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THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

# **Public Health Bill 1997**

## **EXPLANATORY MEMORANDUM**

**Circulated by the authority of  
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# **PUBLIC HEALTH BILL 1997**

## **EXPLANATORY MEMORANDUM**

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## PUBLIC HEALTH BILL 1997

### OUTLINE

The Public Health Bill will provide relevant and flexible public health legislation. The Bill will also enable the development of good public health practice which is responsive to current issues and trends and based on the notions of reasonable quality and best practical means.

ACT public health legislation currently consists of the *Public Health Act 1928* and its associated Regulations. The Act is now over 60 years old and although amended during its existence, it remains a reflection of society's attitudes in the 1920s.

Older models of public health have tended to rely on a narrow view of what constitutes a health risk and how best to implement measures that would address such risks when they arise. There has been heavy reliance on specific regulations that may be quite prescriptive about the application of the law but have not been able to account for all the circumstances that may arise.

The opportunity is also taken to repeal a number of outdated public health laws such as the *Sexually Transmitted Diseases Act 1956* and *Tuberculosis Act 1950*.

Most of the Regulations made under the *Public Health Act 1928* would also be progressively repealed and replaced with Codes of Practice, where applicable. The Codes of Practice would be developed in partnership with the relevant stakeholders and would be disallowable instruments.

### DETAILS OF THE BILL

#### PART I PRELIMINARY

##### 1.1 Formal requirements (clauses 1 & 2)

Clauses 1 & 2 are the formal requirements of all Acts, specifying the title and commencement arrangements. These clauses take effect from the day on which the Bill is notified in the *Gazette*. The rest of the Bill's provisions take effect from the date, or dates the Minister notifies in the *Gazette*. There is also provision for the remaining parts of the Bill to take effect six months after it is first notified in the *Gazette*. This is a 'catch - all' provision which will ensure all provisions commence no later than six months after first notification.

##### 1.2 Repeal of the *Public Health Act 1928* (clause 3)

This clause repeals the *Public Health Act 1928* and its associated amendments.

### 1.3 Objectives (clause 4)

The Bill is to be interpreted and administered to give effect to the goals listed in this clause. Fundamentally the Bill is designed to:

- a protect the public from risks associated with facilities, equipment, services, products, activities and agents not adequately controlled by other specific legislation,
- b monitor disease patterns in order to provide the public with information about health risks and to design and implement appropriate prevention and control policies and programs,
- c provide for a rapid response to public health risks while avoiding any undue infringement of civil liberties and privacy.

### 1.4 Interpretation (clause 5)

The interpretation clause sets out the meanings attached to important terms used throughout the Bill. Not all terms used in the Bill are defined. Some simply have their dictionary definition, while others are terms which are used in many statutes and are defined in the *Interpretation Act 1967*.

Some of the most significant definitions in clause 5 are described below.

#### 1.4.1 Definition of contact (clause 5)

As defined in clause 5, a contact is a person who may have transmitted a notifiable condition to person who currently has the condition or alternately a contact could be a person exposed to the notifiable condition.

#### 1.4.2 Definition of defined influential person (clause 5)

As defined in clause 5, a defined influential person is essentially a person involved in a body corporate or a partner in relation to a person carrying on a public health risk activity. The intention is to ensure that where a partnership is involved in an activity, although only one partner may hold the licence, the other partner's competence and experience for example, are relevant to any decision made in relation to a licence given that person.

#### 1.4.3 Definition of insanitary condition (clause 5)

As defined in clause 5, Insanitary conditions are conditions or situations which are or liable to be dangerous to health or offensive and in particular conditions or situations arising from or constituted by-

- (a) any building or structure, or
- (b) any land, water or land covered by water; or
- (c) any animal or bird, or

- (d) or any refuse,
- (e) any noise or emission,
- (f) any state, condition or activity; or
- (g) any other matter or thing-

which is, or liable to be, dangerous to health or offensive

#### **1.4.4 Definition of public health (clause 5)**

As defined in clause 5, public health means the health of individuals in the context of the wider health of the community, or the organised response by society to protect and promote health and prevent illness, injury or disability

#### **1.4.5 Definition of public health risk activity (clause 5)**

Under Clause 18, the Minister may declare an activity that may result in the transmission of disease, or adversely affect public health to be a public health risk activity

#### **1.4.6 Definition of public health risk procedure (clause 5)**

Under clause 18, the Minister may declare any procedure associated with a public health risk activity to be a public health risk procedure

#### **1.4.7 Definition of responsible person (clause 5)**

A responsible person is-

- (a) a medical practitioner of a person with a notifiable condition;
- (b) a counsellor who has counselled a person in relation to a notifiable condition, or
- (c) a person who is responsible for the care, support or education of a person with a notifiable condition.

#### **1.5 Consistency with other health and environmental laws (clause 6)**

Clause 6 deals with how the Bill is to work with other public health laws and environment laws. As far as possible, the Bill is to be interpreted and administered consistent with these other laws.

## **PART II STATUTORY OFFICES**

### **2.1 Structure of statutory offices**

The appointments provided for in this Part are.

- (a) Chief Health Officer;
- (b) Acting Chief Health Officer,

- (c) One or more Public Health Officers,
- (d) One or more Authorised Medical Officers,
- (e) One or more Analysts

## **2.2 Chief Health Officer (clause 7)**

The Chief Executive administering the Bill, who is currently the Chief Executive of Department of Health and Community Care, is required to create and maintain a specific ACT Public Service position. The occupant of this position must be a legally qualified medical practitioner.

The term “Medical Officer of Health” from the *Public Health Act 128* is being replaced by Chief Health Officer because it is an outdated title and is not clearly identifiable with the modern public health role of this position. Other jurisdictions use a similar title to Chief Health Officer.

### **2.2.1 Functions of Chief Health Officer (clause 9)**

Clause 9 outlines the general functions and responsibilities of the Chief Health Officer.

Which are

- (a) to develop and implement strategies to promote and protect public health;
- (b) to ensure that this Bill is complied with
- (c) to advise the Minister about proposed legislative or administrative changes related to public health; and
- (d) any other functions determined by the Minister by instrument as long as they are within the scope of the Bill.

### **2.2.2 Biennial Report by Chief Health Officer (clause 10)**

The Chief Health Officer will prepare a report every two years about the state of the health of people in the Territory with respect to the following

- (a) trends and indicators in health status,
- (b) potential public health risks,
- (c) morbidity and mortality,

- (d) notifiable conditions, and
- (e) any other significant issues that the Chief Health Officer wishes to report on

The Chief Health Officer must submit the report to the Minister within 3 months from the end of the relevant period. The Minister then tables the report in the Legislative Assembly within 15 sitting days after receiving it. The first report will cover the two year period to 30 June 1998.

#### **2.2.3 Power of Delegation (clause 11)**

Under clause 11, the Chief Health Officer can delegate any of his or her powers under this Bill (except this power of delegation) by instrument to another person or class of persons such as Public Health Officers

This enables other authorised personnel to assist with the administration of the Bill, while ensuring that these powers are not passed on too widely. The instrument of delegation can either be general or can place certain restrictions on the delegated powers

#### **2.3 Acting Chief Health Officer (clause 8)**

Clause 8 allows the Chief Executive to appoint a person to act as the Chief Health Officer when the Chief Health Officer is unavailable, on leave, or when the position of Chief Health Officer is vacant.

#### **2.4 Public Health Officers (clause 12)**

As well as the Chief Health Officer, other public servants or any person appointed by the Chief Executive will assist the Chief Health Officer as Public Health Officers. Public Health Officers occupy specified positions created and maintained by the Chief Executive. They are given specified powers under the Bill to assist in its implementation, including the power to inspect premises and issue notices requiring certain specified actions to be undertaken. (Please see *Part V, Division 2 -Authorised Officers powers* below for more information on this point.)

In addition, Public Health Officers under this Bill can be authorised can be authorised for other purposes under other Acts. These clauses give scope to administer related powers under other Acts cooperatively with other regulatory authorities, and to avoid overlaps and duplication.

