



AUSTRALIAN CAPITAL TERRITORY

Clinical Waste Act 1990

No. 5 of 1990

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AUSTRALIAN CAPITAL TERRITORY

Clinical Waste Act 1990

No. 5 of 1990

An Act relating to the treatment, storage, transportation and disposal of clinical waste

[Notified in ACT Gazette S14: 9 April 1990]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Clinical Waste Act 1990*.

Commencement

2. (1) Subject to subsection (2), this Act commences on a day fixed by the Minister by notice in the *Gazette*.

(2) If this Act has not commenced before the expiration of the period of 6 months commencing on the day on which it is notified in the *Gazette*,

it shall, by force of this subsection, commence on the expiration of that period.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

“Appeals Tribunal” means the Australian Capital Territory Administrative Appeals Tribunal;

“clinical waste” means—

- (a) waste consisting of any catheter, hypodermic needle, intravenous set, pipette or scalpel;
- (b) waste consisting of any other instrument or object that has been used in the taking of blood, the testing, processing or handling of blood or blood products, the investigation of human or animal diseases or in analysis or research that involves the use of tissue or fluid specimens, whether human or animal;
- (c) sanitary waste that originates from or has been in contact with a person suffering from tuberculosis or an infectious or notifiable disease within the meaning of the Public Health (Infectious and Notifiable Diseases) Regulations;
- (d) sanitary waste that originates from or has been in contact with a person suffering from venereal disease within the meaning of the *Venereal Diseases Act 1956*;
- (e) waste resulting from the investigation or analysis of tissue or fluid specimens, whether human or animal;
- (f) biological or chemical waste resulting from the investigation of human or animal diseases;
- (g) waste derived from a prescribed activity, being waste that includes or included human blood, or animal blood in any form other than food waste;
- (h) human or animal tissue or body fluids, removed during surgery or an autopsy;

- (i) waste consisting of a cytotoxic substance or waste that is, or is likely to be, contaminated by a cytotoxic substance;
- (j) waste consisting of anything that has been in contact with waste referred to in a previous paragraph;
- (k) waste derived from the preparation of a human body for burial or cremation; or
- (l) waste declared by the Minister by instrument to be clinical waste for the purposes of this Act;

but does not include waste the treatment of which has been completed in accordance with the Manual;

“Controller” means the Clinical Waste Controller appointed under section 7;

“Crimes Act” means the Crimes Act, 1900 of the State of New South Wales in its application to the Territory;

“determined fee” means the fee determined under section 12 for the purposes of the provision in which the expression occurs;

“licence” means a licence in force under this Act;

“Manual” means the Clinical Waste Manual as in force from time to time under Part III;

“occupier”, in relation to premises, includes a person who is, or appears to be, in charge of the premises;

“premises” includes—

- (a) a structure, building, aircraft, vehicle or vessel;
- (b) a place (whether enclosed or built upon or not); and
- (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b));

“prescribed activity” means—

- (a) the provision of medical, surgical or dental treatment, or nursing care;
- (b) the provision of diagnostic or paramedical services;

- (c) the provision of veterinary services;
- (d) a practice, business or undertaking—
 - (i) conducted by a pharmacist, chiropodist or podiatrist;
 - (ii) that involves the taking of blood or the testing, processing or handling of blood or blood products;
 - (iii) that involves tattooing, acupuncture, depilation, ear or nose piercing, hair restoration or any other process requiring penetration of the skin of a live person;
 - (iv) that involves the investigation of human or animal diseases;
 - (v) that involves analysis or research involving the use of tissue or fluid specimens, whether human or animal; or
- (e) an activity declared by the Minister by instrument to be a prescribed activity for the purposes of this Act;

“regulated premises” means—

- (a) a hospital;
- (b) premises used primarily for the provision of accommodation and nursing care, or nursing care;
- (c) a funeral parlour;
- (d) a mortuary; or
- (e) any other premises on which a prescribed activity is conducted or carried on;

“waste disposal site”, in relation to clinical waste of a particular kind, means a place declared by the Minister under section 11 to be a disposal site for clinical waste of that kind.

