



Australian Capital Territory

# Nurse Practitioners Legislation Amendment Act 2004

A2004-10

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Australian Capital Territory

# Nurse Practitioners Legislation Amendment Act 2004

**A2004-10**

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An Act to amend legislation because of the enactment of the *Nurses Amendment Act 2003*, and for other purposes

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

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2003 112B

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Nurse Practitioners Legislation Amendment Act 2004*.

### 2 Commencement

This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

## Part 2 Health Act 1993

### 3 Legislation amended—pt 2

This part amends the *Health Act 1993*.

### 4 New section 37B

*insert*

#### 37B Regulations about nurse practitioners

- (1) The regulations may make provision in relation to nurse practitioner positions and the scopes of practice for nurse practitioner positions.
- (2) In this section:

***nurse practitioner position*** means a position approved under the regulations as a nurse practitioner position.

***position*** means a position (however described) in the public or private sector, whether or not the occupant is an employee.

***scope of practice***, for a nurse practitioner position, means the manner in which the nurse practitioner who occupies the position may practise as a nurse practitioner, including, for example, the aspects of practice that the nurse practitioner may perform as a nurse practitioner.

**Examples for def *scope of practice***

- 1 prescribing particular medication
- 2 referring patients to other health care professionals
- 3 ordering particular diagnostic investigations

*Note* An example is part of the regulations, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **Part 3                      Legislation Act 2001**

### **5            Legislation amended—pt 3**

This part amends the *Legislation Act 2001*.

### **6            Dictionary, part 1, new definition of *nurse practitioner***

*insert*

*nurse practitioner* means a person who is registered as a nurse practitioner under the *Nurses Act 1988*.



## Part 4                      Mental Health (Treatment and Care) Act 1994

### 7      Legislation amended—pt 4

This part amends the *Mental Health (Treatment and Care) Act 1994*.

### 8      New section 4A

*insert*

#### 4A      Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1      Criminal Code*

The Criminal Code, ch 2 applies to the following offence against this Act (see Code, pt 2.1):

- s 119B (2) (Identity cards for mental health officers).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2      Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

**9 Section 119**

*substitute*

**119 Mental health officers**

- (1) The Minister may appoint a person as a mental health officer.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) A person is not eligible for appointment as a mental health officer unless the person is a mental health nurse, authorised nurse practitioner, psychologist or social worker.

- (3) In this section:

***authorised nurse practitioner*** means a nurse practitioner who is the occupant of a nurse practitioner position acting within the scope of practice for the position.

***nurse practitioner position***—see the *Health Act 1993*, section 37B (2).

***scope of practice***—see the *Health Act 1993*, section 37B (2).

**119A Functions of mental health officers**

The functions of a mental health officer for this Act are the functions that the chief psychiatrist directs.

*Note* ***Function*** includes authority, duty and power (see Legislation Act, dict, pt 1).

**119B Identity cards for mental health officers**

- (1) The chief executive must give a mental health officer an identity card that states the person is a mental health officer for this Act and shows—
  - (a) the name of the person; and
  - (b) a recent photograph of the person.
- (2) A person commits an offence if—
  - (a) the person was appointed as a mental health officer; and
  - (b) the person ceases to be a mental health officer; and
  - (c) the person does not return the person's identity card to the chief executive as soon as practicable (but within 7 days) after the day the person ceases to be a mental health officer.

Maximum penalty: 1 penalty unit.

- (3) An offence against subsection (2) is a strict liability offence.

## Part 5 Pharmacy Act 1931

### 10 Legislation amended—pt 5

This part amends the *Pharmacy Act 1931*.

### 11 New section 4A

*in part 1, insert*

#### 4A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to the following offence against this Act (see Code, pt 2.1):

- s 51 (Restrictions on supply of certain medicines etc).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

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**12 Sections 46 and 47**

*substitute*

**46 Prescriptions to be signed and dated etc**

A person who issues a prescription (the *prescriber*) must—

- (a) issue the prescription on which the prescriber's full name is printed; and
- (b) sign and date the prescription.

*Note* The *Poisons Regulations 1933* also contain provisions about prescriptions.

**47 Record of prescriptions**

- (1) A pharmacist must keep a record of every prescription dispensed, compounded or made up by the pharmacist.
- (2) The record must be made in accordance with the regulations (if any).