#### **2.5 Authorised Medical Officers (clause 13)**

Authorised Medical Officers occupy specified positions created and maintained by the Chief Executive. An Authorised Medical Officer may or may not be a public servant, but must be a medical practitioner and often may have desired specialised skills or knowledge. They would be given specifically delegated powers by the Chief Health Officer to assist in the implementation of particular aspects of the Bill

## **2.6 Functions of Public Health Officers and Authorised Medical Officers (clause 14)**

The Chief Health Officer authorises by instrument a Public Health Officer or an Authorised Medical Officer to undertake certain specified duties as determined by the Chief Health Officer

## **2.7 Analysts (clause 15)**

For the purposes of this Bill, an analyst will be.

- (a) any public servant occupying the position of Government Analyst established under the *Drugs of Dependence Act 1989*; and
- (b) any other suitably qualified person appointed by the Chief Executive

## **2.8 Identity cards (clause 16)**

Because people who hold positions under this Act have significant powers, it is important that they are easily identifiable to the public.

Therefore, photographic identity cards must be issued to all authorised officers by the Chief Executive. The identity card must be returned when the person ceases to hold a particular position. Public Health Officers and Authorised Medical Officers will also have authorisation specifying the sections of the Act for which they are authorised.

## **2.9 Legal immunity (clause 17)**

Clause 17 provides legal protection to all authorised officers in the performance of their duties. Officers enforcing the Bill are exempt from civil and criminal liability, providing that they acted in good faith. This ensures that officers are not discouraged from enforcing the provisions of this Bill by risk of personal liability.

# **PART 111 - PUBLIC HEALTH RISK ACTIVITIES AND PROCEDURES**

## **Division 1 - General**

The aim of this Part is twofold-

- (a) it enables appropriate control mechanisms to be put in place in order to minimise the risks to the public from these activities and procedures, and
- (b) it sets up a licensing framework

It is not anticipated that there will be any new licences proposed at this time, but a consolidation of the existing licensing regimes from the various Act and Regulations

## **3.1 Ministerial declaration of public health risk activities and public health risk procedures (clause 18)**

Under this clause the Minister may by instrument, declare an activity that may result in the transmission of disease or adversely affect public health to be a public health risk activity.

Examples of public health risk activity would include the operating of an air conditioning cooling tower or a business where skin penetration procedures were undertaken, such as a tattooist business

**3.1.1 Declaration of a public health risk procedure**

The Minister may declare any procedures undertaken in relation to that activity to be public health risk procedures. Examples of public health risk procedures would be the tattooing of a person or the performance of acupuncture.

**3.1.2 Licensable or non - licensable activity or procedure**

The Ministerial declaration would also state whether the declared activity or procedure is a licensable or non-licensable activity or procedure as the case may be

**3.1.3 Ministerial declaration - disallowable instrument**

A declaration made under this clause is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*

**3.2 Differential fees (clause 19)**

When determining any fees in relation to public health risk activities or procedures the Minister may -

- (a) determine different fees to apply in different circumstances; and
- (b) determine exemptions for specified persons, or in specified circumstances.

**3.3 Compliance with Codes of Practice (clause 20)**

All people carrying on a public health risk activity or performing a public health risk procedure would be required to comply with an applicable Code of Practice for that activity or procedure

**3.4 Requirement to obtain an activity licence (clause 21)**

A person who carries on a licensable public health risk activity is required to obtain an activity licence unless exempt under clause 22 of this Bill.

**3.5 Licence exemption - activity accreditation schemes (clause 22)**

A person would be exempt from the requirement to obtain an activity licence if -

- (a) the person was currently accredited in accordance with the requirements of an appropriate activity accreditation scheme determined under subclause 22(2), and
- (b) the person has not, within the previous 12 months contravened any of the standards in the relevant accreditation scheme except where the Minister has given approval under subclause 27 (1) for the person to carry on the activity not in accordance with applicable accreditation standards

The Minister may by instrument, determine an activity accreditation scheme and the relevant standards for that scheme

**3.6 Requirement to obtain a procedure licence (clause 23)**

A person who performs a public health risk procedure that the Minister has declared to be licensable would be required to obtain a procedure licence unless they are exempt under clause 24 of this Bill

**3.7 Licence exemption - procedure accreditation schemes (clause 24)**

A person would be exempt from the requirement to obtain a procedure licence if -

- (a) the person was currently accredited in accordance with requirements of an appropriate procedure accreditation scheme determined under subclause 24(2),
- (b) the person has not, within the previous 12 months contravened any of the standards in the relevant accreditation scheme except where the Minister has given approval under subclause 27 (2) for the person to carry on the procedure not in accordance with applicable accreditation standards

The Minister may by instrument, determine a procedure accreditation scheme and the relevant standards for that scheme

**3.8 False representation (clause 25)**

A person who is not a licensee shall not falsely represent that he or she holds a licence

A person who is not accredited in accordance with an accreditation scheme determined by the Minister shall not falsely represent that he or she is accredited for the purposes of this Bill.

A licensee whose licence is under suspension shall not represent that he or she holds a licence without advising that the licence is under suspension

**3.9 Alteration of premises and appliances (clause 26)**

The alteration of premises and appliances clause is intended to provide a reasonable approach to the alteration of premises and appliances. A person would only need approval for any alterations that may increase the public health risk

**3.9.1 Public health risk activities (subclause 26 (1))**

A person who carries on a public health risk activity is not permitted without Ministerial approval under subclause 27 (1) (b) to structurally alter his or her premises or introduce, alter or replace any equipment used in association with a procedure, where that person has reasonable grounds for believing that those actions would increase the public health risk associated that with procedure



**3.9.2 Public health risk procedures (subclause 26 (2))**

A person who performs a public health risk procedure is not permitted without Ministerial approval under subclause 27 (2) (b) to introduce, alter or replace any equipment used in association with a procedure, where that person has reasonable grounds for believing that those actions would increase the public health risk associated with that procedure

**3.10 Ministerial approvals (clause 27)**

Where there has been application under this clause, the Minister would normally issue an approval under subclause 27 (1) or (2) unless he or she was satisfied that to do so would significantly increase the public health risk

**3.10.1 Public health risk activities (subclause 27 (1))**

The Minister may on application by a person who carries on a public health risk activity issue an approval -

- (a) for the applicant to carry on that activity otherwise than in accordance with applicable activity accreditation standards;
- (b) for the applicant to structurally alter the premises where the activity is carried on or to introduce, alter or replace an appliance used in the premises.

**3.10.2 Public health risk procedures (subclause 27 (2))**

The Minister may on application by a person who carries on a public health risk procedure issue an approval -

- (a) for the applicant to perform that procedure otherwise than in accordance with applicable procedure accreditation standard
- (b) for the applicant to introduce, alter or replace an appliance or equipment used in connection with that procedure.

**3.10.3 Application procedure (subclause 27 (3))**

A person would submit a written application in a form approved by the Minister providing all the relevant information as well as a copy of the plans and specifications if required and the appropriate fee.

In order to properly assess the application, the Minister may require the applicant to provide specified additional information.

The Minister would notify the applicant in writing of the decision to grant or refuse the approval

**3.11 Licence and records inspection (clause 28)**

A person who carries on a public health risk activity or performs a public health risk procedure would be required to have the relevant records and documentation such as a current licence or accreditation certificate available for inspection by an authorised officer upon request.

## **Division 2 - Activity licences**

It is essential that the premises where public health risk activities are carried out be equipped with adequate fixtures and fittings in order to minimise the risk to public health

The requirement to obtain a licence gives the discretion to apply different conditions to different premises, giving flexibility to target problems without disadvantaging all businesses.

This section only applies to licensable activities as determined by the Minister

### **3.12 Activity licence - application (clause 29)**

The application will be in a form approved by the Minister, made by the applicant. The applicant will be required to provide details regarding the layout of the premises and also, the equipment located on the premises used in relation to the public health risk activity.

### **3.13 Activity licence - grant or refusal ( clause 30)**

Upon receiving an application for an activity licence, the Minister will 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 the requirements of the relevant Code of Practice.

An applicant who has been refused an activity licence by the Minister may apply to the Administrative Appeals Tribunal for a review of that decision.

### **3.14 Activity licence - form (clause 31)**

The activity licence is in a form approved by the Minister.

### **3.15 Activity licence - duration (clause 32)**

An activity licence is issued for the time specified on the licence unless it is cancelled, suspended or surrendered in the interim.

### **3.16 Activity licence - renewal (clause 33)**

Normally, an activity licence is automatically renewed on application. The application is accompanied by the determined fee.