(2) An instrument made by the Minister for the purposes of—

- (a) paragraph (1) of the definition of “clinical waste” in subsection (1); or

- (b) paragraph (e) of the definition of “prescribed activity” in subsection (1);

is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(3) A reference in this Act to an offence against this Act shall be read as including a reference—

- (a) to an offence that there are reasonable grounds for believing has been, or will be, committed; and
- (b) to an offence referred to in Part VIII of the Crimes Act that relates to the first-mentioned offence against this Act.

Act to bind Crown

4. This Act binds the Crown.

Crown not liable to prosecution

5. Nothing in this Act renders the Crown liable to be prosecuted for an offence.

Radioactive material

6. This Act does not apply to radioactive material within the meaning of the *Radiation Act 1983*.

PART II—ADMINISTRATION

Clinical Waste Controller

7. (1) The Minister may appoint a public servant to be the Clinical Waste Controller.

(2) For the purposes of Part VI, the Controller shall be taken to be an inspector.

Delegation

8. The Controller may delegate in writing to a public servant all or any of his or her powers under this Act.

Appointment of inspectors

9. (1) The Minister may appoint a public servant to be an inspector for the purposes of this Act.

(2) The Minister shall issue to each inspector an identity card that specifies the name and appointment of the inspector and on which there appears a recent photograph of the inspector.

Return of identity cards

10. A person who ceases to be an inspector shall not, without reasonable excuse, fail to return his or her identity card to the Minister upon ceasing to be an inspector.

Penalty: \$100.

Declaration of disposal sites

11. The Minister may, by notice in the *Gazette*, declare a specified place to be a disposal site for clinical waste of a specified kind.

Fees

12. The Minister may, by notice in writing, determine fees for the purposes of this Act or the regulations.

Annual report

13. The administrative head shall furnish to the Minister for presentation to the Legislative Assembly a report relating to the operation of this Act during each financial year.

PART III—CLINICAL WASTE MANUAL**Preparation of Manual**

14. (1) The Minister shall prepare and maintain a Clinical Waste Manual dealing with all matters—

- (a) required or permitted by this Act to be so dealt with; or
- (b) necessary or convenient to be so dealt with for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Manual—

- (a) may contain requirements, not inconsistent with this Act, relating to—
 - (i) the manner in which clinical waste may be stored, treated, transported or disposed of;
 - (ii) the kinds of containers in which clinical waste may be stored or transported; or
 - (iii) the labelling and marking of containers used for the storage or transport of clinical waste; and
- (b) shall contain—
 - (i) a list of waste disposal sites; and
 - (ii) the form of an application for a licence.

Amendment of Manual

15. The Minister may, in writing, amend the Manual.

Publication

16. (1) The Minister shall publish in the *Gazette* and in a daily newspaper circulating in the Territory a notice of the preparation of the Manual and of each amendment.

(2) The Manual, or any amendment, takes effect on the fifteenth day after the date of publication of the notice in the *Gazette* or, if a later date is specified in the Manual or amendment, on that later date.

Manual to be disallowable

17. The Manual, and each amendment, are disallowable instruments for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Inspection of Manual

18. (1) The Controller shall keep a copy of the Manual at his or her office at all times.

(2) Any person may, upon request, at any time at which the Controller's office is open for business, inspect the copy of the Manual kept by the Controller.

PART IV—LICENCES

Application

19. An application for a licence to carry on the business of transporting clinical waste shall be—

- (a) in accordance with the form set out in the Manual;
- (b) executed by or on behalf of the applicant; and
- (c) lodged at the office of the Controller together with the determined fee.

Grant or refusal

20. (1) Where an application for a licence has been made, the Controller shall—

- (a) grant the licence subject to such conditions (if any) as are specified on the licence; or
- (b) refuse to grant the licence.

