

1994

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SKIN PENETRATION PROCEDURES BILL 1994

EXPLANATORY MEMORANDUM

**Circulated by Authority of Terry Connolly MLA
Minister for Health**

OUTLINE

The *Skin Penetration Procedures Bill 1994* has been prepared in response to the risks associated with the transmission of blood borne infection, eg. Hepatitis B, Hepatitis C and HIV. The main purposes of the Bill are to ensure firstly, that premises in which skin penetration procedures are carried out are safe, and conducted in a way which prevents the contamination of both equipment and clients. Secondly, that those persons who perform skin penetration procedures, do so in such a way that clients are protected from the possibility of contamination from the operator, equipment used and other clients.

The risks associated with skin penetration procedures are significant when they are performed in unhygienic environments, with equipment that has not been sterilised and by persons whose practice does not incorporate the principles of universal precautions (an internationally recognised set of practices which protect clients, staff and the general public from the transmission of infectious disease). While the risks of contracting blood borne diseases, such as HIV, are well documented, public health authorities are also concerned about the potential for identification of blood borne viruses in the future.

In order to reduce the risks of skin penetration procedures, this Bill includes provisions for the licensing of businesses, apart from those conducted by the Government, where such procedures are performed. Also, because a large number of persons perform these procedures outside a premises, eg. mobile acupuncturists, the Bill includes provisions for the licensing of operators. Those health professionals whose practice is regulated by a health professions registration Act will be exempt from the need to obtain an operator's licence however, their practice will still be required to comply with approved codes of practice.

All private and publicly owned businesses that provide skin penetration services, as well as, persons who perform these procedures, eg. doctors, dentists, acupuncturists and tattooists, will have to comply with the requirements of approved codes of practice. These codes of practice will require approval by the Minister for Health.

The Minister may suspend or cancel a business and operator's licence if it is: obtained by fraud; the licensee contravenes the licence conditions or the Act; or he/she fails to comply with the code of practice.

An authorised officer may issue an improvement or prohibition notice when required. An improvement notice may be issued to the licensee when an authorised officer is satisfied that he/she contravenes, or is likely to contravene the legislation. A prohibition notice may be issued to a licensee by an authorised officer if he/she believes that an imminent risk of injury to health exists. It is an offence to fail to comply with an improvement or prohibition notice.

The Bill includes provisions for proprietors and operators to make application to the Administrative Appeals Tribunal in relation to decisions about licence applications, suspensions, cancellations and variation of a licence.

FINANCIAL CONSIDERATIONS

The cost of administering the legislation will be met from within the Department's budget.

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CLAUSE NOTES

PART I PRELIMINARY

Clause 1 Short Title

This clause refers to the short title of the Act to be known as the *Skin Penetration Procedures Act 1994*.

Clause 2 Commencement

These clauses deal with commencement of the Act. Commencement for provisions, apart from those detailed in the first two Clauses, are delayed in order to establish administrative procedures, particularly for the licences.

Clause 3 Interpretation

Particular words are defined for the purpose of the Bill. The following words have definitions which are beyond their generally accepted meaning.

"code of practice" - will be a disallowable instrument and include a range of stated requirements for the performance of skin penetration procedures. The code may take the form of one or more documents which will require updating as technologies and conditions change.

"skin penetration procedure" - includes any procedure related to the penetration of living human tissue or, the cleaning, disinfecting or sterilisation of equipment used in these procedures. Closed ear piercing refers to those procedures where the operator pierces the ear in such a way that no bodily contact is required with the site of penetration. This system should not be used to insert studs or other foreign matter into other areas of the body.

Clause 4 Interpretation - "prescribed business"

A prescribed business for the purposes of this Act is a business or profession which involves the performance of skin penetration procedures. It includes those businesses which charge a fee as well as Government agencies which provide these services, at times, without charging a fee.

PART II ADMINISTRATION

Clause 5 Authorised officers

(1-3) This clause refers to the appointment of suitably qualified and experienced persons to perform a range of functions relevant to the legislation.

Environmental Health Officers for the purposes of this Act will be the same as those appointed under the *Public Health Act 1928*.

Clause 6 Identity cards

(1-2) Authorised officers will need to carry identification which can show proof of their authority to perform a function under the Act. This proof of identification must be returned to the Chief Executive, Department of Health once they are no longer performing the duties of an authorised officer.