### **3.17 Activity licence - variation (clause 34)**

A licensee may apply to vary the licence and the Minister may vary the licence if he or she is satisfied that it is not prejudicial to public health to vary the licence.

Where the Minister believes on reasonable grounds that it is in the interest of public health to vary a licence, he or she will give to the licensee a notice in writing, specifying those grounds and the basis for them. The Minister will also advise the licensee of the time period in which he or she may 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, revoke or impose conditions

Where a person has applied to the Minister subclause 34 (1) for variation to his or her licence, the Minister may decide not to vary the licence. The licensee may then apply to the Administrative Appeals Tribunal for a review of that decision.

### **3.18 Activity licence - return for endorsement of variation (clause 35)**

The licensee is then required to return the licence for endorsement with the relevant variations. The revised licence is then returned to the licensee

### **3.19 Activity licence - application for transfer (clause 36)**

A licensee and the person to whom it is proposed to transfer the licence may jointly apply for the transfer of an activity licence

The application has to be in a form approved by the Minister, signed by each joint applicant and accompanied by the licence and the determined fee

### **3.20 Activity licence - grant or refusal of transfer (clause 37)**

The Minister may approve or refuse to approve the transfer. The Minister will have regard to the matters specified in subclause 37 (3) when deciding whether to approve or not approve the transfer

Either applicant may apply to the Administrative Appeals Tribunal for a review of the Minister's decision not to approve the transfer.

### **3.21 Activity licence - surrender (clause 38)**

A licensee may surrender a licence by giving the Minister a signed notice of surrender as well as the licence. A suspended licence may be surrendered in the same way, and thereafter, be cancelled by the Minister.

### **3.22 Activity licence - suspension and cancellation (clause 39)**

Clause 39 provides powers to suspend or cancel a licence

Subclause 39 (1) lists as grounds for suspension or cancellation of a licence:

- (a) the obtaining of a licence by fraud or misrepresentation;
- (b) the contravention by the licensee or any defined influential person of this Act or corresponding public health risk law;
- (c) the lack of competence of the licensee or any defined influential person in relation to the licensee

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 that he or she intends to suspend or cancel their licence. The Minister is required to also inform the licensee that he/she has 28 days in which to respond to the notice.

At the end of 28 days and after considering any response from the licensee, the Minister may accept the response or suspend the licence for the specified time or cancel the licence.

Suspension or cancellation of the licence takes effect on the date notice was given to suspend the licence or a date specified in the notice.

### **3.23 Activity licence - emergency suspension (clause 40)**

An activity licence may be immediately suspended, where a licence condition has been contravened or subject to clause 41, or where a prohibition notice has been issued.

The Minister may suspend the licence for up to 6 months:

- (a) when a ground exists by virtue of subclause 40 (1), and
- (b) it is necessary to suspend the licence in order to prevent or remove an imminent serious risk to public health.

The suspension of the licence takes effect on the date the notice is given to the licensee.

The notice will -

- (a) specify the grounds upon which the licence is suspended,
- (b) specify the period of the suspension, and
- (c) state the facts and circumstances that constitute the grounds for suspension.

### **3.24 Activity licence - automatic suspension (clause 41)**

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 was given. The automatic suspension will cease when the prohibition notice is revoked.

### **3.25 Activity licence - return of defunct licences (clause 42)**

Within 7 days of a suspension, cancellation or variation taking effect, a licensee must return his or her licence to the Minister, unless the person has a reasonable excuse for not doing so.

In the case of a variation, the Minister will endorse the licence with the variation and return it to the licensee as soon as possible.

### **Division 3 - Procedure licences**

While a person who carries on a public health risk activity must comply with the relevant Code of Practice, this alone will not affect the practices of persons who operate outside a particular premises, eg mobile services that are provided in a client's home. The purpose of licensing of people who perform public health risk procedures is to provide a mechanism by which their practices can be monitored and controlled.

A condition of a licence is that the person complies with the relevant Code of Practice and by obtaining a licence, the person has understood and agreed with the licence conditions.

If a person did not comply with the relevant requirements under this Act, then it is administratively far simpler to suspend or cancel the licence, than the other option, which would be institute legal proceedings for non - compliance with the Act.

#### **3.26 Procedure licence - application (clause 43)**

A person who performs a public health risk procedure for which a licence is required may apply to the Minister for a procedure licence

The application will be in a form approved by the Minister. The applicant will specify the public health risk procedure. The application will be accompanied by the determined fee.

#### **3.27 Procedure licence - further information ( clause 44)**

In order to properly assess the application, the Minister may require the applicant to provide additional information.

#### **3.28 Procedure licence - grant or refusal (clause 45)**

Upon receiving an application for a procedure licence, the Minister will grant or refuse the application.

The Minister can not refuse to grant a procedure licence unless he or she is satisfied after considering the criteria in subclause 45(4), that the applicant is not suitable to hold a procedure licence

In making a decision to grant or refuse a licence, the Minister would take into account various matters related to the applicants capacity to perform a public health risk procedure, in a way which meets the minimum requirement of the relevant Code of Practice.

A person who has been refused a procedure licence by the Minister may apply to the Administrative Appeals Tribunal for a review of that decision

**3.29 Procedure licence - form (clause 46)**

The procedure licence is in a form approved by the Minister

**3.30 Procedure licence - annual fees (clause 47)**

An annual fee will be paid by the licensee on or before the anniversary of the granting of the licence

**3.31 Procedure licence - suspension and cancellation for failing to pay annual fee (clause 48)**

If the fee is not paid by this date then the licence is suspended

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

**3.32 Procedure licence - variation (clause 49)**

A licensee may apply to vary the licence and the Minister may vary the licence if he or she is satisfied that it is not prejudicial to public health to vary the licence

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

After expiration of the time, and taking into account any response from the licensee, the Minister can decide to vary the licence by varying conditions attached to the licence or revoke or impose conditions. The Minister can also decide not to vary the licence, in which case the licensee may then apply to the Administrative Appeals Tribunal for a review of that decision.

**3.33 Procedure licence - return for endorsement of variation (clause 50)**

The licensee is then required to return the licence for endorsement with the relevant variations. The revised licence is then returned to the licensee

**3.34 Procedure licence - duration (clause 51)**

A procedure licence remains in force, unless it is cancelled, suspended or surrendered in the interim

**3.35 Procedure licence - surrender (clause 52)**

A licensee may surrender a licence by giving the Minister a signed notice of surrender as well as the licence. A suspended licence may be surrendered in the same way, and thereafter, be cancelled by the Minister

### **3.36 Procedure licence - suspension and cancellation (clause 53)**

Clause 53 provides powers to suspend or cancel a licence.

Subclause 53 (1) lists as grounds.

- (a) the obtaining of a licence by fraud or misrepresentation;
- (b) the contravention by the licensee or any defined influential person of this Act or corresponding public health risk law,
- (c) the lack of competence of the licensee

The Minister must have a reasonable belief that grounds exist and it is in the interest 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. The Minister is required to also inform the licensee that he/she has 28 days in which to respond to the notice

At the end of 28 days and after considering any response from the licensee, the Minister may accept the response or suspend the licence for the specified time or cancel the licence

Suspension or cancellation of the licence takes effect on the date notice was given to suspend the licence or a date specified in the notice.

### **3.37 Procedure licence - emergency suspension (clause 54)**

A procedure licence may be suspended, where a licence condition has been contravened or subject to clause 55, where a prohibition notice has been issued.

The Minister may suspend the licence for up to 6 months.

- (a) when grounds exist for the suspension of the licence; and
- (b) it is necessary to suspend the licence in order to prevent or remove an imminent serious risk to public health

The suspension of the licence takes effect on the date the notice is given to the licensee

The notice will-

- (a) specify the grounds upon which the licence is suspended;
- (b) specify the period of the suspension; and
- (c) state the facts and circumstances that constitute the grounds for suspension

**3.38 Procedure licence - automatic suspension (clause 55)**

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 was given. The automatic suspension will cease when the prohibition notice is revoked.

**3.39 Procedure licence - return of defunct licences (clause 56)**

Within 7 days of a suspension, cancellation or variation taking effect, a licensee must return his or her licence to the Minister, unless the person has a reasonable excuse for not doing so.

In the case of a variation, the Minister will endorse the licence and return it to the licensee as soon as possible.

