisfied that the person is competent to carry out the duties of a water quality auditor, having regard to –

(i) the person's technical skills and experience; and

(ii) the approved competency criteria, if any; and

(b) the Director is not aware of any grounds on which, if the person held the approval, the approval could be suspended or cancelled under section 129E.

(6) Without limiting the conditions on which an approval may be granted to a person, an approval may be granted on condition that the person does not conduct an audit in relation to a person specified in the approval.

(7) If the Director refuses to grant an approval to a person, the Director must give to the person notice of the refusal and of the reasons for the refusal.

(8) Unless the approval is cancelled under section 129E, an approval remains in force for 12 months from the date on which it is granted.

(9) An approval is not to be taken to be in force at any time during a period for which the approval is suspended.

129D. Variation of condition of approval as a water quality auditor

(1) The Director, by notice in writing served on a person who holds an approval, may vary the conditions of the approval.

(2) The variation of the conditions of an approval takes effect –

(a) if an application for review of the decision to vary the conditions is not made under section 160C – 28 days after the notice of the variation is served under subsection (1); or

(b) if an application for review of the decision to vary the conditions is made under section 160C and the Magistrates Court (Administrative Appeals Division) makes a decision affirming the decision under review – on the day the decision was affirmed.

129E. Suspension and cancellation of approval

(1) The Director, by notice served on a water quality auditor who holds an approval, may suspend or cancel the approval, if the Director is satisfied that –

(a) the water quality auditor has contravened any provision of this Act or the relevant guidelines; or

(b) the water quality auditor has contravened a condition of the approval; or

(c) the water quality auditor has not carried out an audit, or prepared a report, for the purposes of the guidelines –

(i) competently; or

(ii) in accordance with the provisions of the relevant guidelines; or

(d) the water quality auditor had a conflict of interest in relation to another person at the time at which the water quality auditor carried out, in relation to the other person, an audit or report for the purposes of the relevant guidelines; or

(e) the approval ought to be cancelled for any other reason.

(2) The cancellation of an approval under subsection (1) takes effect –

(a) if an application for review of the decision to cancel the approval is not made under section 160C – 28 days after the notice of the cancellation is served under subsection (1); or

(b) if an application for review of the decision to cancel the approval is made under section 160C and the Magistrates Court (Administrative Appeals Division) makes a decision affirming the decision under review – on the day the decision was affirmed.

(3) The Director, at the request of a water quality auditor, may, by notice served on the person, cancel the water quality auditor's approval.

129F. Duties of water quality auditors

(1) A water quality auditor must notify the Director as soon as practicable after becoming aware that the auditor has, or may have, a conflict of interest in relation to a person at the time of conducting an audit, or preparing a report, for the purposes of the relevant guidelines, in relation to the person.

(2) A water quality auditor must notify the Director as soon as practicable, but in any case within 24 hours, after becoming aware that water, in relation to which the auditor is conducting or has conducted an audit, is a threat to public health or is likely to become a threat to public health.

129G. When water quality auditor to be taken to have conflict of interest

(1) For the purposes of this Act, a water quality auditor has a conflict of interest in relation to another person if the auditor –

(a) has, directly or indirectly, a material personal interest in relation to the other person; or

(b) has, under the relevant guidelines, a conflict of interest in relation to the person.

(2) For the purposes of this Act, a water quality auditor does not have a conflict of interest in relation to another person by reason only that the auditor is paid, under a contract or arrangement with the person, to carry out a duty of the auditor under this Part or the guidelines.

(3) In this section –
material personal interest in relation to the other person includes, in relation to a water quality auditor –

(a) a pecuniary or non-pecuniary interest, of the auditor, in the other person; and

(b) an interest, in the other person, of a relative of the auditor; and

(c) the holding of another office by the auditor, where there arises, or may arise, a conflict between his or her duties in that office and his or her duties, in relation to the person, as an auditor.

129H. List of auditors to be kept and made available

(1) The Director is to establish and maintain a list of water quality auditors and their contact details.

(2) The list of water quality auditors is to be made available to the public free of charge.

Division 2 - Monitoring water quality

130. Monitoring and review

(1) A council is to monitor the quality of water within its municipal area in accordance with any relevant guidelines.

(2) The Director, by notice in writing, may require any Agency, public authority, regulated entity or person to monitor, in accordance with any relevant guidelines, the quality of water under its management or control.

(3) Any Agency, public authority, regulated entity or person required to monitor the quality of water is to provide the Director with a report of its findings as the Director requires.

131. Samples

(1) An authorised officer or a council may take a sample from any water.

(2) The Director may require any Agency, public authority, regulated entity or person to take, in accordance with any relevant guidelines, a sample of any water under its management or control.

(3) Any sample taken under this section is to be analysed and tested in accordance with the requirements of the Director.

(4) A person who analyses or tests a sample taken under subsection (2) is to forward the result of the analysis or test to the Director as soon as practicable.

132. Health evaluation

(1) The Director may require any Agency, public authority, regulated entity or person to carry out a health evaluation of any water under its management or control.

(2) A health evaluation is to be carried out in an approved manner.

(3) If any Agency, public authority, regulated entity or person fails to comply with this section, the Director may direct an authorised officer to carry out the health evaluation at the expense of the Agency, public authority, regulated entity or person in accordance with any relevant guidelines.

Division 3 - Registration of suppliers of water from private water sources

133. Registration

(1) An Agency, public authority or person must not –

(a) for commercial purposes, supply water that is obtained from a private water source; or

(b) supply to any place that is used for health, educational, imprisonment or detention purposes, water that is obtained from a private water source –

unless the Agency, public authority or person is registered under this Division as a supplier of water from a private water source.

Penalty:

Fine not exceeding 50 penalty units.

(2) A person who supplies water from a private water source and is not required to be registered under subsection (1) may apply to be registered under this Division.

(3) For the purposes of subsection (1), a person (*the supplier*) is not to be taken to supply water for commercial purposes to another person by reason only that the supplier supplies water to premises that are residential premises to which relates –

(a) a residential tenancy agreement, within the meaning of the Residential Tenancy Act 1997 between the supplier and the other person; or

(b) a contract, to lease the premises, entered into by the supplier and the other person.

(4) Subsection (1) does not apply in relation to the supply, as part of the carrying on of a food business, within the meaning of the *Food Act 2003*, that is registered as a food business under that Act, of water from a private water source.

134. Application for registration

(1) A person may apply to the relevant council to be registered as a supplier of water from a private water source.

(2) An application is to be –

(a) in an approved form; and

(b) lodged with the public office of the council; and

(c) accompanied by the applicable council fee.

(3) For the purposes of this section, the relevant council in relation to a person applying to be registered as a supplier of water from a private water source is the council in respect of the municipal area in which the water is situated.

135. Grant or refusal of registration

(1) A council may –

(a) grant an application for registration as a supplier of water from a private water source without conditions or on the conditions the council thinks fit; or

(b) refuse to grant the application.