(2) For the purpose of making a decision under subsection (1), the Controller shall, in relation to the period to which the licence would relate, have regard to the following matters:

- (a) whether the applicant has, or will have, the necessary facilities to transport clinical waste in accordance with this Act;
- (b) the terms of any contract that the applicant has entered into, or intends to enter into, in relation to the transport of clinical waste;
- (c) the volume and type of clinical waste that the applicant intends to transport;
- (d) the arrangements that the applicant has made, or proposes to make, for the safe handling of clinical waste transported by the applicant;
- (e) whether the applicant is, or undertakes to be, insured by an authorised insurer against any liability that may result from any activity that would be carried out under the licence, and whether that insurance will be adequate for that purpose;

- (f) the degree of supervision that the applicant would exercise over persons employed or engaged in activities that would be carried out under the licence;
- (g) whether the applicant has previously engaged in the business of transporting clinical waste and whether, in the course of that business, clinical waste was handled in contravention of this Act or of legislation of a State or another Territory dealing with the treatment, storage, transportation or disposal of clinical waste;
- (h) such other matters as the Controller reasonably believes to be relevant, including, in particular, the need to protect public health, property or the environment.

(3) Where the Controller grants a licence subject to a condition or refuses to grant a licence, he or she shall, within 28 days after the decision, give written notice of the decision to the applicant.

(4) In paragraph (2) (e)—

“authorised insurer” means a body corporate authorised under section 23 or 24 of the *Insurance Act 1973* of the Commonwealth to carry on an insurance business.

Duration

21. (1) Subject to subsection (2), a licence remains in force for the period of 12 months commencing on the day on which the licence is granted.

(2) A licence shall not be taken to be in force while it is suspended under section 23 or 25.

Variation

22. (1) Where, after a licence has been granted, the Controller believes on reasonable grounds that it is necessary to do so in the interests of the health or safety of any person affected by the licensee's activities, the Controller may, subject to section 24, by notice in writing given to the licensee, vary a licence by—

- (a) varying a condition to which it is subject;
- (b) revoking such a condition; or
- (c) imposing a condition on the licence.

- (2) The variation of a licence takes effect on—
- (a) the date on which notice of the variation is given to the licensee; or
 - (b) if a later date is specified in the notice, on that later date.
- (3) In this section “licence” includes a licence that is suspended.

Suspension or cancellation

23. (1) Where a licensee—
- (a) has been found guilty of an offence against this Act;
 - (b) has contravened a condition to which the licence is subject; or
 - (c) has contravened a requirement contained in the Manual;

the Controller may, subject to section 24, by notice in writing given to the licensee, suspend the licence for a specified period not exceeding 6 months or cancel it, if he or she believes on reasonable grounds that it is necessary in the interests of the health or safety of any person affected by the licensee’s activities to do so.

- (2) The suspension or cancellation of a licence takes effect on—
- (a) the date on which notice of the suspension or cancellation is given to the licensee; or
 - (b) if a later date is specified in the notice, on that later date.

Notices

24. (1) The Controller shall not vary, or suspend or cancel a licence under section 23, unless he or she has given to the licensee a notice in writing that—
- (a) specifies the ground upon which the Controller intends to vary, suspend or cancel the licence;
 - (b) states the facts and circumstances that, in the Controller’s opinion, constitute that ground; and
 - (c) informs the licensee that the licensee may, within 28 days after the date of the notice, give to the Controller a written response to the matters stated in the notice.

(2) For the purpose of deciding whether to exercise his or her powers under section 22 or 23, the Controller shall have regard to any response given in accordance with a notice under subsection (1).

Emergency suspension

25. (1) Where—

- (a) a licensee—
 - (i) has been found guilty of an offence under this Act;
 - (ii) has contravened a condition to which the licence is subject;
or
 - (iii) has contravened a requirement contained in the Manual;
and
- (b) the Controller believes on reasonable grounds that it is necessary, in order to prevent or remove an imminent risk of death, serious illness or serious injury to a person (whether identified or not), to suspend the licence;

the Controller may, by notice in writing given to the licensee, suspend the licence for a specified period not exceeding 6 months.

(2) The suspension takes effect on the date on which the notice is given to the licensee.

(3) The notice of suspension shall—

- (a) specify the ground upon which the licence was suspended; and
- (b) state the facts and circumstances that, in the Controller's opinion, constitute that ground.

Return of licence

26. (1) Not later than 7 days after the date on which the variation, suspension or cancellation of a licence takes effect, the person to whom the licence had been issued shall submit it to the Controller.