**13 Section 51**

*substitute*

**51 Restrictions on supply of certain medicines etc**

- (1) A person commits an offence if—
  - (a) the person is not—
    - (i) a doctor; or
    - (ii) an authorised nurse practitioner; or
    - (iii) acting in accordance with a doctor's direct instructions to the person; and

Section 13

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- (b) the person intentionally attends on, prescribes for, or supplies a substance or instrument to, someone else—
- (i) for the treatment or cure of a sexual health condition (whether or not the other person has the condition); or
  - (ii) for menstrual problems; or
  - (iii) to influence the course of a pregnancy.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Absolute liability applies to subsection (1) (a) (i).
- (3) Strict liability applies to subsection (1) (a) (ii) and (iii).
- (4) Subsection (1) does not apply to—
- (a) a registered pharmacist who dispenses a substance or instrument to someone else under a prescription given by a doctor or nurse practitioner; or
  - (b) a registered pharmacist who, in the ordinary course of the pharmacist's business, sells or supplies a substance or instrument (other than a substance or instrument prescribed under the regulations) for a purpose other than a purpose mentioned in subsection (1) (b).
- (5) In this section:

***authorised nurse practitioner*** means a nurse practitioner who is the occupant of a nurse practitioner position acting within the scope of practice for the position.

***nurse practitioner position***—see the *Health Act 1993*, section 37B (2).

***scope of practice***—see the *Health Act 1993*, section 37B (2).

***sexual health condition*** means—

- (a) a sexually transmitted disease; or
- (b) a disease affecting a reproductive organ or function; or
- (c) impotence; or
- (d) an ailment relating to sexual intercourse.

***sexually transmitted disease***—see the *Sexually Transmitted Diseases Act 1956*, section 4.

*Note* Under the *Sexually Transmitted Diseases Act 1956*, s 4 a ***sexually transmitted disease*** is chancroid, chlamydial disease, donovanosis, gonorrhoea, HIV/AIDS, lymphogranuloma venereum, syphilis or a disease prescribed by regulations under that Act.

## Part 6 Poisons Act 1933

### 14 Legislation amended—pt 6

This part amends the *Poisons Act 1933*.

### 15 New section 3A

*in part 1, insert*

#### 3A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to the following offence against this Act (see Code, pt 2.1):

- s 16 (Sale etc of biological preparations and restricted substances).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

### 16 Section 16

*substitute*

#### 16 Sale etc of biological preparations and restricted substances

- (1) A person commits an offence if—
  - (a) the person sells or otherwise supplies to, or dispenses for, someone else a biological preparation or restricted substance; and



- (b) the other person is not an eligible receiver; and
- (c) the person is reckless about whether the other person is an eligible receiver.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A person commits an offence if—
- (a) the person sells or otherwise supplies a biological preparation or restricted substance; and
  - (b) the person is not—
    - (i) a doctor; or
    - (ii) an authorised nurse practitioner; or
    - (iii) a dentist; or
    - (iv) a pharmacist; or
    - (v) a veterinary surgeon; or
    - (vi) the holder of a licence to sell or otherwise supply the preparation or substance; or
    - (vii) a public employee who is authorised in writing by the Minister for this section.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) Absolute liability applies to subsection (2) (b) (i) to (v).
- (4) Strict liability applies to subsection (2) (b) (vi) and (vii).
- (5) In this section:

***authorised nurse practitioner*** means a nurse practitioner who is the occupant of a nurse practitioner position acting within the scope of practice for the position, if the scope of practice for the position

includes prescribing stated biological preparations or restricted substances (however described).

***eligible receiver***, in relation to a biological preparation or restricted substance, means—

- (a) a doctor; or
- (b) an authorised nurse practitioner; or
- (c) a dentist; or
- (d) a pharmacist; or
- (e) a veterinary surgeon; or
- (f) the holder of a licence to sell the preparation or substance; or
- (g) a public employee who is authorised in writing by the Minister for this section; or
- (h) a person who presents a prescription authorising the supply of the preparation or substance to the person or someone else for whom the person is acting.

***nurse practitioner position***—see the *Health Act 1993*, section 37B (2).

***prescription*** means a prescription, given by a doctor, authorised nurse practitioner, dentist or veterinary surgeon, that complies with the regulations.

***scope of practice***—see the *Health Act 1993*, section 37B (2).

**17 Maximum penalty where offence is due to inadvertence  
Section 18 (b)**

*omit*

issued by doctors

**18 Regulation-making power  
Section 22 (2) (i)**

*substitute*

- (i) the issue of prescriptions;

## Part 7 Poisons Regulations 1933

### 19 Legislation amended—pt 7

This part amends the *Poisons Regulations 1933*.