(2) In determining an application, the council is to have regard to –

(a) public health and any relevant guidelines; and

(b) whether the applicant is likely to comply with the Act and any relevant guidelines; and

(c) if the applicant has previously been registered as a supplier of water from a private water source – the extent to which the applicant has complied with the Act, any relevant guidelines, and any conditions of such registration.

(3) The council, by notice in writing served on the applicant, must notify the applicant of –

- (a) the granting of the application; or
- (b) the refusal to grant the application.

136. Issue of certificate of registration

If a council grants an application under section 135 or section 136AA, it is to –

- (a) issue in an approved form a certificate of registration as a supplier of water from a private water source; and
- (b) endorse the certificate with the conditions, if any, on which the application is granted; and
- (c) specify on the certificate –
 - (i) the name and address of the person to whom it is issued; and
 - (ii) the water to which it relates; and
 - (iii) the date on which the registration is granted and the period for which, subject to this Act, the registration remains in force.

136AA. Renewal of registration

(1) A person may apply to the relevant council to renew the registration of the person as a supplier of water from a private water source.

(2) An application is to be –

- (a) in the approved form; and
- (b) lodged at the public office of the council; and
- (c) accompanied by the applicable council fee.

(3) A council may –

(a) grant an application for renewal of registration as a supplier of water from a private water source and register the applicant without conditions or on the conditions the council thinks fit; or

(b) refuse to grant an application for renewal of registration as a supplier of water from a private water source.

(4) In determining an application, a council is to have regard to –

(a) public health and any relevant guidelines; and

(b) whether the applicant is likely to comply with the Act and any relevant guidelines; and

(c) the extent to which the applicant has complied with the Act, any relevant guidelines, and any conditions of registration as a supplier of water from a private water source.

(5) The council, by notice in writing served on an applicant for renewal of registration, must notify the applicant of –

(a) the granting of the application; or

(b) the refusal to grant the application.

136AAB. Duration of registration

(1) The registration of a person as a supplier of water from a private water source remains in force for the period of 12 months, or a shorter period specified by the council and specified on the certificate of registration, from the date on which the application for registration, or for renewal of registration, is granted.

(2) However, if an application to renew the registration of a person as a supplier of water from a private water source is lodged and not determined before the registration expires, the period of the registration is extended until the application is determined.

136A. Use or supply of water

A person required to be registered under section 133(1) as a supplier of water from a private water source must ensure that the water is supplied –

(a) in accordance with –

(i) any condition of the registration; and

(ii) any relevant guidelines; and

(b) in a manner that does not pose a threat to public health.

Penalty:

Fine not exceeding 50 penalty units.

136AB. Supplier of water from private water source must give notice to public if water unsafe

A person required to be registered under section 133(1) as a supplier of water from a private water source must, if the person becomes aware that the quality of the water that the person has supplied or is intending to supply is a threat to public health or is likely to become a threat to public health, take any necessary and practicable action in accordance with any relevant guidelines to prevent the threat by –

(a) restricting or preventing the use of the water; or

(b) rendering the water safe; or

(c) giving warnings and information to the public about the safe use of the water or risk of using the water.

136B. Variation of registration

(1) A council, on its own volition or on application by a person who is registered as a supplier of water from a private water source, may vary the registration by omitting, adding, substituting or amending any condition of the registration.

(2) Before varying the registration, the council is to consider the protection of public health and any relevant guidelines.

(3) The council, by notice in writing served on the holder of the certificate of registration, is to notify any variation of the registration.

(4) The variation of the registration takes effect –

(a) if an application for a review of the decision to vary the registration is not made under section 163A(c), 28 days after service of the notice; or

(b) if an application for a review of the decision to vary the registration is made under section 163A(c) and the Magistrates Court (Administrative Appeals Division) makes a decision affirming the decision under review, on the day the decision was affirmed.

136C. Cancellation of registration

(1) A council may cancel the registration of a person as a supplier of water from a private water source if –

(a) a condition of the registration, or a provision of the Act, or the guidelines, that applies to a supplier of water from a private water source, has not been complied with; or

(b) the water source poses, or is likely to pose, a threat to public health.

(2) The council, by notice in writing served on the holder of the certificate of registration, is to notify the cancellation of the registration.

(3) The cancellation of the registration under subsection (1)(a) takes effect –

(a) if an application for a review of the decision to cancel the registration is not made under section 163A(d), 28 days after service of the notice; or

(b) if an application for a review of the decision to cancel the registration is made under section 163A(d) and the Magistrates Court (Administrative Appeals Division) makes a decision affirming the decision under review, on the day the decision was affirmed.

Division 4 - Registration of water carriers

136D. Water carriers

(1) In this section –

water tank means a receptacle that is designed, or used, for the carriage of liquids in bulk.

(2) For the purposes of this Act, a person carries on the undertaking of a water carrier if the person carries on an undertaking that –

(a) supplies, whether or not for fee or reward, water that is intended for human consumption; and

(b) supplies such water by transporting it in a water tank that is situated in or on, or is attached to, a vehicle.

(3) A person does not carry on the undertaking of a water carrier by reason only of being the driver of a vehicle that carries water.

136E. Water carriers required to be registered

(1) A person must not carry on the undertaking of a water carrier unless the person is registered with the council in respect of the municipal area in which will be stored the majority of vehicles by which water is to be supplied in the course of carrying out the undertaking.

Penalty:

Fine not exceeding 50 penalty units.

(2) A person who is required under this section to be registered as a water carrier –

(a) must comply with the conditions, if any, of the registration and with any relevant guidelines; and

(b) must supply water, as part of the undertaking of being a water carrier, in a manner that does not pose a threat to public health.

Penalty:

Fine not exceeding 50 penalty units.

136F. Application for registration

(1) A person may apply to a council to be registered as a water carrier.

(2) An application is to be –

(a) in the approved form; and

(b) lodged at the public office of the council; and

(c) accompanied by the applicable council fee.

136G. Grant or refusal of registration

(1) A council may –

(a) grant an application for registration as a water carrier and register the applicant without conditions or on the conditions the council thinks fit; or

(b) refuse to grant an application for registration as a water carrier.

(2) In determining an application, a council is to have regard to –

(a) public health and any relevant guidelines; and

(b) whether the applicant is likely to comply with the Act and any relevant guidelines; and

(c) if the applicant has previously been registered as a water carrier – the extent to which the applicant has complied with the Act, any relevant guidelines, and any conditions of such registration.

(3) The council, by notice in writing served on an applicant for registration, must notify the applicant of –

(a) the granting of the application; or

(b) the refusal to grant the application.

136H. Issue of certificate of registration

If a council grants an application under section 136G or section 136I it is to –

- (a) issue in an approved form a certificate of registration as a water carrier; and
- (b) endorse the certificate with the conditions, if any, on which the application is granted; and
- (c) specify on the certificate –
 - (i) the name and address of the person to whom it is issued; and
 - (ii) the date on which the registration is granted and the period for which, subject to this Act, the registration remains in force; and
 - (iii) the equipment, and the vehicle registration number of the vehicles, to be used by the person in carrying on the undertaking of a water carrier.