(2) A person shall not, without reasonable excuse, fail to comply with subsection (1).

Penalty: \$1,000.

(3) The Controller shall endorse any variation on the licence and return it to the licensee.

Review of decisions

27. (1) Application may be made to the Appeals Tribunal for a review of a decision by the Controller—

- (a) granting a licence subject to conditions;
- (b) refusing to grant a licence;
- (c) varying a licence; or
- (d) suspending or cancelling a licence.

(2) A notice under subsection 20 (3) or section 22, 23 or 25 shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Appeals Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act.

(3) The validity of a decision referred to in subsection (1) is not affected by a failure to comply with subsection (2).

PART V—OFFENCES

Handling—general

28. A person shall not, without reasonable excuse, store, transport or dispose of clinical waste in a manner that is likely to cause injury or disease to a person lawfully dealing with that waste.

- Penalty: (a) if the offender is a natural person—\$5,000 or imprisonment for two years or both; or
- (b) if the offender is a body corporate—\$25,000.

Handling—regulated premises

29. A person shall not, without reasonable excuse, store, transport or dispose of clinical waste derived from regulated premises otherwise than in accordance with the Manual.

- Penalty: (a) if the offender is a natural person—\$5,000 or imprisonment for two years or both; or
- (b) if the offender is a body corporate—\$25,000.

Unlicensed transportation

30. A person shall not conduct the business of transporting clinical waste unless licensed to do so.

- Penalty: (a) if the offender is a natural person—\$1,000 or imprisonment for 6 months, or both; or
- (b) if the offender is a body corporate—\$5,000.

PART VI—ENFORCEMENT**Interpretation**

31. For the purposes of this Part, a thing is connected with a particular offence if—

- (a) the offence has been committed with respect to it;
- (b) it will afford evidence of the commission of the offence; or
- (c) it was used, or is or was intended to be used, for the purpose of committing the offence.

Entry to premises

32. (1) For the purposes of this Act, an inspector may, without the authority of a warrant—

- (a) enter regulated premises at any reasonable time; or
- (b) enter any premises at any time with the consent of the occupier;

if the inspector believes on reasonable grounds that those premises are being used in connection with the storage, treatment, transportation or disposal of clinical waste.

(2) An inspector who enters premises under subsection (1) is not entitled to remain on the premises if, on request by the occupier, the inspector does not produce his or her identity card to the occupier.

Consent to entry

33. (1) An inspector who requests a person to consent to the inspector entering premises under subsection 32 (1) shall inform the person that he or she may refuse to give consent.

(2) Where an inspector obtains the consent of a person to enter premises under subsection 32 (1), he or she shall ask the person to sign a written acknowledgment—

- (a) that the person has been informed that he or she may refuse to so consent;
- (b) that the person has consented; and
- (c) of the day on which, and the time at which, the person consented.

(3) Where it is material, in any proceedings, for a court to be satisfied that a person has consented to an inspector entering premises under subsection 32 (1) and an acknowledgment, in accordance with subsection (2), signed by the person is not produced in evidence, it shall be presumed that the person did not consent, unless the contrary is established.

Powers of inspectors

34. An inspector who is entitled under section 32 to remain on premises may—

- (a) inspect, examine, take measurements of, or conduct tests concerning, the premises or any system of work, plant, substance or thing at the premises;
- (b) inspect and test any container or equipment on the premises that the inspector believes on reasonable grounds to be used for the treatment, storage, transportation or disposal of clinical waste;
- (c) inspect and test any material or substance on the premises that the inspector believes on reasonable grounds to be clinical waste, and take samples of any such material or substance;

- (d) take such photographs, video recordings or films in connection with the inspection as the inspector believes on reasonable grounds to be necessary;
- (e) seize anything that the inspector believes on reasonable grounds to be connected with an offence against this Act;
- (f) inspect any document on the premises relating to the treatment, storage, transportation or disposal of clinical waste;
- (g) make copies of, or take extracts from, any such document;
- (h) require any person on the premises to make available to the inspector any document relating to the use of the premises in connection with the treatment, storage, transportation or disposal of clinical waste;
- (i) require any person on the premises to answer questions relating to the use of those premises in connection with the treatment, storage, transportation or disposal of clinical waste; and
- (j) require any person on the premises to give the inspector such assistance as is necessary or reasonable to enable the inspector to exercise his or her powers under this section.