**Division 4 - Improvement notices**

The purpose of an improvement notice is to enable an authorised officer to require a person carrying on a public health risk activity to carry out structural work or repairs to upgrade the premises so that they comply with the minimum standards required. An improvement notice can also be used to improve the practice of a person performing a public health risk procedure so that the public health risks are minimised.

**3.40 Improvement notice - compliance (clause 57)**

Where a person has been issued with an improvement notice, it will be an offence to fail to comply with a notice without a reasonable excuse.

**3.41 Improvement notice - issue (clause 58)**

Where an authorised officer is satisfied that a person who is carrying on a public health risk activity or performing a public health risk procedure is or is likely to contravene the Act, then an improvement notice may be issued.

If the person carrying on the public health risk activity or performing the public health risk procedure to whom an improvement notice has been issued is not in charge of the premises then the authorised officer will send a copy of the notice to the person who is in charge of the premises.

An improvement notice would specify the following matters:

- (a) the contraventions that have occurred or may occur and the reason for the assessment,
- (b) the time period within which the matters stipulated in the notice have to be completed.

The improvement notice may specify what actions should be taken in order to comply with the notice.



In most instances an authorised officer would also provide verbal advice as to what matters needed rectification and why. The officer and licensee would usually agree on the time frames for the work to be completed.

### **3.42 Improvement notice - extension of compliance period (clause 59)**

An authorised officer may, before the end of the specified time, extend the period in which the person to whom the notice was issued is required to take action to rectify matters. This may be desirable in cases where compliance, in the specified time, is beyond the person's control.

Where an extension of time to rectify matters is refused, the authorised officer will inform the person in writing of the decision to refuse the application.

### **3.43 Improvement notice - revocation (clause 60)**

An improvement notice remains in force until it is revoked by an authorised officer, once he or she is satisfied that the notice has been complied with. The person to whom the notice was issued may apply to have the notice revoked.

Subclause 60 (3) outlines the information that is to be contained in an application for revocation.

If an authorised officer refuses an application for revocation, he or she will advise the applicant in writing and state the reasons for the refusal.

## **Division 5 - Prohibition notices**

A situation may exist in a premises that, if allowed to continue may give rise to imminent serious risk to public health. This section provides authorised officers with the powers to take necessary action to eliminate or minimise that risk.

### **3.44 Prohibition notice - issue (clause 61)**

This clause refers to three broad areas where problems may arise when either a public health risk activity is carried on or when a public health risk procedure is performed. These are:

- (a) the manner in which the public health risk activity is being carried on, or a public health risk procedure is being performed;
- (b) the use made of the premises in which a public health risk activity is carried out, or
- (c) the state of the premises in which a public health risk activity is carried out.

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 serious risk to public health, then the officer can serve a prohibition notice on the person carrying out the activity or performing the procedure.

If the person carrying on the activity or performing the procedure to which the notice applies is not the person in charge of the premises, then the authorised officer would forward a copy of the prohibition notice to the person in charge of the premises where the activity was carried on or the procedure was being performed

A prohibition notice may prohibit any or all of the following:

- (a) the carrying out of the activity or the performance of the procedure,
- (b) the carrying out of the activity or the performance of a procedure except in accordance with specified directions,
- (c) the use of specified premises for the activity or procedure

A prohibition notice may include directions such as

- (a) that the activity or procedure or a specified part of that activity or procedure can only be carried out or performed in a part of the premises specified in the notice,
- (b) that a particular substance is not to be used in connection with an activity or procedure,
- (c) that an activity or procedure be carried on or performed in a particular manner
- (d) the impounding or isolation of any equipment,
- (e) the destruction or disposal of any equipment or substance in a specified manner,
- (f) specifying a period in which the person to whom the notice was given must comply with any directions

A prohibition notice remains in force until revoked.

#### **3.45 Prohibition notice - extension of compliance period (clause 62)**

An authorised officer may, before the end of the specified time, extend the period in which the person to whom the notice was issued is required to take action to rectify matters. This may be desirable in cases where compliance, within the specified time, is beyond the person's control

An authorised officer advises an applicant in writing with reasons, if he or she rejects the person's application for an extension

**3.46 Prohibition notice - display (clause 63)**

Clause 63 of the Bill requires that a prohibition notice is to be displayed so that it is clearly visible to people entering the premises. If there were more than one entrance to the premises, then a copy of the notice would have to be displayed at each entrance.

**3.47 Prohibition notice - implementation (clause 64)**

Clause 64 provides the mechanisms for the implementation of a prohibition notice.

The Bill requires that a person is to be given a reasonable opportunity to comply with the notice before an authorised officer can proceed with its implementation.

If an authorised officer is satisfied that the circumstances that gave rise to the issuing of the prohibition notice are of such seriousness and urgency, then an authorised officer can immediately enter the premises. However the officer is not entitled to remain on the premises if, he or she does not produce his or her identity card and any authorisation when requested by the occupier to do so.

**3.48 Prohibition notice - revocation (clause 65)**

An authorised officer would revoke the notice after he or she was satisfied that the notice had been complied with and adequate measures had been taken to prevent or remove the serious risk to health which resulted in the prohibition notice being issued.

An authorised officer can decide to revoke the notice himself or herself, or the person to whom the notice was issued can apply to the officer to have the notice revoked.

The procedure for applying for the revocation of the prohibition notice is contained in subclause 65 (2) of the Bill.

If the authorised officer refuses the application for revocation, then the officer must give a written notice of refusal to the applicant with the reasons for the refusal.

**3.49 Prohibition orders (clause 66)**

If a person fails to comply with a prohibition notice then the Chief Health Officer can apply to the Magistrates Court for an order compelling the person to comply with the prohibition notice.

If the Court is satisfied that there is serious and imminent danger to public health the Court may make any of the following orders.

- (a) that the person comply with the original prohibition notice;
- (b) that the person comply with any additional requirements to those specified in the notice,
- (c) an order giving direction about the payment of any costs and expenses associated with the application.

Subclause 66 (5) of the Bill allows an authorised officer, using the minimum amount of force necessary and with any assistance, to enter the premises or land and undertake appropriate actions to implement the order. The officer would also be able to recover any cost or expenses incurred by the Territory in implementing the order from the person to whom the order was made.

The Magistrates Court can revoke a prohibition order on application either by the person to whom the order was made or the Chief Health Officer. The Court would need to be satisfied that the order had been complied with and that the circumstances that resulted in the making of the order were not likely to recur.

A person who is the subject of a prohibition order may appeal to the Supreme Court against that order.

## **PART IV - INSANITARY CONDITIONS**

### **4.1 Offence - insanitary conditions (clause 67)**

It is an offence for a person-

- (a) to cause an insanitary condition, or
- (b) allow or tolerate an insanitary condition on or emanating from land owned or occupied by or in the charge of that person.

### **4.2 Complaints about insanitary conditions (clause 68)**

A person may give an authorised officer a written complaint about the existence of an insanitary condition. The complaint is investigated, and if the officer decides not to issue an abatement notice then he or she informs the complainant in writing and also advises about any available methods for settling the matter privately.

### **4.3 Abatement notices - issue (clause 69)**

If an authorised officer is satisfied that an insanitary condition exists the officer may issue an abatement notice to the person causing the condition. However if that person cannot be identified then the notice is given to the person who owns, occupies or is in charge of the land where the condition exists or emanates.

In determining whether to issue an abatement notice or not, an authorised officer -

- (a) would take into account the number of people affected or potentially affected,
- (b) would take into account the extent of damage to public health, or the degree of offensiveness to community health standards.

The officer may also take into account any reasonable precautions that the person causing the condition may or may not have taken to avoid or minimise the adverse effect of the condition.

The officer may also have regard to any reasonable precautions that the person who is affected by the condition has or has not taken in an attempt to avoid or minimise the effect of the condition on his or her health or the health of any other person for whose care, support or education the person is responsible.

An abatement notice issued under subclause 69 (1) of this Bill would specify the following-

- (a) the insanitary condition to be abated;
- (b) the time in which the condition is to be abated

The notice may also specify steps to be taken to prevent the recurrence of the insanitary condition and any time periods within which they are to be completed

The abatement notice remains in force until it is revoked by an authorised officer in accordance with clause 71

It would be an offence to fail to comply with an abatement notice without a reasonable excuse.