136I. Renewal of registration

- (1) A person may apply to the relevant council to renew the registration of the person as a water carrier.
- (2) An application is to be –
 - (a) in the approved form; and
 - (b) lodged at the public office of the council; and
 - (c) accompanied by the applicable council fee.
- (3) A council may –
 - (a) grant an application for renewal of registration as a water carrier and register the applicant without conditions or on the conditions the council thinks fit; or
 - (b) refuse to grant an application for renewal of registration as a water carrier.
- (4) In determining an application, a council is to have regard to –
 - (a) public health and any relevant guidelines; and
 - (b) whether the applicant is likely to comply with the Act and any relevant guidelines; and
 - (c) the extent to which the applicant has complied with the Act, any relevant guidelines, and any conditions of registration as a water carrier.

(5) The council, by notice in writing served on an applicant for renewal of registration, must notify the applicant of –

- (a) the granting of the application; or
- (b) the refusal to grant the application.

136J. Duration of registration

(1) The registration of a person as a water carrier remains in force for the period of 12 months, or a shorter period specified by the council and specified on the certificate of registration, from the date on which the application for registration, or for renewal of registration, is granted.

(2) However, if an application to renew the registration of a person as a water carrier is lodged and not determined before the registration expires, the period of the registration is extended until the application is determined.

136K. Variation of registration

(1) A council, on its own volition or on application by a person who is registered as a water carrier, may vary the registration of the person as a water carrier by omitting, adding, substituting or amending any condition of the registration.

(2) Before varying the registration, the council is to consider the protection of public health and any relevant guidelines.

(3) The council, by notice in writing served on the holder of the certificate of registration as a water carrier, is to notify any variation of the registration.

(4) The variation of the registration takes effect –

(a) if an application for review of the decision to vary the registration is not made under section 163B – 28 days after service of the notice; or

(b) if an application for review of the decision to vary the registration is made under section 163B and the Magistrates Court (Administrative Appeals Division) makes a decision affirming the decision under review – on the day the decision was affirmed.

136L. Cancellation of registration

(1) A council may cancel the registration of a person as a water carrier if –

(a) a condition of the registration, or a provision of the Act, or of the guidelines, that applies to a water carrier, has not been complied with; or

(b) the water source, or the supply of water by the water carrier, is a threat to public health or a likely threat to public health.

(2) The council, by notice in writing served on the holder of a certificate of registration as a water carrier, is to notify the cancellation of the registration.

(3) The cancellation of the registration takes effect –

(a) if an application for review of the decision to cancel the registration is not made under section 163B – 28 days after service of the notice; or

(b) if an application for review of the decision to cancel the registration is made under section 163B and the Magistrates Court (Administrative Appeals Division) makes a decision affirming the decision under review – on the day the decision was affirmed.

136M. Water carrier must give notice to public if water unsafe

(1) A person required to be registered under section 136E as a water carrier must, if the person becomes aware that the quality of the water in relation to which the person is registered as a water carrier is a threat to public health or is likely to become a threat to public health, take any action, to prevent the threat, that is specified in any relevant guidelines and is necessary and practicable.

(2) Action that the relevant guidelines may specify for the purposes of subsection (1) includes, but is not limited to including, any actions for any of the following purposes:

(a) restricting or preventing the use of the water;

(b) rendering the water safe;

(c) giving warnings and information to the public about the safe use of the water or risk of using the water.

PART 7 - Registers

Division 1 - Cervical Screening Register

137. Cervical Screening Register

The Director must compile and maintain a Cervical Screening Register.

137A. Contents of Cervical Screening Register

The Director may record the following kinds of information about a person in the Cervical Screening Register:

- (a) the person's personal information;
- (ab) a number, or other sign, assigned to the person so as to identify the person;
- (ac) information as to whether or not the person is an Aboriginal or Torres Strait Islander, or both;
- (b) the person's date of birth;
- (c) the history of the person's cervical cancer tests and the results of those tests;
- (d) the history of the person's cervical cancer treatment;
- (e) HPV vaccination information relating to the person.

137B. Sharing of information about cervical screening

(1) The information to be recorded in the Cervical Screening Register about a person may be obtained from one or more of the following sources:

- (a) the person;
- (b) a medical practitioner or registered nurse engaged by the person;
- (c) a person in charge of a laboratory engaged by, or on behalf of, the person;
- (d) the person responsible for keeping the National HPV Vaccination Program Register;
- (e) a person responsible for keeping a corresponding register;
- (f) Medicare Australia.

(2) The Director may provide information recorded in the Cervical Screening Register about a person to one or more of the following for a purpose specified in section 138(a),(b), (c), (ca) or (cb):

- (a) the person;
- (b) a medical practitioner or registered nurse engaged by the person;
- (c) a person in charge of a laboratory engaged by, or on behalf of, the person;
- (d) the person responsible for keeping the National HPV Vaccination Program Register;

(e) a person responsible for keeping a corresponding register;

(f) Medicare Australia.

138. Use of information on Cervical Screening Register

The Director may use the information contained in the Cervical Screening Register for the following purposes:

(a) to ensure that the information held about a person on the Register is up to date;

(b) to provide notification in respect of a person on the Register who may –

(i) be overdue for a cervical cancer test; or

(ii) need to have a cervical cancer test repeated because of a technically unsatisfactory test result; or

(iii) require appropriate medical investigation or treatment because of an abnormal cervical cancer test result;

(c) to provide information, including a cervical cancer test result, for a person on the Register to assist in –

(i) the making of a diagnosis; or

(ii) the recommendation of treatment for the person; or

(iii) the determination of the time when the person should have the next cervical cancer test;

(ca) to provide general information to persons on the Register about the role and functions of the Register, cervical screening and cervical cancer prevention;

(cb) to provide information for the purposes of the National HPV Vaccination Program Register or for the purposes of maintaining a corresponding register;

(d) to provide comparative data from laboratories to encourage consistency of performance;

(e) to provide epidemiological data in order to –

(i) monitor participation rates and patterns; and

(ii) assist program planning or the development of national guidelines; and

- (iii) provide a database for use in research into cancer, its alleviation and its prevention; and
- (iv) assist the compilation of comparative data by any approved organisation; and
- (v) increase public awareness by the publication of statistical profiles.

139. Disclosing information in Cervical Screening Register

A person must not disclose any information contained in the Cervical Screening Register which relates to a person on that Register unless –

- (a) the person has consented, in writing, to the disclosure; or
- (b) the information is provided by the Director in accordance with section 137B(2); or
- (c) the information is provided for a purpose specified in section 138(d) or (e) and does not disclose the personal information of a person on the Register.

Penalty:

Fine not exceeding 100 penalty units.

140. Objection to inclusion in Cervical Screening Register

- (1) A person may request that the results or copies of the results of a cervical cancer test carried out on the person –
 - (a) not be provided to the Director; and
 - (b) not be held in the Cervical Screening Register.
- (2) The person who carried out the cervical cancer test, by notice in writing, must notify the person in charge of the laboratory that completed the test that the results or a copy of the results of the test are not to be provided to the Director.

Penalty:

Fine not exceeding 5 penalty units.