PART III CODES OF PRACTICE**Clause 7 Determination**

(1-2) These clauses refer to the power of the Minister to determine a code of practice. A code of practice will set out the general requirements for the performance of skin penetration procedures. It is intended that the Minister will receive advice regarding these requirements from the Medical Officer of Health.

Codes of practice will be based upon the principles of Universal Precautions (an internationally recognised set of behaviours which protect clients, staff and the general public from the transmission of infectious disease).

Clause 8 Disallowance

A code of practice determined under clause 7 is disallowable instrument.

Clause 9 Publication

(1-4) These clauses refer to the public's right of access to information regarding changes to the Codes of Practice.

Clause 10 Failure to comply with code

A person shall not perform skin penetration procedures for a fee or any reward unless they comply with any applicable codes of practice determined under clause 7.

Clause 11 False representation of compliance with codes

A person shall not falsely represent themselves or their business as being carried out in accordance with an applicable code of practice.

PART IV LICENCES

Clause 12 Requirement to obtain a business licence

(1-4) It is essential that premises used for skin penetration procedures be equipped with adequate fixtures and fittings in order to minimise the risk of contamination. The requirement to obtain a licence gives the discretion to apply different conditions to different premises, giving the flexibility to target problems without disadvantaging all businesses.

The licence will provide the Minister with information relevant to the type of business conducted, eg. whether it is an acupuncturist or tattooist.

Only those premises defined as a public authority are exempt from the need to obtain a licence. These premises are defined as those established under an Act of Parliament eg. the Woden Valley Hospital or the Phillip Health Centre. Other premises exempted from the need to be licensed include:

- . an authority declared by the Minister or Executive as being a public authority;
- . a facility over which the ACT Government is able to exercise control;
- . a person holding an office under an Act; or
- . a person holding an office or performing duties under this Act.

These premises will be required to comply with all other requirements of the Act.

Clause 13 Requirement to obtain operator's licence

(1-4) While proprietors must comply with approved codes of practice, this alone will not affect the practices of persons who operate outside a particular premises eg., mobile beauty therapists or tattooists who may provide a service in a client's home. The purpose of licensing operators, apart from those registered under their respective professional registration legislation, is to provide a mechanism by which their practice can be monitored and controlled.

The only people exempt from performing skin penetration procedures without an operator's licence are those health professionals registered under the:

- . *Chiropractors and Osteopaths Act 1983;*
- . *Dental Technicians and Dental Prosthetists Registration Act 1988;*
- . *Dentists Registration Act 1931;*
- . *Medical Practitioners Act 1930;*
- . *Nurses Act 1988;*
- . *Optometrists Act 1956;*
- . *Pharmacy Act 1931; and*
- . *Physiotherapists Registration Act 1977*

and employees responsible for the cleaning, disinfection or sterilisation of equipment used in skin penetration procedures eg. those individuals employed at Totalcare.

Clause 14 Application for business licence

(1-3) The application will be in a form approved by the Minister, made by or on behalf of the proprietor and signed by the applicant. The applicant will be required to provide details regarding the layout of the premises and also, those appliances located on the premises in relation to skin penetration procedures.

An exemption of the need to submit details regarding the layout and appliances located on the premises will apply when no changes have been made to the premises since the licence was last applied for, eg. when the business has been purchased and the new owner is certain that no changes to the business have been made, and he/she intends to make none.

Clause 15 Application for operator's licence

(1-2) Application for an operator's licence will be made on a form approved by the Minister and accompanied by the determined fee.

Clause 16 Further information on licence application

The Minister may require that the applicant provide, in writing, further information relevant to the licence application.

Clause 17 Grant or refusal of business licence

(1-6) Upon receiving an application for a business licence, the Minister shall grant or refuse the application. If granted, there may be conditions attached to the licence that will ensure that the premises are suitable for the purpose and operated in a manner which meets requirements contained within the codes of practice.

The type or scope of conditions are not restricted by these clauses but will assist the Minister in making a decision to either grant or refuse the application. For example, if the application proposes to use a premises for acupuncture and the design provides no space for the inclusion of a sterilising unit, then a condition of the licence may be that only single use, disposable equipment be used.

The business licence shall be in a form approved by the Minister and specify the: licensee's name, the type of business to be conducted; and the name as well as location of the business.