#### **4.3.1 Abatement notice - extension of compliance period (clause 70)**

An authorised officer may, before the end of the specified time, extend the period in which the person to whom the notice was issued is required to take action to rectify matters. This may be desirable in cases where compliance, in the specified time, is beyond the person's control

The authorised officer advises the applicant in writing with reasons, if he or she rejects the person's application for an extension

#### **4.3.2 Abatement notice - implementation (clause 71)**

Clause 64 provides the mechanisms for the implementation of an abatement notice.

The Bill requires that a person is to be given a reasonable opportunity to comply with the notice before an authorised officer can proceed with its implementation.

An authorised officer can only implement an abatement notice under this clause to avert an imminent and serious public health risk.

If an authorised officer is satisfied that the circumstances that gave rise to the issuing of an abatement notice are of such seriousness and urgency, then an authorised officer can immediately enter the premises. However the officer is not entitled to remain on the premises if, he or she does not produce his or her identity card and any authorisation when requested by the occupier to do so

#### **4.3.3 Abatement notice - revocation (clause 72)**

An authorised officer would revoke the notice after he or she was satisfied that the notice had been complied with and adequate measures had been taken to prevent the

recurrence of the insanitary condition which resulted in the abatement notice being issued

The authorised officer can decide to revoke the notice himself or herself, or the person to whom the notice was issued can apply to the officer to have the notice revoked

The procedure for applying for the revocation of an abatement notice is contained in subclauses 72 (2) and (3) of the Bill.

If the authorised officer refuses the application for revocation, the officer must give a written notice of refusal to the applicant with the reasons for the refusal

#### **4.4 Abatement orders (clause 73)**

If a person fails to comply with an abatement notice then the Chief Health Officer can apply to the Magistrates Court for an order compelling the person to comply with the abatement notice

In considering an application by the Chief Health Officer, the Court may adjourn any hearings in order to consider any relevant reports on the alleged insanitary condition

If the Court is satisfied that an insanitary conditions exists, the Court may make any of the following orders:

- (a) that the person comply with the original abatement notice;
- (b) that in order to prevent the recurrence of the insanitary condition, the person undertake any specified action, or cease or refrain from undertaking any specified action;
- (c) an order giving direction about the payment of any costs and expenses associated with the application.

Subclause 73 (5) of the Bill allows an authorised officer, using the minimum amount of force necessary and with any assistance, to enter the premises or land and undertake appropriate actions to abate the insanitary condition and also implement the order. The officer would also be able to recover any costs or expenses incurred by the Territory in implementing the order from the person to whom the order was made

The Magistrate Court can revoke an abatement order on application either by the person to whom the order was made or the Chief Health Officer. The Court would need to be satisfied that the order had been complied with and that the circumstances that resulted in the making of the order were not likely to recur

A person who was the subject of an abatement order may appeal to the Supreme Court against that order

#### **4.5 Joint and several responsibility for insanitary conditions (clause 74)**

This clause applies to a situation where an authorised officer believes that-

- (a) 2 or more people have caused the condition; or
- (b) the person or persons causing the insanitary condition can not be identified but 2 or more people are in charge of the land or premises on which the condition had occurred or had emanated.

Each person would be issued with an abatement notice and would be subject to an abatement order under clause 73 of this Bill.

### **PART V - INSPECTION AND ANALYSIS**

#### **Division 1 - Preliminary**

##### **5.1 Interpretation (clause 75)**

This clause gives definitions and terms used only in this Part.

#### **Division 2 - Authorised officers' powers**

Given the public interest need to monitor compliance with this Bill and to investigate possible breaches of it, the Bill gives certain powers of access and information gathering to authorised officers. These powers are subject to common law and statutory limitations and conditions. For example, under subclause 75 (3) authorised officers cannot remain on any premises they enter unless they produce their identity card and authorisation when requested by the occupier.

##### **5.2 Entry to premises (clause 76)**

Clause 75 provides that authorised officers can enter non - residential premises at any reasonable time. If the occupier gives consent, authorised officers can enter any premises, including residential premises, at any time.

In emergency situations, where there is a serious public health risk or where circumstances are of such seriousness and urgency where there is a risk to a person, property or animals, the authorised officer can enter a premise without the consent of the occupier or without a warrant in order to deal with the situation.

Sewage emanating from a property and threatening a water supply or a could be an example of a serious public health risk that required urgent action. Under subclause 75 (2) the officer would be able to enter the property, assess the situation including the extent of the risk, then determine the most appropriate actions to deal with the problem.

##### **5.3 Consent to entry (clause 77)**

This clause sets out the procedure authorised officers must follow in obtaining consent from an occupier to enter premises

#### **5.4 Powers of authorised officers upon entry of a premises (clause 78)**

While undertaking a routine inspection or complaint investigation in a premises, an authorised officer is entitled to gather relevant information through a variety of means including taking of photographs, testing equipment, making observations and the taking of samples.

Authorised officers can also require people on the premises to answer questions and provide reasonable assistance to the officer

#### **5.5 Power of authorised officers to require a person's name and address (clause 79)**

Authorised officers can require people who are committing or who they reasonably believe have committed an offence under this Act to provide their name and address. Officers must:

- (a) inform the person of the reasons why they are being required to give this information; and
- (b) record those reasons as soon as practicable.

This power to require name and address supports the power to investigate situations where there is a serious risk to public health

#### **5.6 Search warrants (clause 80)**

Search warrants are issued by magistrates if there are reasonable grounds for suspecting that there may be an item in the premises that may be associated with a contravention of the Act. Under clause 80 search warrants give authorised officers powers to enter any premises (whether residential or not) without the constraints of clause 76

For example, an authorised officer could obtain a warrant to search a premises, in which the officer has reason to believe contained equipment used in an illegal high public health risk activity

#### **5.7 Obtaining of a warrant by telephone or other electronic means (clause 81)**

An authorised officer may apply for a warrant by telephone or other electronic means in an urgent case or when the delay in applying for the warrant in person would create difficulties in its execution

#### **5.8 Obstruction of an authorised officer (clause 82)**

It is an offence under clause 82 to obstruct or hinder the work of an authorised officer, or refuse to comply with his or her lawful directions. The work of authorised officers is central to the administration of the Bill, and this clause reflects the seriousness of interfering with those duties

#### **5.9 False information (clause 83)**

This clause makes the giving of false or misleading information on matters under this Bill an offence



### **Division 3 - Seizure**

Authorised officers have the power to seize items if the officers have reasonable grounds for believing the items are connected with an offence under this Act, and that the item should be seized to secure it, to prevent an offence from being committed or obtain evidence from it

#### **5.10 Seizure notices (clause 84)**

As soon as practicable after seizing an item or items an authorised officer would give a seizure notice to the owner of the item. If the owner is not present or readily available then the officers give the notice to the person who was responsible for the item at the time of seizure.

The notice would specify-

- (a) details about the seized item,
- (b) the date and place of seizure;
- (c) the location where the seized item/s are stored;
- (d) the reasons for the seizure;
- (e) the procedure for appealing the seizure; and
- (f) the name, address and telephone number of the officer who undertook the seizure

#### **5.11 Onsite storage of seized items (clause 85)**

An authorised officer has the option of storing the seized item at the place where it was seized. This would usually occur when the item was too large to move or a large number of items were seized. The officer would give the occupier of the premises a copy of the detainment notice. This notice would contain the information specified in subclause 85 (2) of this Bill such as the date and place of seizure, reasons for the seizure and the location of the items seized.

#### **5.12 Interference with seized items (clause 86)**

It would be an offence to tamper with seized items which were detained on the premises.

#### **5.13 Access to seized records (clause 87)**

If an authorised officer seizes records or documents, then the owner of documents is able to have access to the documents and copy any part or all of the document.

**5.14 Return of seized items (clause 88)**

Unless its release to its owner is authorised by the Minister, seized items are held as potential evidence for any legal proceedings. The Bill stipulates that any legal proceedings must be commenced within 6 months of the items being seized.

If a decision has been made not to prosecute for an offence, or a prosecution occurs but the defendant is found not guilty, the Minister decides whether disposing of the item is necessary to prevent or minimise the risk to public health. If the Minister decides that it is not necessary, the seized item is returned to the owner.