### 20 Dispensing Regulation 5 (2) (k)

*substitute*

- (k) a prescription for a substance containing a biological preparation or restricted substance must be kept by the pharmacist to whom it is presented, whether or not the prescription has been dispensed, if—
- (i) the pharmacist suspects that the prescription is forged or fraudulently issued; or
  - (ii) the prescription does not contain the signature of a person authorised to prescribe it.

## Part 8 Prostitution Act 1992

### 21 Legislation amended—pt 8

This part amends the *Prostitution Act 1992*.

### 22 New section 3A

*insert*

### 3A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to the following offence against this Act (see Code, pt 2.1):

- s 26 (Medical tests and examinations).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

### 23 Section 26

*substitute*

### 26 Medical tests and examinations

- (1) A person commits an offence if—
  - (a) the person is an operator or owner of a brothel or escort agency; and

Section 23

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- (b) the person fails to take reasonable steps to ensure that 1 or more of the following is not used to induce someone else to believe that the prostitute is not infected with a sexually transmitted disease:
- (i) the fact that a prostitute had a medical test;
  - (ii) the fact that a prostitute had a medical examination by a doctor or authorised nurse practitioner;
  - (iii) the result of a prostitute's medical test;
  - (iv) the result of a prostitute's medical examination by a doctor or authorised nurse practitioner.

Maximum penalty: 20 penalty units.

- (2) A prostitute commits an offence if—
- (a) the prostitute tells someone else—
    - (i) that the prostitute had a medical test; or
    - (ii) that the prostitute had a medical examination by a doctor or authorised nurse practitioner; or
    - (iii) the result of the prostitute's medical test; or
    - (iv) the result of the prostitute's medical examination by a doctor or authorised nurse practitioner; and
  - (b) the prostitute—
    - (i) intends the person to believe that the prostitute is not infected with a sexually transmitted disease; or
    - (ii) is reckless about whether the person believes that the prostitute is not infected with a sexually transmitted disease.

Maximum penalty: 20 penalty units.

- (3) An offence against subsection (1) is a strict liability offence.

(4) This section does not apply to an operator or owner of a brothel or escort agency if the operator or owner uses a prostitute's medical test, a prostitute's medical examination by a doctor or authorised nurse practitioner, or the result of a prostitute's medical test or medical examination by a doctor or authorised nurse practitioner, to satisfy himself or herself that the prostitute is not infected with a sexually transmitted disease.

(5) In this section:

*medical test* means the taking of a sample of tissue, blood, urine or other bodily material for medical testing.

#### **24 Disqualifying offences—this Act Schedule 2, item 8, column 3**

*omit*

medical examination

*substitute*

medical test and medical examination

#### **25 Dictionary, new definition of *authorised nurse practitioner***

*insert*

*authorised nurse practitioner* means a nurse practitioner who is the occupant of a nurse practitioner position acting within the scope of practice for the position.

#### **26 Dictionary, definition of *medical examination***

*omit*

**27 Dictionary, new definitions**

*insert*

*nurse practitioner position*—see the *Health Act 1993*, section 37B (2).

*scope of practice*—see the *Health Act 1993*, section 37B (2).



## Part 9 Public Health Act 1997

### 28 Legislation amended—pt 9

This part amends the *Public Health Act 1997*.

### 29 New section 6A

*in part 1, insert*

#### 6A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 102A (Doctors and authorised nurse practitioners—failure to notify)
- s 111 (Disclosure of information that identifies doctor etc).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

### 30 Section 102

*substitute*

#### 102 Notification by doctors and authorised nurse practitioners

- (1) If a doctor or authorised nurse practitioner has reasonable grounds to believe that a patient has, or may have, a notifiable condition, the doctor or nurse practitioner must—

- (a) give the patient information about—
    - (i) the transmission of the condition and how to prevent the transmission of the condition to others; and
    - (ii) anything determined in writing by the chief health officer; and
  - (b) advise the patient of the patient's rights under section 99 (c); and
  - (c) if the patient agrees, make reasonable arrangements for the patient to receive counselling in accordance with any applicable code of practice; and
  - (d) ask the patient to give the doctor or nurse practitioner information for the purpose of complying with section 102A (Doctors and authorised nurse practitioners—failure to notify).
- (2) A determination under subsection (1) (a) (ii) is a notifiable instrument.
- Note* A notifiable instrument must be notified under the Legislation Act.
- (3) Subsection (1) does not apply if the doctor or authorised nurse practitioner proves that he or she had reasonable grounds to believe that the patient had been given the information mentioned in subsection (1) (a) by another doctor or authorised nurse practitioner.
  - (4) Failure to comply with subsection (1) by a doctor—
    - (a) is taken to be unsatisfactory professional conduct for the *Medical Practitioners Act 1930*, part 4 (The conduct of medical practice); and
    - (b) is a ground for the patient to make a complaint to the commissioner for health complaints under the *Community and Health Services Complaints Act 1993*, section 22 (1).
  - (5) Failure to comply with subsection (1) by an authorised nurse practitioner—