Clause 18 Business licence not to be granted while premises incomplete

A licence application made in respect of premises which are being altered or constructed cannot be approved until the premises are fit for occupation in accordance with the *Building Act 1972*. The purpose of this clause is to prevent instances where premises commence operations after meeting requirements of one regulatory authority but not another.

This provision also serves to protect the public by ensuring that, prior to granting a licence, the Minister can be assured that fixtures, fittings and appliances meet the requirements contained within the approved codes of practice.

Clause 19 Grant or refusal of operator's licence

(1-6) Upon receiving an application for an operator's licence, the Minister shall grant or refuse the application. In making a decision to grant or refuse a licence, the Minister may take into account various matters related to the applicant's capacity to perform, in a way which meets requirements contained within the codes of practice for skin penetration procedures.

There may be conditions attached to the licence.

The licence shall be in a form approved by the Minister.

Clause 20 Inspection of licences

(1) The holder of a business licence shall ensure that the licence is available for inspection when an authorised officer wishes to see it. The purpose is to ensure that it is clear to both the authorised officer and proprietor that the premises is licensed to conduct skin penetration procedures.

(2) The holder of an operator's licence shall ensure that the licence is available for inspection upon request by an authorised officer. The purpose is to ensure that it is clear to both the authorised officer and operator that the operator is licensed.

Clause 21 Duration

(1-2) A licence will remain in force until it is surrendered or cancelled. It shall not be in force while it is suspended.

Clause 22 Surrender

(1-4) A licensee may surrender a licence by giving a signed written notice, as well as the licence to the Minister. A suspended licence may also be surrendered this way and thereafter, be cancelled by the Minister.

A proportion of the fee, based upon the period between the date of suspension and payment of the next annual fee, will be returned when a licence is surrendered.

Clause 23 Annual fees

(1-7) An annual fee will be paid by the licensee on or before the anniversary of the granting of the licence. If the licensee does not pay the fee on or before this date, the licence may be suspended.

Where a licence has been suspended due to failure to pay a licence fee, the Minister shall inform the licensee in writing that, unless the fee is paid within one month, the licence may be cancelled.

Suspension of a licence for not paying fees does not impact upon the suspension with regard to other provisions within the Act eg when a prohibition notice is issued.

Clause 24 Alteration of premises and appliances

(1-5) The licensee shall seek the Minister's approval to carry out alterations to fixtures and/or fittings in a licensed premises. He/she will also need to seek the Minister's approval to alter any appliances installed in the premises when they are used in connection with skin penetration procedures.

The application shall be:

- . in a form approved by the Minister;
- . accompanied by the determined fee;
- . signed by the applicant; and
- . accompanied by a copy of the relevant plans and specifications where alterations to the premises are proposed.

The applicant may be required to provide the Minister with further written information relevant to the application.

In deciding whether to grant or refuse approval, regard must be given to the matters listed in the clause 17(4).

Clause 25 Variation of licences

(1-6) A licensee may apply to vary the licence and the Minister may grant or refuse the application if it is not prejudicial to the interests of public health.

Where the Minister believes on reasonable grounds that it is desirable to vary a licence, he or she shall give to the licensee in writing, a notice specifying those grounds and the basis for them. The Minister shall also advise the licensee of the time period in which he/she can give a written response.

After expiration of the time, and taking into account any response from the licensee, the Minister can vary the licence by varying conditions attached to the licence or revoke or impose conditions.

The variation takes place on the date on which the notice of variation is given to the licensee, or on a later date specified in the notice.

Clause 26 Suspension or cancellation of licences

These clauses provide powers to suspend or cancel a licence.

(1) Lists the grounds as:

- . the obtaining of the licence by fraud or misrepresentation;
- . contravention by the licensee of a condition to which the licence is subject;
- . the contravention of the licensee of an offence against this Act or the regulations;
- and
- . the failure of the licensee to comply with an improvement notice.

(2) The Minister must have a reasonable belief that grounds exist and it is in the interests of public health to suspend or cancel the licence.

Where the Minister intends to suspend or cancel a licence, he or she must notify the licensee in writing and give reasons for the intention. The Minister shall also inform the licensee that he/she has 28 days in which to respond to the notice.

(3) After receiving a response, or at the end of 28 days, the Minister may accept the response or suspend the licence for a specified time or cancel the licence.