**5.15 Court ordered relief against seizure (clause 89)**

Clause 89 contains the procedure for a person to appeal to the Courts against the seizure. A person has 10 days from the date of seizure to lodge an application for the court to disallow the seizure.

**5.16 Forfeiture of seized items (clause 90)**

A seized item is forfeited to the Territory in the following circumstances-

- (a) the seized item has not been returned to the owner, or
- (b) where there has been not been an appeal against the seizure, or
- (c) where the court has rejected an appeal

The Minister then may direct that the item be destroyed, sold or otherwise disposed of.

**5.17 Cost of destruction or disposal of items forfeited (clause 91)**

This clause applies to a situation where the owner of the forfeited items has been convicted of an offence with regard to the forfeited item/s.

The owner is responsible for costs incurred in the disposal or destruction of the forfeited item.

**5.18 Destruction of contaminated items (clause 92)**

An authorised officer may have a seized item destroyed, if the officer believes that the item is so contaminated or is in such a condition that its continued use would give rise to a serious public health risk.

**Division 4 - Analysis****5.19 Entry to premises (clause 93)**

Providing they produce their identity card, analysts are empowered to enter premises in the company of authorised officers to conduct tests and collect information.

As with authorised officers, an Analyst is not entitled to remain on the premises without showing an identity card when requested to do so.

**5.20 Notice of taking a sample (clause 94)**

An authorised officer must give notice of sampling to the appropriate responsible person, as soon as practicable after taking the sample.

**5.21 Analysis of a sample (clause 95)**

An Analyst is required to either analyse the sample personally or supervise the analysis of the sample by another person under his or her direction. On completion of the analysis, a certificate of analysis is provide to the authorised officer who took the sample.

**5.22 Certificate evidence of analysis (clause 96)**

This clause provides that results given by an analyst in a certificate of analysis to court are prima facie of the matters stated

**5.23 Time limits for certain prosecutions (clause 97)**

The Bill stipulates that any legal proceedings must be commenced within 6 months of the sample being taken.

**5.24 Prohibited use of the results of analysis (clause 98)**

A person is prohibited from using the results of analysis undertaken for the purposes of this Act for any commercial purpose or in advertising.

**PART VI - NOTIFIABLE CONDITIONS AND PUBLIC HEALTH HAZARDS****Division 1 - Preliminary****6.1 Principles - notifiable conditions (clause 99)**

Consistent with the philosophy of social equity, the Bill contains a set of principles which cover a person's fundamental rights and responsibilities in relation to notifiable conditions

Basically, a person with a notifiable condition or at risk of developing a notifiable condition has a right to-

- (a) have his or her privacy respected,
- (b) receive information about the medical and social consequences of the condition and any proposed treatment,

A person who engages in activities that are known to carry a potential risk of exposure to a transmissible condition, and any person responsible for the care, support or education of that person has a responsibility to-

- (a) take all reasonable precautions to avoid contracting the condition;

- (b) ascertain whether the condition has been contracted and what precautions should be taken to prevent exposing others to the condition, if exposure has potentially occurred, and
- (c) comply with preventive measures and treatment that will minimise the risk of exposure to others, and
- (d) take reasonable measures to ensure that others are not unknowingly placed at risk through their own action or inaction of the person

Any public health investigation of a notifiable condition should be aimed at-

- (a) minimising the public health consequences of the condition, and
- (b) if the condition is transmissible, limiting its spread

#### **6.2 Notifiable conditions - Ministerial determination (clause 100)**

The Minister can by instrument determine a disease or condition to be a notifiable condition and whether it is a transmissible notifiable condition. It would be expected that the Minister would consult widely with relevant experts and stake holders before determining if a disease or condition should be added to the list and if it should be determined to be a transmissible notifiable condition.

The purpose of this determination is twofold-

- (a) to control public health risks by requiring medical practitioners and other responsible persons (clauses 102 - 105) to notify the Chief Health Officer if they identify a person with a condition that is notifiable, and
- (b) to limit some of the public health actions available to the Chief Health Officer in relation to transmissible notifiable conditions which pose particular public health risks

The Ministerial determination is a disallowable instrument.

#### **6.3 Notifiable conditions - temporary status (clause 101)**

The Chief Health Officer has a short term emergency power to declare a disease or condition notifiable. A declaration by the Chief Health Officer can only remain in force for a maximum of 6 months and is also a disallowable instrument.

This is necessary for the protection of the community given the worldwide concern about the emergence of new human pathogens such as equine morbillivirus and bat lyssavirus.

## **Division 2 - Notification of notifiable conditions**

### **6.4 Medical practitioners (clause 102)**

Subclause 102 (1) of the Bill requires a medical practitioner, who believes on reasonable grounds that a patient has a notifiable condition, to-

- (a) give the patient information about-
  - (i) the transmission of that condition and how to prevent transmitting it to others; and
  - (ii) any other matters that the Chief Health Officer determines,
- (b) arrange for the patient to receive counselling in accordance with any relevant guidelines if the patient agrees; and
- (c) request the patient to give relevant information to the practitioner so that the medical practitioner can notify the Chief Health Officer

Subclause 102 (1) does not apply if the medical practitioner establishes that the information in paragraph (a) above has been provided by another medical practitioner.

Failure by a medical practitioner to comply with the requirements in clause 102 (1) is taken as unsatisfactory professional conduct for the purposes of Part IV of the *Medical Practitioners Act 1930* as well as grounds for a complaint to the Commissioner for Health Complaints under sub section 22 (1) of the *Health Complaints Act 1993*.

Under subclause 102(4) a medical practitioner is required, as soon as practicable, to notify the Chief Health Officer of any of his or her patients who the practitioner believes on reasonable grounds to have a notifiable condition.

Subclause 102 (5) requires a medical practitioner to notify the Chief Health Officer if he or she has reasonable grounds for believing that at the time of death, his or her patient had a notifiable condition.

It is a defence to a prosecution, if the medical practitioner establishes that he or she had reasonable grounds for believing that the Chief Health Officer had already been notified about the patient's notifiable condition.

### **6.5 Pathologists (clause 103)**

This clause outlines the requirement relating to pathologists and pathology laboratory notification of notifiable conditions

### **6.6 Hospitals (clause 104)**

The person in charge of a hospital is required to notify the Chief Health Officer of any in - patient who has or may have a notifiable condition

**6.7 Notification by responsible persons (clause 105)**

A counsellor is required to notify the Chief Health Officer if they believe that person whom they have counselled has a notifiable condition

A responsible person such as apparent, school principal or director of a childcare centre is required to notify the Chief Health Officer if a person in their care has a notifiable condition

**6.8 Notification by a person with a notifiable condition (clause 106)**

Clause 106 applies to a situation, where an authorised officer has reasonable grounds for believing that a person has a notifiable condition.

The officer may request that the person provide any or all of the following information

- (a) the person's name and address;
- (b) information about the circumstances under which the person may have been exposed to the condition,
- (c) in the case of a transmissible notifiable condition-
  - (i) the circumstances under which the person may have transmitted or acquired the condition
  - (ii) the name, address or whereabouts of any person the authorised officer has reasonable grounds for believing may be a contact of the person with the condition.

Before requesting the information, the authorised officer will inform the person about the reason for the request. The officer will produce his or her identity card and authorisation as the case may be, when requested by the person

The above information is required so that a case of a notifiable condition is thoroughly investigated and appropriate measures are instituted to minimise the public health risk.

**6.9 Unauthorised assertions (clause 107)**

It is an offence for a person to disclose to a contact of person with a notifiable condition, that the person has a transmissible notifiable condition, unless specifically authorised to do so under this Act

**6.10 Authorised notification of contacts (clause 108)**

This clause applies to the following circumstances-

- (a) a person with transmissible notifiable condition refuses to inform a contact or contacts of his or her potential exposure to that condition, or

- (b) refuse to give permission for a counsellor or a medical practitioner to inform the contact/s.

A medical practitioner or counsellor may with the approval of the Chief Health Officer inform the contact of his or her potential exposure to the transmissible notifiable condition

Upon being informed of the above, the Chief Health Officer may take reasonable steps to ensure the contact or contacts are informed of their potential exposure, the Chief Health Officer will have regard to-

- (a) the degree of risk of the contact or contacts contracting or possibly contracting the condition;
- (b) the possibility of causing undue anxiety to the person with the condition or the contact;
- (c) any other relevant circumstances.