141. Cervical cancer test results

- (1) Within 60 days after the completion of a cervical cancer test, the person in charge of the laboratory that completed the test must provide to the Director the results, or a copy of the results, of the test in an approved form.

Penalty:

Fine not exceeding 5 penalty units and a special penalty of 1 penalty unit for each result not provided.

(2) Subsection (1) does not apply to a cervical cancer test if a notice under section 140 is received in respect of that test.

142. Removal of identifying data from Cervical Screening Register

(1) A person, by notice in writing, may request the Director to remove any data identifying the person from the Cervical Screening Register.

(2) The Director must comply with a request as soon as practicable.

(3) Data which relates to, but does not identify, a person who made a request under subsection (1) may be retained in the Cervical Screening Register.

Division 2 - Information registers

143. General registers

(1) The Director may establish registers containing information which the Director considers may assist in facilitating, protecting, promoting or maintaining public health.

(2) The Director may require any person, public authority or Agency to provide information for inclusion in an information register.

(2A) A person must comply with a requirement under subsection (2).

Penalty:

Fine not exceeding 100 penalty units.

(3) The Director may require a council to establish registers containing any information the Director determines.

144. Registers kept by councils

A council is to keep –

(a) a register of registered regulated systems; and

(b) a register of registered users and suppliers of water from private water sources; and

(c) a register of registered premises used for public health risk activities.

145. Register of licences

The Director may require a council to keep a register of licences issued by it and in force under this Act.

146. Keeping of registers

A register under this Part is to be kept –

- (a) in an approved form; and
- (b) in accordance with any relevant guidelines.

PART 8 - Miscellaneous

Division 1 - Information

147. Disclosure of information

(1) A person must not disclose to another person any information, relating to a natural person, that is information –

- (a) that has been obtained by a person for the purposes of this Act or relates to the administration of this Act; and
- (b) from which the identity of the natural person is apparent or reasonably ascertainable –

unless the disclosure of the information is permitted under subsection (2).

Penalty:

Fine not exceeding 100 penalty units.

(2) The disclosure of information by a person is permitted if the disclosure –

- (a) is authorised under subsection (3); and
- (b) except if subsection (3)(g), (i) or (j) applies, is in accordance with relevant guidelines, if any, in relation to such a disclosure.

(3) A disclosure to a person of information relating to another person (a ***relevant person***) that is information from which the identity of the other person is apparent or reasonably ascertainable is authorised if –

- (a) the relevant person gives his or her written consent to the disclosure or, where he or she is a child, or a person with a guardian, who is incapable of giving consent, a parent or guardian of the relevant person gives written consent to the disclosure; or

- (b)** the disclosure is disclosure to a person involved in the diagnosis, clinical assessment, treatment or counselling of the relevant person; or
- (c)** the disclosure is disclosure to a person apparently in charge of any institution or facility which is involved in the clinical assessment, treatment or counselling of the relevant person; or
- (d)** the disclosure is disclosure to a person authorised by the Director; or
- (e)** the disclosure is for the purpose of –
 - (i)** the management, detection, notification, treatment or prevention of the spread of a notifiable disease or notifiable contaminant; or
 - (ii)** managing a threat to public health or a likely threat to public health; or
- (f)** the disclosure is for the purpose of an approved epidemiological study, approved study or approved research; or
- (g)** the disclosure is for the purposes of legal proceedings arising out of this Act; or
- (h)** the disclosure is for the purposes of, or occurs in the course of, an inquiry, or investigation, under this Act; or
- (i)** the disclosure is for a purpose authorised, or is required, by this Act or another Act; or
- (j)** the disclosure is for the purposes of ensuring compliance with, and enforcing, this Act.

(4) A person must not disclose to a person any information –

(a) that has been obtained by a person for the purposes of this Act or that relates to the administration of this Act; and

(b) from which the identity of a business or premises is apparent or reasonably ascertainable –

unless the person is permitted to do so under subsection (5).

Penalty:

Fine not exceeding 100 penalty units.

(5) The disclosure of information by a person is permitted if the disclosure –

(a) is authorised under subsection (6); and

(b) except if subsection (6)(d), (g) or (h) applies, is in accordance with relevant guidelines, if any, in relation to such a disclosure.

(6) A disclosure to a person of information from which the identity of a business or premises is apparent or reasonably ascertainable is authorised if –

(a) the owner of the business, or the occupier of the premises, gives his or her written consent to the disclosure; or

(b) the disclosure is disclosure to a person authorised by the Director; or

(c) the disclosure is for the purposes of, or occurs in the course of, an inquiry, or investigation, under this Act; or

(d) the disclosure is for a purpose authorised, or is required, by this Act or another Act; or

(e) the disclosure is for the purpose of –

(i) the management, diagnosis, detection, notification, treatment or prevention of the spread of a notifiable disease or notifiable contaminant; or

(ii) managing a threat to public health or a likely threat to public health; or

(f) the disclosure is for the purpose of an approved epidemiological study, approved study or approved research; or

(g) the disclosure is for the purposes of legal proceedings arising out of this Act; or

(h) the disclosure is for the purposes of ensuring compliance with, and enforcing, this Act.

(7) For the purposes of this section, a child or person is incapable of giving consent if the child or person is unable to understand the implications of giving consent to the disclosure of information in relation to himself or herself.

148. Requirement for information

(1) The Director, any council or an authorised officer may require a person to provide information relating to public health which is reasonably needed for the purposes of this Act.

(2) The Director may require a person to provide information that the Director considers is relevant to public health.

(3) A person must comply with a requirement under this section.

Penalty:

Fine not exceeding 100 penalty units.

(4) A court that finds a person guilty of failing to comply under subsection (3) with a requirement to provide information may order the person to provide the information to the Director.

149.

Division 2 - Articles and substances

150. Dealings with certain articles and substances

(1) The Director may require that any article, item or substance that in the opinion of the Director may cause a threat to public health –

(a) is not to be manufactured, sold, used or transported; or

(b) is to be dealt with in accordance with any relevant guidelines.

(2) A person must comply with a requirement.

Penalty:

Fine not exceeding 100 penalty units.

151. Removal and destruction

(1) The Director may require a person, public authority or Agency to remove or destroy any articles, items, goods or substances that in the opinion of the Director may cause a threat to public health.

(2) The removal and destruction of any articles, goods or substances must be carried out in accordance with –

(a) any direction of the Director; or

(b) any relevant guidelines.

Penalty:

Fine not exceeding 100 penalty units.

(3) The removal or destruction of any articles, goods or substances is at the expense of the person, public authority or Agency required to carry out the removal or destruction.

Division 3 - Costs and compensation

152. Costs incurred in exercising power

(1) If a person, public authority or Agency fails to exercise a power or perform a function or fails to comply with a direction or requirement of the Director under this Act when required to do so, the Director or a council may exercise that power or perform that function at the expense of that person or body.

(2) Any costs or charges incurred by the Director or a council under this section –

(a) is a debt due –

(i) to the Crown, if the Director incurred the costs or charges; and

(ii) to the council, if the council incurred the costs or charges; and

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

153. Compensation

(1) A person may claim for compensation for damage to any premises, vehicle or article owned by, or in the possession or under the control of, that person if the damage –

(a) was the result of the exercise of a power or performance of a function under this Act; and

(b) was not caused by any action or omission of the person.