(4) Suspension or cancellation of the licence takes effect on the date notice was given to the licensee or a date specified in the notice.

Clause 27 Emergency suspension of licences

(1) A licence may be suspended, without giving 28 days notice, when a condition of the licence has been contravened or when a prohibition notice is issued.

(2) A licence may be suspended:

- when grounds exist for suspension of the licence; and
- when an imminent risk to public health exists

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

(4) The notice will specify: the grounds on which the notice was given; the period of suspension; and the basis for the grounds of suspension.

Clause 28 -Automatic suspension of licence

(1-2) The issuing of a prohibition notice by an authorised officer may result in the automatic suspension of the licence. The suspension will take effect from the time specified in the notice or when the notice is given. The automatic suspension will cease when the prohibition notice is revoked.

Clause 29 Return of licence

(1) Within seven days of a suspension, cancellation or variation taking effect, a licensee must return his/her licence to the Minister unless the person has a reasonable excuse for not doing so.

(2) In the case of a variation, the Minister shall endorse the licence and return it to the licensee as soon as possible.

Clause 30 False representation of being licensed

It is an offence for a person who is not licensed to falsely represent that he or she holds a current licence.

Clause 31 False representation of being licensed

It is an offence for a person whose licence is under suspension to falsely represent that he or she holds a current licence.

PART V INSPECTION**Clause 32 Interpretation**

(1) An identity card, issued to authorised officers, will be issued under the *Public Health Act 1928*.

(2) An item is connected with an offence if it is used to commit the offence; or it can be used in evidence of the offence having been committed; or it was used or intended to be used for the purpose of committing an offence.

(3) An offence includes an offence for which there are reasonable grounds for believing is being committed or has been committed. It intended that this may include observations regarding the inappropriateness or absence of appliances necessary to meet the requirements stated in the Code or Codes of Practice.

(4) "Occupiers", is taken to include a person that an authorised officer believes on reasonable grounds is the occupier or the person in charge of the premises.

Clause 33 Entry to premises

(1) During the hours of a business' operation, authorised officers will be able to enter a premises where skin penetration procedures are performed. Outside of these hours, an authorised officer may enter these premises with the consent of the occupier. However, if the authorised officer believes that there are urgent and serious grounds for entry, he/she may enter immediately. These premises may be either licensed or unlicensed.

It is intended that unless the authorised Officer believes that there is an immediate risk to public health, he/she would enter these premises during the premise's hours of operation only .

(2) An authorised officer who enters a premises must show his/her identification to the occupants. This identification will show that the person entering the premises is authorised to do so under the Act. If a person claiming to be an authorised officer does not show his/her identification, the occupier can demand that he/she leave the premises.

(3-4) These clauses refer to the times at which an inspection may be made to premises at which a business is conducted and to those where records may be kept eg. a home.

Clause 34 Consent to entry

(1) Before obtaining a licensee's consent to enter a premises, outside of the period to be considered a reasonable time, an authorised officer shall produce his/her identity card, if requested to do so, and inform the licensee that he/she may refuse the officer's entry.

(2) After obtaining the licensee's consent to enter a premises, outside of the period to be considered a reasonable time, an authorised officer shall ask the licensee to sign a written acknowledgment that:

- . he/she has been informed that consent may have been refused;
- . he/she has voluntarily given consent; and
- . consent was given on a particular day and at a particular time.

(3) If the written acknowledgment of consent is not produced in court, it will be assumed that consent was not given unless the contrary was proved.

Clause 35 Powers of authorised officers

These clauses list the powers an authorised officer may exercise as part of their duties.

They include the power to:

- . inspect, examine and take measurements in relation to a premises where skin penetration procedures are performed;
- . inspect and test any item found in a premises where skin penetration procedures are performed;
- . inspect, test and remove for sampling, any material or substance believed to be connected to the performance of skin penetration procedures;
- . open or have opened any container believed to be connected with skin penetration procedures;
- . seize any appliance, equipment, article, substance or thing connected with skin penetration procedures;
- . take photographs or make video, sound or films in connection with an inspection;
- . require that the occupier make available records, documents or other material related to the performance of skin penetration procedures. Also, allowing for the authorised officer to make copies and take extracts from these;
- . require that information recorded on electronic equipment be made available in the written or audible form;
- . require that the occupier provide information or answer questions related to the premise's use in connection with skin penetration procedures;
- . require the occupier to assist the authorised officer to exercise his/her powers; and
- . stop, detain and inspect any vehicle believed to be connected with an offence which relates to skin penetration procedures.