#### **6.11 Use of notified information (clause 109)**

Information collected by the Territory as a result of notifications made under this Act may be used for the following purposes.

- (a) the prevention and control of notifiable conditions in the Territory and elsewhere;
- (b) the prevention and control of risks to public health;
- (c) research related to public health in the Territory and elsewhere

Only information that does not contain information that may identify a patient is used for research purposes.

Information will be only used under this clause in accordance with the principles in clause 98 and the objective of the Bill as set out in clause 4

#### **6.12 Disclosure of information that may identify a person with a notifiable condition (clause 110)**

A person can not disclose information notified under this Part which identifies the person to whom the information applies unless that person consents in writing to the disclosure or the disclosure is for other valid legal reasons

#### **6.13 Disclosure of information that may identify a medical practitioner, pathologist or hospital (clause 111)**

A person can not disclose information notified under this Part which identifies a medical practitioner, pathologist or hospital unless that person consents in writing to the disclosure

### **Division 3 - Public health hazards**

#### **6.14 Notification of public health hazards (clause 112)**

A person is required to notify the Chief Health Officer of the presence or occurrence, on land occupied by that person, in any food, water or air or elsewhere in the environment, of any substance or matter that the person has reasonable grounds for believing constitutes a significant public health hazard

In this section matter or substance includes-

- (a) a contaminant,
- (b) an organism that causes, or may cause, a notifiable condition; and
- (c) any other human pathogenic organism

It would be an offence for failing to notify the Chief Health Officer of the presence of the above

#### **6.15 Public health directions - issue (clause 113)**

Where the Chief Health Officer has been notified of a person with a notifiable condition or an event that may impact significantly upon public health, he or she may take a range of actions as required

The Bill specifies that the following parameters must be considered in deciding what action is appropriate

- (a) the number of people potentially affected;
- (b) the potential seriousness of the effect on individuals,
- (c) the probability of a serious effect on the community at large;
- (d) the capacity to control the problem with other measures

The range of actions envisaged includes for example.

- (a) actions relating to people such as
  - (i) requiring a person to refrain from behaviours or activities which pose a risk to public health,



- (ii) requiring a person to cease a particular form of work while this potentially poses a public health risk;
  - (iii) requiring a person with a transmissible notifiable condition to undergo a medical examination;
  - (iv) requiring a person with a transmissible notifiable condition to undergo specified medical treatment;
  - (v) requiring a person with a transmissible notifiable condition to be confined to a particular premises, being the least restrictive confinement appropriate to the person's medical condition.
- (b) actions relating to premises, land or equipment such as:
- (i) requiring a person to cease using a piece of equipment;
  - (ii) requiring a person to clean and decontaminate a premises;
  - (iii) requiring a person to cease occupying a premises.

The Bill requires that the Chief Health Officer undertakes the minimum action necessary to prevent, control or alleviate the public health hazard

Any directions made by the Chief Health Officer under this section will be in writing.

**6.16 Public health direction - notice to a medical practitioner (clause 114)**

Where the Chief Health Officer has issued a public health direction to a person who has a notifiable condition, the Chief Health Officer is required to write to the person's medical practitioner advising him or her of the directions that have been issued

**6.17 Public health directions - extension of compliance period (clause 115)**

An authorised officer may, before the end of the specified time, extend the period in which the person to whom the public health direction notice was issued is required to comply with the direction or directions

The authorised officer advises the applicant in writing with reasons, if he or she rejects the person's application for an extension.

### **6.18 Public health direction - implementation (clause 116)**

Clause 116 provides the mechanisms for the implementation of public health directions

The Bill requires that a person is to be given a reasonable opportunity to comply with the direction or directions before an authorised officer can proceed with its implementation.

An authorised officer can only implement a public health direction under this clause to avert an imminent and serious risk to public health

If an authorised officer is satisfied that the circumstances that gave rise to the issuing of the public health direction are of such seriousness and urgency, then an authorised officer can immediately enter the premises. However the officer is not entitled to remain on the premises if, he or she does not produce his or her identity card and any authorisation when requested by the occupier to do so.

### **6.19 Public health directions - revocation (clause 117)**

An authorised officer would revoke the notice after he or she was satisfied that the direction or directions has been complied with and adequate measures had been taken to prevent or alleviate the public health hazard which resulted in the public health direction.

The authorised officer can decide to revoke the direction himself or herself, or the person to whom the direction was issued can apply to the officer to have the direction revoked

The procedure for applying for the revocation of a public health direction is contained in subclauses 117 (2) and (3) of the Bill

If the authorised officer refuses the application for revocation, the officer must give a written notice of refusal to the applicant with the reasons for the refusal.

### **6.20 Public health orders (clause 118)**

The Chief Health Officer may apply to the Magistrates Court for an order requiring that person to whom a public health direction has been issued comply with the direction

In considering an application by the Chief Health Officer, the Court may adjourn any hearings in order to consider any relevant reports on the alleged public health hazard.

If the Court is satisfied that a public health hazard exist, the Court may make any of the following orders:

- (a) that the person comply with the original public health direction within the original specified time period (if any);

- (b) that in order to prevent or alleviate the relevant public health hazard; the person undertake any specified action, or cease or refrain from undertaking any specified action;
- (c) an order giving direction about the payment of any costs and expenses associated with the application; and
- (d) an order imposing any monetary penalty.

Subclause 118(5) of the Bill allows an authorised officer, using the minimum amount of force necessary and with any assistance, to enter the premises or land and undertake appropriate actions to implement the order. The officer would also be able to recover any costs or expenses incurred by the Territory in implementing the order from the person to whom the order was made.

The Magistrate Court can revoke an public health order on application either by the person to whom the order was made or the Chief Health Officer. The Court would need to be satisfied that the order had been complied with and that the circumstances that resulted in the making of the order were not likely to recur.

A person who was the subject of a public health order may appeal to the Supreme Court against that order

## **PART VII PUBLIC HEALTH EMERGENCIES**

### **7.1 Emergency declarations (clause 119)**

The Minister may in writing, declare a public health emergency, if satisfied that the situation requires it. The declaration would specify the nature of the public health emergency and any area to which the declaration relates, and the period for which the declaration remains in force.

An emergency declaration comes into force on the date on which it was made and continues for a period not exceeding 5 days. The Minister may also by declaration extend or further extend the period during which an emergency declaration remains in force by a period of up to 2 days each time.

### **7.2 Emergency actions and directions (clause 120)**

While an emergency declaration is in force, the Chief Health Officer may take any action or give either written or oral directions to-

- (a) reduce, remove or destroy any threat to public health; or
- (b) segregate or isolate persons in any area; or
- (c) evacuate any person from an area, or

- (d) prevent or permit access to any area, or
- (e) control the movement of any vehicle

The Chief Health Officer may give a direction to a person that includes any or all of the following

- (a) that the person undergo a medical examination,
- (b) that the person move to or stay in a specified area,
- (c) that any substance or thing be seized which is posing a significant public health risk,
- (d) that any thing or substance be destroyed because it poses a serious public health risk;
- (e) that any other action be taken that the Chief Health Officer considers appropriate

It is a requirement of the Act, that a person must comply with a direction of the Chief Health Officer unless he or she has a reasonable excuse

### **7.3 Emergency powers (clause 121)**

While an emergency declaration is in force, an authorised person assisting to carry out the direction or order may-

- (a) enter, by reasonable force if necessary, any place 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 path, and
- (d) remove by reasonable force any person who fails to comply with the direction or order.

The Chief Health Officer may authorise persons or groups of people in writing for the purposes of this section. The Chief Health Officer may require any authorised person to assist in carrying out a direction or order made under this section

An authorised person who enters a premises or land pursuant to this section of the Act is not entitled to remain in that place if, on request by the occupier, he or she does not

produce appropriate identification and or an authorisation from the Chief Health Officer.

#### **7.4 Compensation (clause 122)**

In some circumstance compensation may be payable to a person for loss or damage suffered by the person as a result of actions taken during a public health emergency.

Under subclause 122(1) an eligible person may apply to the Minister for compensation in relation to any loss or damage suffered by the person as a result of any action taken during a public health emergency

Subclause 122(2) provides for compensation to be paid by the Territory to an eligible person at an amount the Minister considers appropriate. In determining the amount of compensation to be paid the Minister will have regard to the loss or damage suffered by the person

Compensation is not payable to an eligible person in the following circumstances-

- (a) where any loss or damage occurred because of the action or inaction of the person who has suffered the loss or damage; or
- (b) where any loss or damage was caused or contributed to by the public health emergency.