(2) Compensation is payable at an amount the Director considers reasonable.

(3) Compensation is not payable if the premises, vehicle or article damaged was the cause of, or constituted, a threat to public health or a likely threat to public health.

Division 4 - Offences

154. Offences against authorised officers

(1) A person must not –

(a) assault, abuse or threaten an authorised officer, nominated officer or a police officer exercising or attempting to exercise a power or performing a function under this Act; or

(b) hinder, obstruct or delay an authorised officer, nominated officer or a police officer exercising or attempting to exercise a power or performing a function under this Act.

Penalty:

Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both.

(2) A person must not fail to comply with a requirement of an authorised officer, nominated officer or police officer under this Act.

Penalty:

Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both.

154A. Offences against water quality auditors

A person must not –

(a) assault, abuse or threaten a person conducting an audit, or preparing a report, required by guidelines for the purposes of section 129B; or

(b) hinder, obstruct or delay a person conducting an audit, or preparing a report, required by guidelines for the purposes of section 129B.

Penalty:

Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both.

155. Interfering with or removing seals and samples

(1) A person must not interfere with, or remove –

(a) any seal or mark made by an authorised officer or nominated officer; or

(b) any sample taken by an authorised officer or nominated officer; or

(c) any thing or document seized by an authorised officer or nominated officer.

Penalty:

Fine not exceeding 100 penalty units.

(2) A person must not contaminate any sample taken by an authorised officer or nominated officer.

Penalty:

Fine not exceeding 100 penalty units.

156. Inciting and encouraging

(1) A person must not incite or encourage another person to commit an offence under this Act.

Penalty:

Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 6 months, or both.

(2) Subsection (1) does not apply to a person authorised under section 67A to carry out any approved activity for the purpose of that section.

157. Offences by corporations

If a body corporate is guilty of an offence under this Act, each director of the body corporate is guilty of the offence unless it is proved that the director could not have reasonably prevented the commission of the offence by the body corporate.

158. Proceedings

(1) Proceedings for an offence under this Act may only be instituted by –

(a) the Minister or a person authorised by the Minister; or

(b) an authorised officer; or

(c) a nominated officer in relation to proceedings for an offence under Part 4; or

(d) a police officer; or

(e) a council.

(2) Proceedings for an offence under this Act must be instituted within 3 years after the date on which an offence is alleged to have been committed.

(3)

159. Cost of proceedings

(1) A person convicted of an offence is liable for costs relating to –

- (a) the examination and analysis of any thing to which the offence relates; and
 - (b) the seizure and disposal of any thing to which that offence relates; and
 - (c) the transportation and storage of any thing to which the offence relates.
- (2) Any costs incurred by a council in relation to an offence is payable to the council by the person convicted of the offence.

Division 5 - Reviews and Appeals

160. Appeal relating to seizure

- (1) A person may appeal to a magistrate against the seizure of any thing under section 30(1)(f).
- (2) An appeal is to be made within 14 days after service of a notice under section 30(4).

160AA. Reviews relating to permits to supply needles and syringes

- (1) A person may apply to the Magistrates Court (Administrative Appeals Division) for a review of a decision of the Director –
- (a) under section 56D to refuse to issue a permit to the person; or
 - (b) under section 56F(6) to specify a condition on a permit issued to the person under section 56D; or
 - (c) to refuse to specify under section 56E(2) or (3) a term on a permit issued to the person under section 56D; or
 - (d) under section 56G(2) to vary, or refuse to vary, a condition imposed under section 56F(6) on a permit issued to the person under section 56D; or
 - (e) under section 56G(2) to vary, to refuse to vary, or to revoke, a term specified under section 56E(2) or (3) on a permit issued to the person under section 56D; or
 - (f) under section 56G(2) to vary, or to refuse to vary, in accordance with section 56G(4), a term specified under section 56E(1) on a permit issued to the person under section 56D; or
 - (g) to revoke, or to refuse to renew, under section 56H a permit issued to the person under section 56D.
- (2) A person may apply to the Magistrates Court (Administrative Appeals Division) for a review of a decision of the Director or a person –

(a) to refuse to issue a certificate under section 56I(3); or

(b) to cancel a certificate under section 56I(5).

160A. Reviews relating to tobacco seller's licence

A person may apply to the Magistrates Court (Administrative Appeals Division) for a review of the Director's decision to –

(a) grant or refuse to grant an application for a tobacco seller's licence; or

(b) grant or refuse to grant an application for the renewal of that licence; or

(c) impose any condition on that licence; or

(d) vary that licence; or

(e) cancel that licence.

160B. Reviews relating to approval of designated smoking area

A person may apply to the Magistrates Court (Administrative Appeals Division) for a review of the Director's decision to –

(a) grant or refuse to grant an application for an approval of a designated smoking area; or

(b) impose any condition on that approval; or

(c) vary a condition of that approval; or

(d) suspend or revoke that approval.

160C. Reviews relating to approval of water quality auditor

A person may apply to the Magistrates Court (Administrative Appeals Division) for a review of the Director's decision to –

(a) grant or refuse to grant an application for approval as a water quality auditor; or

(b) impose any condition on that approval; or

(c) vary a condition of that approval; or

(d) suspend or cancel that approval.

161. Appeal relating to place of assembly licence

(1) A person may appeal to the Appeal Tribunal against a council's decision to –

(a) grant or refuse to grant an application for a place of assembly licence; or

(b) grant or refuse to grant an application for the renewal of a place of assembly licence; or

(c) impose any condition on a place of assembly licence; or

(d) vary a place of assembly licence; or

(e) cancel a place of assembly licence.

(2) An appeal is to be made within 14 days after service of a notice under –

(a) section 77(3); or

(b) section 81(6); or

(c) section 82(3); or

(d) section 83(2).

162. Appeal relating to registration

(1) A person may appeal to the Appeal Tribunal against the council's decision to –

(a) grant or refuse to grant an application for the registration of premises to carry out a public health risk activity; or

(b) grant or refuse to grant an application for the renewal of the registration of those premises; or

(c) impose any condition on the registration of those premises; or

(d) vary the registration of those premises; or

(e) cancel the registration of those premises.

(2) An appeal is to be made within 14 days after service of a notice under –

(a) section 97(3); or

(b) section 101(6); or

(c) section 102(3); or

(d) section 103(2).

163. Reviews relating to public health risk activity licence

A person may apply to the Magistrates Court (Administrative Appeals Division) for a review of the council's decision to –

(a) grant or refuse to grant an application for a licence to carry out a public health risk activity; or

(b) grant or refuse to grant an application for the renewal of that licence; or

(c) impose any condition on the licence; or

(d) vary that licence; or

(e) cancel that licence.

163A. Reviews relating to registration as supplier of water

A person may apply to the Magistrates Court (Administrative Appeals Division) for a review of the council's decision to –

(a) grant or refuse to grant an application for registration or renewal of registration as a supplier of water from a private water source; or

(b) impose any condition on that registration or renewal of registration; or

(c) vary that registration; or

(d) cancel that registration.