Clause 36 Obstruction of authorised officers

(1) An authorised officer shall not be hindered or obstructed from performing his/her duties. Failure to comply with a requirement made by an authorised officer will be an offence.

(2) It will be an excuse for an occupier to refuse to answer questions, or to assist an authorised officer, if this may incriminate them.

Clause 37 False information

It is an offence to knowingly give an authorised officer false information.

Clause 38 Notice of seizure

The purpose of the clause is to require an authorised officer who seizes any item under the power to give notice in writing of that seizure to the owner or person in charge of that thing at the time of the seizure.

The notice of seizure will ensure that the owner of the goods seized is fully aware of what has been seized, why it has been seized and remedies available should the person feel aggrieved by the seizure.

The notice of seizure must contain all relevant information necessary for the owner of the seized item or his or her representative to determine if an appeal is warranted and if so, what steps are necessary to initiate legal proceedings to recover the item.

Clause 39 Storage of things seized

(1) Where an authorised officer has seized anything, it may be left on the premises on which it was found and may be:

- (a) placed in a room, compartment or enclosed area;
- (b) secured against interference; or
- (c) identified in such a manner as to be clear that it is an item under seizure.

This power will normally be exercised where the nature of seized good makes removal impractical.

(2) If an authorised officer detains the seized items on the premises, he/she must give the occupier notice in writing describing the seized item, the manner and circumstances of the detention, the expected time period of the detention, the liability of the occupier and details of how to contact authorised officers involved in the detention.

Clause 40 Access to seized records

The person or the agent of a person entitled to possession of any seized document must be permitted to inspect and to make copies or take extracts of the document.

Clause 41 Return of things seized

(1-2) This clause requires the Minister to return a seized item if after 6 months no proceedings are taken in relation to the alleged offence, or the proceedings are withdrawn; or no conviction is entered; or the Minister becomes satisfied that no contravention of the Act or Regulations has been committed in respect of that item. eg. an authorised officer may seize an item with the belief that an offence has been committed but subsequent review and investigation by the Department may prove the authorised officer wrong. The seized item would have to be returned under the provision of this clause.

Unless the seized item has been disposed of or destroyed the Minister must return the item even if the statutory time limit to appeal against the seizure had expired

Clause 42 Application for relief against seizure

(1) Any person claiming to be entitled to anything seized may apply to a Court of competent jurisdiction in the Territory for an order disallowing the seizure.

(2) An application to disallow seizure cannot be heard by a Court unless a copy of the application has been served on the relevant authorised officer by the applicant.

Clause 43 Appearance to application

The authorised officer responsible for the seizure is entitled to appeal as respondent in hearing for the disallowance of the seizure.

Clause 44 Order disallowing seizure

A Court shall disallow a seizure at the hearing if the applicant proves that he/she is entitled to the item seized and it is not proved beyond reasonable doubt that an offence was being or had been committed in relation to the seized item.

The onus of proof in relation to the offence rests with the Territory. There is no obligation conferred on the applicant to prove that an offence was not being or had been committed.

The Court may also disallow seizure if there are exceptional circumstances justifying the making of an order.

Clause 45 Ancillary orders

(1) If a seizure is disallowed the Court may order the respondent to return the seized item to the applicant. Compensation may be awarded to the applicants if for any reason the goods cannot be returned or if a seized item has depreciated in value.

(2) The Court may also direct the Territory to pay compensation for any financial loss incurred by the applicant as a result of being deprived of the things seized.

(3) The award of any cost in relation to the hearing of the application is at the discretion of the Court.

Clause 46 Adjournment pending other proceedings

One of the elements that has to be proven at a hearing to disallow seizure is that an offence had or was being committed against the Act at the time of the seizure. A conviction for an offence in a Court hearing constitutes the necessary evidence to satisfy this condition.

This clause allows the Court the discretion to adjourn a hearing for the disallowance of the seizure until such time as concurrent Court proceedings in relation to an offence are determined.

Clause 47 Forfeiture of things seized

If no application to disallow a seizure is made to the Court or if an application to disallow a seizure has been made and subsequently refused by the Court then the item of the seizure has been forfeited to the Territory. This will also apply when the seized item has not been returned

Forfeited items may be destroyed, sold or disposed of as the Minister directs.