An eligible person in this clause means-

- (a) a person who has suffered the loss or damage; or
- (b) if the damage suffered by a person referred to paragraph (a) above results in his or her death - any member of the deceased's family within the meaning of the *Compensation (Fatal Injuries) Act 1968* who has sustained loss or damage because of the death.

#### **7.5 Chief Health Officer - post emergency report (clause 123)**

Once the emergency has ceased, the Chief Health Officer will provide the Minister with a report about the emergency. The report would include the circumstances that gave rise to the emergency, details of the actions taken to deal with the emergency and any directions given under subclause 120(1)

The Chief Health Officer must submit the report to the Minister within 3 months from the cessation of the emergency. The Minister then tables the report in the Legislative Assembly within 15 sitting days after receiving it.

### **PART VIII - PUBLIC HEALTH INVESTIGATIONS**

#### **8.1 Investigations (clause 124)**

Subject to subclause 124(4) the Chief Health Officer may hold an investigation with respect to any public health issue or the administration of this Bill.

Subclause 124(2) requires the Chief Health Officer to hold a public health investigation if directed by the Minister to do so. The Minister is required to table a copy of that direction in the Legislative Assembly within 15 sitting days of it being made

Subclause 124(4) prohibits the Chief Health Officer from conducting a public health investigation in relation to a matter which is capable of forming the subject of a preliminary assessment, an Assessment or an Inquiry under Part IV of the *Land (Planning and Environment) Act 1991*

However, under clause 134 of this Bill the Minister has the power to-

- (a) direct that an Assessment be made under Division 3 of Part IV of the above Act, or
- (b) establish a panel to conduct an Inquiry under Division 4 of Part IV of that Act,

about any aspect of a proposed development under Part IV of the *Land (Planning and Environment) Act 1991* that the Minister considers would be likely to have a significant impact on public health

## **8.2 Investigation procedures (clause 125)**

Clause 125 outlines the procedure for conducting a public health investigation

The following framework applies to the conducting of an investigation

- (a) An investigation should be conducted with as little formality and technicality as necessary
- (b) An investigation need not involve a public or private hearing
- (c) An investigation would be conducted in accordance with any applicable Code of Practice
- (d) For the purposes of conducting an investigation, the Chief Health Officer-
  - (i) is not bound by the rules of evidence, and
  - (ii) must observe the rules of natural justice

## **8.3 Powers of the Chief Health Officer (clause 126)**

Clause 126 outlines the powers of the Chief Health Officer in conducting a public health investigation. These powers include

- (a) requiring a person to appear and give evidence,

- (b) requiring a person to answer any relevant question,
- (c) taking of evidence on oath or affirmation;
- (d) requiring a person to take an oath or make an affirmation;
- (e) taking of statements and affidavits,
- (f) requiring the production of any relevant document: or
- (g) exercising any other power that the Chief Health Officer considers to be necessary in order to undertake the investigation

#### **8.4 Report on the investigation (clause 127)**

The Chief Health Officer is required to give the Minister a written report of the findings of an investigation as soon as practicable after its conclusion. The Minister must then table a copy of the report within 15 sitting days of receiving it.

#### **8.5 Protection and immunity (clause 128)**

Clause 122 has been inserted to ensure that a public health investigation is effective and people have confidence in its findings

In undertaking a public health investigation the Chief Health Officer has the same protection and immunity as a judge of the Supreme Court.

This protection will ensure that the Chief Health Officer can carry out the investigation and report without fear of being sued

Under subclause 128(2) a person giving evidence in a public health investigation has the same protection as a witness in proceedings in the Supreme Court. This protection will help to ensure that people will be prepared to give evidence at an investigation.

Any evidence given at a public health investigation or record of proceedings is not admissible in a civil or criminal proceedings in any Court.

#### **8.6 Offences associated with the investigation (clause 129)**

Clause 129 creates a number of offences with penalties in relation to public health investigations. These offences have been inserted to ensure that a public health investigation can proceed unhindered with accurate information being presented..

### **PART IX - REVIEW AND APPEALS**

#### **9.1 Review of decisions (clause 130)**

The effect of this section is to create a right of review for certain decisions of the Minister

The following decisions of the Minister made under this Bill are subject to review in the Administrative Appeals Tribunal -

- (a) refusal to grant an activity licence under subclause 30 (1),
- (b) refusal to vary an activity licence under subclause 34 (1),
- (c) refusal to approve the transfer of an activity licence under subclause 37 (1),
- (d) refusal to grant a procedure licence under subclause 45 (1); and
- (e) refusal to vary a procedure licence under subclause 49 (1)

## **9.2 Notification of decisions (clause 131)**

Clause 125 requires that where the Minister who decides to:

- (a) refuse to grant an activity licence under subclause 30 (1),
- (b) refuse to vary an activity licence under subclause 34 (1),
- (c) refuse to approve the transfer of an activity licence under subclause 37 (1),
- (d) refuse to grant a procedure licence under subclause 45 (1), and
- (e) refuse to vary a procedure licence under subclause 49 (1)

The Minister must issue a written notice of that decision to the person specified in subclause 131 (1). This notice must conform with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Act 1989*.

## **9.3 Appeals (clause 132)**

Under clause 132 of the Bill, a person may appeal to the Supreme Court in relation to any of the following orders of the Magistrates Court

- (a) a prohibition order under subclause 66 (3),
- (b) an order dismissing an application for the revocation of a prohibition order, under subclause 66 (7),
- (c) an abatement order under subclause 73 (3)
- (d) an order dismissing an application for revocation of an abatement order, under subclause 73 (7),
- (e) an order for detention or exclusion under subclause 118 (3), or



- (f) an order dismissing an application for revocation of an order for detention or exclusion, under subclause 118 (7).

## **PART X - MISCELLANEOUS**

### **10.1 Codes of Practice (clause 133)**

Subclause 133 (1) provides the Minister with the power to determine Codes of Practice in order to control public health risks or set minimum operating requirements

Subclause 133 (2) allows for the adoption of national or international Codes of Practice or guidelines by reference as well as the automatic updating of such adopted Codes of Practice or guidelines

A Code of Practice determined under subclause 133 (1) would be a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*

### **10.2 Environmental Assessment and Inquiries (clause 134)**

For the purposes of section 231 of the *Land (Planning and Environment) Act 1991*, the Minister has the power to require a form of Environmental Assessment or Inquiry under Part IV of that Act, about any aspect of a proposed development, that the Minister considers likely to have a significant effect on public health

### **10.3 Evidence - records, costs and expenses (clause 135)**

A copy of a record made by an authorised officer is admissible in evidence in any legal proceedings.

### **10.4 Conduct of directors, servants and agents (clause 136)**

This clause contains provisions concerning the state of mind of people involved in a prosecution of an offence under this Bill, and related provisions as described below in 10.3.1 - 10.3.3

#### **10.4.1 Subclauses 136 (1) & (5)**

Subclause (1) attributes the state of the mind of directors, servants and agents to their company or principal, for conduct within the scope of their actual or apparent authority. For these purposes, Government corporations are included in the term 'company' through subclause (5)

#### **10.4.2 Subclauses 136 (2) & (3)**

Subclause (2) explains what matters are part of a person's state of mind, while subclause (3) provides that any conduct by a Director, servant or agent of a person or body (the Principal), within their authority (real or apparent), is attributed to the Principal unless the Principal can establish a "due diligence" defence

#### **10.4.3 Subclause 136 (4)**

Subclause (4) prohibits imprisonment for convictions which rely on this clause, because the conduct or mental state may be imputed rather than real

#### **10.4.4 Subclause 136 (6)**

The term "conduct" also refers to failing or refusing to act

**10.5 Determination of fees (clause 137)**

Clause 137 gives the Minister the power to determine fees payable as required. Such a determination is a disallowable instrument. A notice of determination is published in the Gazette.

**10.6 Regulations (clause 138)**

Clause 138 provides the power for the Executive to make any necessary regulations for the purposes of this Bill.

There is also provision for any regulations to include a financial penalty for offences against those regulations.