163B. Reviews relating to registration as a water carrier

A person may apply to the Magistrates Court (Administrative Appeals Division) for a review of a council's decision to –

(a) grant or refuse to grant an application for registration, or renewal of registration, as a water carrier; or

(b) impose any condition on that registration or renewal of registration; or

(c) vary that registration; or

(d) cancel that registration.

164. Reviews relating to regulated systems

A person may apply to the Magistrates Court (Administrative Appeals Division) for a review of the council's decision to –

- (a) grant or refuse to grant an application for the registration of a regulated system; or
- (b) grant or refuse to grant an application for the renewal of that registration; or
- (c) impose any condition on the registration; or
- (d) vary that registration; or
- (e) cancel that registration.

165. Review of orders

A person may apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision of the Director or a council to make an order under this Act.

166. Review of notices

A person may apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision of the Director or a council to issue a notice under this Act.

167. Determination of appeal

- (1)
- (2) On hearing an appeal against the seizure of any thing, a magistrate may make any of the following orders:
 - (a) an order confirming the seizure;
 - (b) an order revoking the seizure and requiring the thing to be returned to its owner.

168. Appeal to Supreme Court

A person may appeal to the Supreme Court against an order of a magistrate under section 167.

169. Infringement notices

(1) An authorised officer or a council may serve an infringement notice on a person if of the opinion that the person has committed a prescribed offence.

(2) A nominated officer may serve an infringement notice on a person if of the opinion that the person has committed an offence under Part 4.

(3) An infringement notice –

(a) is not to relate to 4 or more offences; and

(b) is not to be served on a person under the age of 16 years.

(4) An infringement notice is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*.

170.

171.

172.

173.

174. Payments to council or Consolidated Fund

Any payments made in respect of an infringement notice –

(a) are payable to a council if the notice was served by the council; or

(b) in any other case, are payable into the Consolidated Fund.

175.

176.

177.

Division 7 - Regulations and guidelines

178. General provisions

(1) The Governor may make regulations for the purpose of this Act.

(2) Regulations may be made so as to apply differently according to any matter, condition, limitation, restriction, exception or circumstance specified in the regulations.

(3) The regulations may –

(a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and

(b) in respect of such an offence, provide for the imposition of a fine not exceeding 20 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

(4) The regulations may –

(a) authorise any matter to be determined, applied or regulated by a specified person, a public authority or an Agency; and

(b) confer a power or impose a duty on a specified person or class of person.

(5) The regulations may adopt or incorporate the whole or part of any standard, rule, code, specification or guidelines, with or without modification, issued, prescribed, made or published by any person or body before or after the regulations take effect.

179. Regulations of savings or transitional nature

(1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subsection (1) may, if the regulations so provide, take effect from the commencement of this Act or a later day.

180. Regulations relating to places

The Governor may make regulations relating to any premises, place or area to which the public has access.

181. Regulations relating to registered premises

The Governor may make regulations relating to –

(a) the health and safety of persons in registered premises; and

(b) the operation and maintenance of registered premises.

182. Regulations relating to fees and charges

(1) The Governor may make regulations prescribing fees and charges in relation to –

(a) any matter under this Act; and

(b) any services provided under this Act.

(2) Regulations made under this section may prescribe a fee or charge by specifying –

(a) a set amount; or

(b) any other method of calculation.

(3) Any fees and charges paid under regulations made under this section relating to any function or power of a council are to be paid to the council.

183. Prescribed offences and penalties

(1) The Governor may make regulations prescribing –

(a) offences for the purposes of infringement notices; and

(b) the penalty applicable to those offences.

(2) Offences under regulations made under this Act may be prescribed for the purpose of subsection (1).

184. Guidelines

(1) The Director may issue guidelines relating to any matter under this Act and any matter in respect of which a regulation may be made.

(1A) The power of the Director under subsection (1) to issue guidelines is not limited to the power to make guidelines for the purposes of a provision that expressly refers to guidelines.

(2) The guidelines may adopt or incorporate the whole or part of any standard, rule, code, specification or guidelines, with or without modification, issued, prescribed, made or published by any person or body before or after the guidelines take effect.

(3) The Director may amend or revoke any guidelines.

(4) The Director, by public notice, must notify –

(a) the issue, amendment or revocation of any guidelines; and

(b) the subject matter of the guidelines; and

(c) the place at which a copy of the guidelines may be obtained; and

(d) the cost, if any, of obtaining the guidelines.

(5) Any Agency, public authority or person must comply with the guidelines.

Penalty:

Fine not exceeding 50 penalty units.

(6) Guidelines are not statutory rules for the purpose of the *Rules Publication Act 1953*.

Division 8 - Miscellaneous matters

185. Council fees

(1) A council, by resolution, may impose fees relating to applications made to it under Part 5 or Part 6.

(2) Any fee imposed under subsection (1) is to be in accordance with any relevant guidelines.

186. Assistance

Any person, public authority or Agency must provide reasonable facilities and assistance to the Director, any authorised officer, nominated officer and council exercising any power or performing any function under this Act.

Penalty:

Fine not exceeding 50 penalty units.

187. Exemptions

(1) The Director, by order, may exempt any Agency, public authority, person or class of person from any provision of this Act.

(2) The Director, by order, may exempt any matter, activity or premises from any provision of this Act.

187A. Quarantined, &c., persons to be permitted to communicate with certain persons

(1) The Secretary of the Department must ensure that a person who is quarantined, placed in isolation, or required to stay in a particular place, under a direction or order given in accordance with this Act –

(a) is given reasonable opportunities to contact and confer with an Australian legal practitioner, or a medical practitioner, of the person's own choosing; and

(b) receives any communications made to the person by an Australian legal practitioner or a medical practitioner.

(2) For the purposes of subsection (1), the Secretary of the Department may limit contact, conferral and communication to or by a person who has a notifiable disease to such means as are necessary to ensure that the notifiable disease is not transmitted by the person to another person.

188. Immunity from liability

(1) Any employee of any Agency or public authority or any nominated officer is not personally liable for an honest act or omission done or made in the exercise or purported exercise of a power, or in the performance or purported performance of a function, under this Act.

(2) Subsection (1) does not preclude the Crown or a public authority from incurring any liability that a person referred to in subsection (1) would, but for that subsection, incur.

189. Forfeiture

A court, in addition to imposing a penalty for an offence under this Act, may order that any article, vehicle or other thing by means of which, or in relation to which, the offence was committed be forfeited to the Crown or a council.

190. Sale or disposal of forfeited things

(1) A council or authorised officer may sell, destroy or otherwise dispose of any thing forfeited if –

(a) an application is not made under subsection (2); or

(b) an application is made under subsection (2) and the application is refused.

(2) A person who owned anything forfeited, or who had any legal or equitable interest in anything forfeited immediately before the forfeiture, may apply to the council or authorised officer to buy it within 30 days after the forfeiture.

(3) The council or authorised officer may –

(a) grant an application under this section; or

(b) refuse to grant the application.