Taking samples

35. An inspector who takes a sample under paragraph 34 (c) shall—

- (a) ensure that the sample is such as to permit paragraph (c) to be complied with;
- (b) give a receipt for the sample to the occupier of the premises from which the sample was taken;
- (c) divide the sample into 2 parts as nearly as practicable identical in size and composition to each other and each suitable for the purpose of analysis;
- (d) place each of those parts in a separate container and seal each container;
- (e) attach to each container a label bearing the signature of the inspector and particulars of the date and time when, and the place at which, the sample was taken; and
- (f) give one container to the occupier of the premises.

Disposal of seized items

36. (1) Where a thing has been seized under paragraph 34 (e) and—

- (a) a prosecution for an offence against this Act in connection with that thing has not been instituted within 90 days after the day of seizure; or
- (b) a person is so charged but is not convicted;

subject to subsection (2), the Controller shall take all reasonably practical steps to give the thing to the person whom the Controller reasonably believes to be entitled to it.

(2) Where a person is—

- (a) convicted of an offence against this Act; or
- (b) dealt with under section 556A of the Crimes Act in respect of an offence against this Act;

the court may order that anything seized under paragraph 34 (e) and connected with the offence—

- (c) be given to the person who appears to the court to be entitled to it; or
- (d) be forfeited to the Territory.

Search warrants

37. (1) Where an information on oath is laid before a magistrate alleging that there are reasonable grounds for suspecting that there may be on any premises a thing of a particular kind connected with a particular offence against this Act or the regulations, and the information sets out those grounds, the magistrate may issue a search warrant authorising an inspector named in the warrant, with such assistance and by such force as is necessary and reasonable—

- (a) to enter the premises;
- (b) to search those premises for things of that kind; and
- (c) to exercise any of the powers referred to in section 34 in relation to such a thing.

(2) A magistrate shall not issue a warrant under subsection (1) unless—

- (a) the informant or some other person has given to the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
 - (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (3)** A warrant shall—
- (a) state the purpose for which it is issued;
 - (b) specify the nature of the offence in relation to which the entry, search and exercise of the powers under section 34 are authorised;
 - (c) specify particular hours during which the entry is authorised or state that the entry is authorised at any time of day or night;
 - (d) include a description of the kinds of things in relation to which the powers under section 34 may be exercised; and
 - (e) specify a day, not being later than one month after the day of issue of the warrant, on which the warrant ceases to have effect.

Obstructing inspectors

38. A person shall not, without reasonable excuse—

- (a) obstruct or hinder an inspector in the exercise of his or her powers under this Part; or
- (b) contravene a requirement of an inspector under section 34.

Penalty: (a) if the offender is a natural person—\$1,000 or imprisonment for 6 months, or both; or

- (b) if the offender is a body corporate—\$5,000.

PART VII—MISCELLANEOUS

Conduct of directors, servants and agents

39. (1) Where, for the purpose of a prosecution for an offence against this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and

(b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

(2) A reference in subsection (1) to the state of mind of a body or person is to be read as including a reference to—

(a) the knowledge, intention, opinion, belief or purpose of the body or person; and

(b) the body's or person's reasons for the intention, opinion, belief or purpose.

(3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purpose of a prosecution for an offence against this Act, to have been engaged in also by the body or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

(4) Where—

(a) a natural person is convicted of an offence against this Act; and

(b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(5) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

(6) A reference in this section to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

Regulations

40. (1) The Executive may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to this Act.

(2) Without limiting the generality of subsection (1), the regulations may prescribe penalties not exceeding—

- (a) if the offender is a natural person—\$1,000; or
- (b) if the offender is a body corporate—\$5,000;

for offences against the regulations, including offences consisting of contraventions of requirements contained in the Manual.

[Presentation speech made in Assembly on 15 February 1990.]

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