Clause 48 Cost of destruction or disposal of things seized

(1-3) The purpose of this clause is to require the owner of a forfeited item to pay for the subsequent costs of its disposal or destruction. The clause only applies when the owner of the item seized is convicted of an offence in relation to the seizure.

Clause 49 Interference with things detained

- (1) This clause refers to the unlawful removal, breakage, opening or interference with an item seized by an authorised officer.
- (2) The occupier of the premises will be guilty of an offence if the item seized is interfered with, even if no one had been charged or convicted of an offence in relation to the item seized.
- (3) This clause refers to grounds which constitutes defences against a prosecution for interfering with an item seized.

PART VI IMPROVEMENT AND PROHIBITION NOTICES**Clause 50 Improvement Notices**

The purpose of these clauses is to: enable an authorised officer to require the proprietor to carry out structural work or repairs to improve the premises; or to improve an operator's practice so that infection hazards are minimised.

- (1) Where an authorised officer is satisfied that a person fails or is likely to contravene the legislation, then an improvement notice may be served.

If the person in charge of a premises is not the licensee, then a copy must be sent by the authorised officer to the licensee. The improvement notice requires the licensee to rectify matters.

- (2) The notice shall specify the: contraventions; authorised officer's reasons for believing that a contravention has or is likely to occur; and the time in which matters are to be rectified.

- (3) The notice may specify the action to be taken by the licensee during the specified period.

It is not anticipated that an improvement notice would be served without informal advice to a proprietor or operator on discovery of a contravention.

- (4) An improvement notice may specify the action being taken by the licensee.
- (5) An authorised officer may, before the end of the specified time, extend the period in which the licensee shall take action to rectify matters. This may be desirable in cases where compliance, in the specified time, is beyond the licensee's control.
- (6) When an extension of time to rectify matters is refused, the authorised officer shall give written notice to the applicant within 28 days.
- (7) An improvement notice continues in force until revoked.

Clause 51 Prohibition notices

A situation may exist in a premises that, if allowed to continue, involves or may involve the imminent risk of injury to health. This proposed section empowers an authorised officer to take action to prevent that risk.

(1) This clause refers to three broad areas where problems may arise in a premises where skin penetration procedures are conducted. These are:

- . the manner in which the prescribed business is being conducted relevant to the public health risk;
- . the use being made of the prescribed premises; and
- . the state or condition of the prescribed premises.

If an authorised officer believes that one or more of these areas is causing a problem of such a degree that there is an imminent risk of injury, then he/she can serve a prohibition notice to the person in charge. If this person is not the licensee, a copy will be sent to him/her as well. The notice will direct that the prescribed business is not carried on or is carried on in accordance with directions specified in the notice. It will also direct that the premises are not used for the business or for a specified part of the business, or are not used for the business except in accordance with directions specified in the notice.

(2) An authorised officer may issue a prohibition notice to a operator when he/she believes that there may be an imminent risk of injury to health.

This notice may require cessation of the operator's performance of skin penetration procedures. It may also direct the operator to perform these procedures in accordance with specified directions.

(3) Directions may relate to: any part of the premises where a specific activity is going on; any substance, compound or article found that are, or are not used in connection with a specified activity; practices and procedures; impounding or isolation of an appliance; or the destruction or disposal of any appliance.

The notice must specify the time, considered reasonable by the authorised officer, for the licensee to remedy the situation.

(4) The time period mentioned above may be extended in the same manner and for the same reasons as with improvement notices.

(5) When an extension of time to rectify matters is refused, the authorised officer shall give written notice to the applicant within 28 days.

(6) The licensee has to display a copy of the prohibition notice in a prominent place on the premises.

(7) It is an offence to contravene the above clause.

(8) A notice remains in force until revoked in accordance with the clause 52.

Clause 52 Revocation of notices

(1) The purpose of this clause is to enable improvement and prohibition notices to be revoked when the licensee has complied with the notice. In the case of an improvement notice, the licensee shall show that he/she has complied with the notice while in the case of a prohibition notice, that adequate measures have been taken to prevent or remove the risk which gave rise to the notice.

(2) Details the form of the application if it is made by the licensee.

(3) Requires the authorised officer to inspect the premises and revoke the notice in writing if he/she is satisfied that the matter is resolved.