(4) If the application is granted, the council or authorised officer is to sell the forfeited thing to the applicant for an amount equal to its estimated market value.

(5) Any proceeds of a sale or disposal of a thing forfeited by a council are payable to the council.

(6) Any proceeds of a sale or disposal of a thing forfeited by an authorised officer are payable to the Consolidated Fund.

191. Return of and access to seized things

(1) The owner of any thing seized under this Act may apply to the council which or authorised officer who seized the thing for –

(a) the return of that thing; or

(b) access to that thing.

(2) An application for the return of any thing seized is to be made within 48 hours after it was seized.

(3) The council or authorised officer may –

(a) grant an application under this section; or

(b) refuse to grant it.

192. Sale or disposal of seized things

(1) A council or authorised officer may sell or otherwise dispose of any thing seized under this Act if –

(a) an appeal is not made under section 160; or

(b) an appeal is made under section 160 and an order is made under section 167(2)(a); or

(c) it poses an immediate threat to public health.

(2) Any proceeds of the sale or disposal of a thing seized by a council are payable to the council.

(3) Any proceeds of the sale or disposal of a thing seized by an authorised officer are payable into the Consolidated Fund.

193. False and misleading statements

A person, in making an application, giving any information or advice or producing any record under this Act, must not –

(a) make a statement knowing it to be false or misleading; or

(b) omit any matter from a statement knowing that without that matter the statement is false or misleading.

Penalty:

Fine not exceeding 50 penalty units.

194. Evidence

In any proceedings for an offence under this Act, a copy of any information, report, record, register, certificate or other document kept under this Act and certified as a correct copy by an authorised officer or public authority is evidence of the facts contained in it.

194A. Evidence relating to tobacco product

An allegation in a complaint in proceedings for an offence under Part 4 that a product is a tobacco product is evidence of that fact.

195. Fees and penalties

Any fees and penalties received under this Act relating to any matter in respect of which a council has exercised a power or performed a function is payable to that council.

196. Guidelines and codes of practice

(1) A guideline issued or code of practice formulated by the Director takes effect on the day on which it is issued or formulated or a day specified in the guideline or code of practice as the day on which it is to take effect.

(1A) An amendment or revocation, of a guideline or a code of practice, that is made by the Director takes effect on the day on which it is made or a day specified in the guideline or code of practice as the day on which it is to take effect.

(2) The Minister must cause a guideline or code of practice, or an amendment of a guideline or code of practice, to be laid before each House of Parliament within 5 sitting days of the day on which it takes effect.

(3) Either House of Parliament may disallow a guideline or code of practice, or an amendment of a guideline or code of practice by resolution of that House passed within 15 sitting days after the guideline or code of practice, or the amendment, is laid before it.

(4) A guideline or code of practice, or an amendment of a guideline or code of practice, may be confirmed by a resolution of both Houses of Parliament passed before the expiration of 15 sitting days after the guideline or code of practice, or the amendment, is laid before it.

(5) If at the expiration of 15 sitting days after a guideline or code of practice, or an amendment of a guideline or code of practice, is laid before either House of Parliament, no notice has been given of a motion to disallow the guideline or code of practice, or amendment, or, if such notice has been given, the notice has been withdrawn or the motion has been negatived, the guideline or code of practice, or the amendment, is taken to have been confirmed.

197. Repeals and rescissions

(1) The enactments and provisions of enactments specified in Schedule 2 are repealed.

(2) A provision of the *Public Health Act 1962* is repealed to the extent and from the day fixed by proclamation in respect of that provision.

(3) Any statutory rule made under any enactment or provision of an enactment specified in Schedule 2 is rescinded or revoked.

198. Savings and transitional

Schedule 3 has effect with respect to savings and transitional provisions.

198A. Savings and consequential provisions consequent to *Public Health (Miscellaneous Amendments) Act 2015*

(1) The registration, as a supplier of water from a private water source, of an Agency, public authority or person, which registration is in force immediately before the day on which the amendments to section 133 effected by the amendment Act come into force, continues in force, as if the registration had been granted under this Act as in force after that day, until the end of the 12-month period from the day the registration is granted.

(2) A person who, immediately before the amendment day, is the holder of a permit in force under the *HIV/AIDS Preventive Measures Act 1993* is to be taken, on and from the amendment day, to be the holder of a certificate issued under section 56I of this Act on the day on which the permit was issued.

(3) Nothing in this section is to be taken to prevent the revocation, expiry or amendment under this Part of a certificate that is taken under this section to be issued to a person under section 56I.

(4) In this section –

amendment Act means the *Public Health (Miscellaneous Amendments) Act 2015*;

amendment day means the day on which section 56C commences.

199. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

(a) the administration of this Act is assigned to the Minister for Community and Health Services; and

(b) the Department responsible to the Minister for Community and Health Services in relation to the administration of this Act is the Department of Community and Health Services.

SCHEDULE 1 - Provisions with respect to membership and meetings of advisory committee

Section 37(4)

1. Interpretation

In this Schedule,

member means a member of the Advisory Committee.

2. Term of office

A member is to be appointed for a period, not exceeding 3 years, specified in the member's instrument of appointment.

3. Holding other office

The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office is not disqualified from –

(a) holding that office and also the office of a member; or

(b) accepting any remuneration payable to a member.

4. Remuneration of members

A member is entitled to be paid any remuneration and travelling and subsistence allowances the Minister determines.

5. Vacation of office

(1) A member vacates office if the member –

(a) dies; or

(b) resigns; or

(c) is removed from office under subclause (2) or (3).

(2) The Minister may remove a member from office if the member –

(a) is absent from 3 consecutive meetings of the Advisory Committee without the permission of the Advisory Committee; or

(b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or

(c) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for 12 months or longer; or

(d) is convicted of an offence against this Act.

(3) The Minister may remove a member from office if satisfied that the member –

(a) is unable to perform adequately or competently the duties of office; or

(b) is no longer qualified to be a member.

6. Filling of vacancies

(1) If the office of a member becomes vacant, the Minister may appoint a person to the vacant office for the remainder of that member's term of office.

(2) If a member is unable for any reason to perform the duties of office, the Minister may appoint a suitable person to act in the office of that member for any period the Minister determines.

7. Presumptions

In any proceedings by or against the Advisory Committee, unless evidence is given to the contrary, proof is not required of –

(a) the constitution of the Advisory Committee; or

(b) any resolution of the Advisory Committee; or

(c) the appointment of any member; or

(d) the presence of a quorum at any meeting of the Advisory Committee.

8. Convening of meetings

(1) A meeting of the Advisory Committee may be convened by the chairperson or by any 2 members.

(2) A notice of any meeting is to be given to the Director at least 2 days before it is to be held.

9. Procedure at meetings

(1) The quorum at any duly convened meeting of the Advisory Committee is 4 members.

(2) Any duly convened meeting of the Advisory Committee at which a quorum is present is competent to transact any business of the Advisory Committee.

(3) A question arising at a meeting of the Advisory Committee is to be determined by a majority of votes of the members present and voting.

(4) The Advisory Committee may permit members to participate in a meeting by –

(a) telephone; or

(b) television conference; or

(c) any other means of communication it approves.

10. Chairperson

(1) The chairperson of the Advisory Committee is to preside at the meetings of the Advisory Committee.

(2) If the chairperson of the Advisory Committee is not present at a meeting of the Advisory Committee, a member elected by the members present is to preside at that meeting.

11. Attendance of Director

(1) The Director or a person authorised by the Director may attend any meeting of the Advisory Committee.

(2) The Director or authorised person does not have any voting rights at any meeting of the Advisory Committee.

(3) The presence of the Director or authorised person at a meeting of the Advisory Committee does not affect the quorum required for the meeting.

12. Disclosure of interest

(1) A member must not participate at any meeting of the Advisory Committee in any discussion relating to a matter in respect of which the member has an interest.

(2) A member is to disclose any interest in a matter before any discussion on that matter commences.

(3) On disclosing an interest, the member is to leave the meeting.

(4) The Advisory Committee may allow a member to remain at a meeting if –

(a) the member is required to make up a quorum; or

(b) it considers that the interest is too remote to influence the discussion or vote at the meeting.

13. General procedure

Subject to this Schedule, the procedures for the calling of, and for the conduct of business at, meetings of the Advisory Committee are –

(a) as determined by the Minister; or

(b) if there are no determinations by the Minister, as determined by the Advisory Committee.

14. Validity of proceedings

(1) An act or proceeding of the Advisory Committee is not invalid by reason only that at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the membership of the Advisory Committee.

(2) An act or proceeding of the Advisory Committee is valid even if –

(a) the appointment of a member of the Advisory Committee was defective; or

(b) a person appointed as a member of the Advisory Committee was disqualified from acting as, or incapable of being, such a member.

SCHEDULE 2 - Repeals

Section 197(1)

1. The following are repealed:

(a) section 197 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*;

(b) *Public Health Amendment Act 1996*;

(c) *Public Health Amendment (Cervical Cytology) Act 1993*;

(d) *Notification of Births Act 1966*;

(e) *Tobacco Products (Labelling) Act 1987*.

SCHEDULE 3 - Savings and transitional

Section 198

1. Interpretation

In this Schedule –

commencement day means the day on which this Act commences;

repealed Act means the *Public Health Act 1962*;

repealed regulations means regulations made under the repealed Act.

2. Director of Public Health

The person who, immediately before the commencement day, was the Director of Health under the repealed Act is, on that day, taken to be the Director of Health appointed under section 6.

3. Health officers

A person who, immediately before the commencement day, was a health officer under the repealed Act is, on that day an authorised officer under this Act.

4. Notice requiring disinfection of premises

A notice made under section 26 of the repealed Act and not complied with immediately before the commencement day may, on and from that day, be dealt with under that Act.

5. Compensation

Any entitlement to compensation under section 24 of the repealed Act existing immediately before the commencement day may, on and from that day, be dealt with under that Act.

6. Cervical Cytology Register

The Cervical Cytology Register compiled and maintained under the repealed Act before the commencement day is, on that day, the Cervical Screening Register maintained under this Act.

7. Information

Any information kept or provided under the repealed Act before the commencement day is, on that day, information kept or provided for the purpose of this Act.

8. Place of assembly

(1) A place in respect of which an approval is in force under the repealed Act immediately before the commencement day is, on that day, a place of assembly in respect of which a licence is in force under Division 1 of Part 5.

(2) Subclause (1) applies until 30 September immediately following the commencement day.

9. Place of public entertainment

(1) Any premises licensed under the repealed Act immediately before the commencement day as a place of public entertainment are, on that day, premises in respect of which a licence is in force under Division 1 of Part 5.

(2) Subclause (1) applies until 1 October immediately following the commencement day.

10. Skin penetration establishment

(1) Any premises registered under the repealed Act immediately before the commencement day as an establishment in which a process of skin penetration is carried on are, on that day, premises registered under Division 3 of Part 5.

(2) Subclause (1) applies until 1 April immediately following the commencement day.

Table Of Amendments

Act	Number and year	Date of commencement
Public Health Act 1997	No. 86 of 1997	1.2.1998
Business Franchise Fee Abolition Act 1999	No. 75 of 1999	24.11.1999
Physiotherapists Registration Act 1999	No. 106 of 1999	1.3.2000
Public Health Amendment (Tobacco) Act 2000	No. 8 of 2000	28.4.2000 (remaining provisions)
Public Health Amendment Act 2008	No. 55 of 2008	16.6.2000
Public Health Amendment (Tobacco Licensing) Act 2000	No. 29 of 2000	16.6.2000
Psychologists Registration Act 2000	No. 9 of 2000	1.10.2000
Public Health Amendment (Tobacco) Act 2000	No. 8 of 2000	31.10.2000 (ss. 10 and 12)
Public Health Amendment Act 2000	No. 90 of 2000	13.12.2000
Public Health Amendment (Tobacco) Act 2000	No. 8 of 2000	1.1.2001 (ss. 5, 7 and 11)
State Service (Consequential and Miscellaneous Amendments) Act 2000	No. 86 of 2000	1.5.2001
Public Health Amendment (Smoke-free Areas) Act 2001	No. 27 of 2001	3.9.2001
Dental Practitioners Registration Act 2001	No. 20 of 2001	3.10.2001
Pharmacists Registration Act 2001	No. 90 of 2001	1.4.2002
Magistrates Court (Administrative Appeals Division) (Consequential Amendments) Act 2001	No. 73 of 2001	1.7.2002
Food Act 2003	No. 8 of 2003	15.10.2003
Public Health Amendment Act 2004	No. 34 of 2004	1.1.2005
Liquor and Accommodation Amendment Act 2004	No. 24 of 2004	1.1.2005
Public Health Amendment Act 2004	No. 34 of	1.1.2006

	2004	
Emergency Management Act 2006	No. 12 of 2006	20.10.2006
Public Health Amendment Act 2006	No. 42 of 2006	18.12.2006
Public Health Amendment Act 2007	No. 69 of 2007	19.12.2007
Monetary Penalties Enforcement (Transitional Arrangements and Consequential Amendments) Act 2007	No. 72 of 2007	28.4.2008
Public Health Amendment Act 2007	No. 69 of 2007	20.6.2008
Public Health Amendment Act 2008	No. 55 of 2008	16.12.2008
Water and Sewerage Industry (Consequential and Transitional) Act 2008	No. 52 of 2008	1.7.2009
Public Health Amendment (Cervical Screening) Act 2009	No. 81 of 2009	1.1.2010
Health Practitioner Regulation National Law (Tasmania) (Consequential Amendments) Act 2010	No. 3 of 2010	1.7.2010
Public Health Amendment Act 2010	No. 44 of 2010	2.2.2011
Health Service Establishments Act 2006	No. 17 of 2006	1.10.2011
Public Health Amendment Act 2011	No. 40 of 2011	1.3.2012
Medical Radiation Science Professionals Registration (Repeal) Act 2011	No. 33 of 2011	1.7.2012
Public Health (Miscellaneous Amendments) Act 2015	No. 4 of 2015	1.7.2015