Clause 53 Compliance with notices

Failure to comply with an improvement or prohibition notice is an offence.

PART VII REVIEW OF DECISIONS

Clause 54 Review by Tribunal

(1) Application may be made to the Administrative Appeals Tribunal for a review of a decision of the Minister regarding: granting or refusing to grant a business licence; granting or refusing to grant an operator's licence; refusing to approve an alteration to a premises or appliance; granting or refusing to vary a licence; suspending a licence or cancelling a licence.

(2) Application may be made to the Tribunal regarding decisions of authorised officers on improvement and prohibition notices.

(3) Advice has to be included in notices on rights of appeal.

(4) Failure to comply with (3) above does not invalidate the notice.

PART VIII MISCELLANEOUS

Clause 55 Powers of Minister to determine fees

The Minister, by notice in writing in the Gazette, determine fees for this Act and the regulations.

Clause 56 Evidentiary value of copies of records

When an authorised officer makes a copy of any record and certifies that it is a true copy, then it shall be admissible in evidence unless the court is satisfied that the authorised officer's certificate is inaccurate.

Clause 57 Conduct of directors, servants and agents

(1) Where it is necessary to establish a body corporate's or person's state of mind in relation to a particular conduct, it will be sufficient to show that:

- a director or other person had that state of mind:
- .. and that his/her conduct was within the scope of his/her actual or apparent authority.

(2) This clause refers to those elements which a body corporate or person has based his/her behaviour on eg. knowledge, intention or opinion.

(3-6) If an employee is conducting him/herself within the authority of their position, an employer, eg. a body corporate would be responsible for their actions.

Clause 58 Penalty for companies

A company convicted of an offence under this Act may be fined by a court, 5 times the usual fine.

Clause 59 Regulations

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

(2) The maximum fine if the offender is a natural person is \$1000, and if it is a body corporate, \$5000.

These fines may be imposed for contraventions against the regulations or requirements contained in an approved code of practice.

PENALTIES

Penalties for offences under the Bill have been set as follows:

Clause 6 (2) - Identity cards - \$100;

Clause 10 - Failure to comply with code - \$5000 or 6 months imprisonment or both;

Clause 11 - False representation of compliance with codes - \$3000;

Clause 12 - Requirement to obtain a business licence - \$5000 or 6 months imprisonment or both;

Clause 13 (1) (b) - Requirement to obtain an operator's licence - \$5000 or 6 months imprisonment or both;

Clause 13 (4) - Requirement to obtain an operator's licence - \$5000 or 6 months imprisonment or both;

Clause 20(1) - Inspection of licences - \$500;

Clause 20(2) - Inspection of licences - \$500;

Clause 24 - Alteration of premises and appliances - \$5000;

Clause 29 - Return of licence- \$500;

Clause 30 - Failure to comply with licence conditions - \$5000 or 6 months imprisonment or both;

Clause 31(1) - False representation of being licensed - \$3000;

Clause 31(2) - False representation of being licensed - \$3000;

Clause 36 - Obstruction of authorised officers - \$5000 or imprisonment for 6 months or both;

Clause 37 - False information - \$5000 or imprisonment for 6 months or both;

Clause 49(1) - Interference with things detained - \$5000 or imprisonment for 6 months or both;

Clause 49(2) - Interference with things detained - \$5000 or imprisonment for 6 months or both;

Clause 51(7) - Prohibition notices - Fine not exceeding \$1000;

Clause 53 - Compliance with notice - \$10000;

Clause 59(2)(a) - Regulations - \$1000; and

Clause 59 (2)(b) - Regulations - \$5000.

SKIN PENETRATION PROCEDURES BILL 1994

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendment to be moved on behalf of the Government

**Circulated by the authority of the Minister for Health
Terry Connolly MLA**

The amendment to the *Skin Penetration Procedures Bill 1994* amends the term "a health officer" referred to in clause 49 of the Bill to read "an authorised officer".

The Standing Committee on Scrutiny of Bills and Subordinate Legislation, in its Report No. 17 of 1994, identified an anomaly in clause 49 of the *Skin Penetration Procedures Bill 1994*.

Throughout the Bill the term "authorised officer" was used, but in clause 49 the term "health officer" has been used. The amendment corrects this anomaly by replacing the words "a health" with "an authorised" in clause 49, page 24, lines 28 and 30.