- (a) is taken to be a failure to exercise adequate care in practising nursing for the *Nurses Act 1988*, section 61 (1) (Cancellation or suspension of registration or enrolment); and
- (b) is a ground for the patient to make a complaint to the commissioner for health complaints under the *Community and Health Services Complaints Act 1993*, section 22 (1).

**102A Doctors and authorised nurse practitioners—failure to notify**

- (1) A doctor or authorised nurse practitioner commits an offence if—
  - (a) the doctor or nurse practitioner has reasonable grounds to believe that a patient has, or may have, a notifiable condition; and
  - (b) the doctor or nurse practitioner fails to notify the chief health officer, in accordance with the applicable code of practice, about the patient’s notifiable condition as soon as practicable.

Maximum penalty: 5 penalty units.

- (2) A doctor commits an offence if—
  - (a) the doctor has reasonable grounds to believe that a dead person had, or may have had, a notifiable condition at the time of death; and
  - (b) the person was a patient of the doctor immediately before death, or was examined by the doctor after death; and
  - (c) the doctor fails to notify the chief health officer, in accordance with the applicable code of practice, about the person’s notifiable condition as soon as practicable.

Maximum penalty: 5 penalty units.

- (3) An offence against this section is a strict liability offence.

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- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the doctor or authorised nurse practitioner proves that he or she believed on reasonable grounds that the chief health officer had already been told about the notifiable condition of the patient or dead person.

**31 Authorised notification of contacts**  
**Section 108 (4) (a)**

*substitute*

- (a) a doctor or authorised nurse practitioner; or

**32 Section 111**

*substitute*

**111 Disclosure of information that identifies doctor etc**

- (1) A person commits an offence if the person—
- (a) intentionally discloses information notified under this division; and
  - (b) is reckless about whether the person who made the notification, or the pathology laboratory or hospital to which the notification relates, is reasonably able to be identified from the information.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Subsection (1) does not apply if—
- (a) the person who made the notification, or the person in charge of the pathology laboratory or hospital, consents in writing to the disclosure; or
  - (b) the person has a reasonable excuse for the disclosure.
- (3) In this section:

*person who made the notification* means the doctor, authorised nurse practitioner, pathologist or responsible person who made the notification.

*responsible person* means a counsellor mentioned in section 105 (1) (Notification by responsible people) or person mentioned in section 105 (2) who is responsible for the care, support or education of someone else.

### **33 Section 114**

*substitute*

#### **114 Public health directions—notice to doctor or authorised nurse practitioner**

- (1) This section applies if the chief health officer gives a public health direction about a person for reasons including the chief health officer's belief that the person has a disease or notifiable condition.
- (2) The chief health officer must give written notice of the direction to any doctor or authorised nurse practitioner professionally attending the person at the time of the direction.

### **34 Dictionary, new definitions**

*insert*

*authorised nurse practitioner* means a nurse practitioner who is the occupant of a nurse practitioner position acting within the scope of practice for the position.

*nurse practitioner position*—see the *Health Act 1993*, section 37B (2).

### **35 Dictionary, definition of *responsible person***

*substitute*

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*responsible person*, in relation to a person having a notifiable condition, means—

- (a) a doctor; or
- (b) an authorised nurse practitioner; or
- (c) a counsellor who has counselled the person in relation to the condition; or
- (d) a person who is responsible for the care, support or education of the person.

**36 Dictionary, new definition of *scope of practice***

*insert*

*scope of practice*—see the *Health Act 1993*, section 37B (2).

## Part 10                      Public Health Regulations 2000

### **37    Legislation amended—pt 10**

This part amends the *Public Health Regulations 2000*.

### **38    Sale of injurious drugs, articles and apparatus Regulation 51 (7) (c) and (d)**

*substitute*

- (c) the supply of drugs by prescription or order, signed by a doctor or authorised nurse practitioner; or
- (d) the supply of drugs by a doctor or authorised nurse practitioner to a patient or person acting on behalf of a patient.

## Part 11 Road Transport (Alcohol and Drugs) Act 1977

### 39 Legislation amended—pt 11

This part amends the *Road Transport (Alcohol and Drugs) Act 1977*.

### 40 Restrictions on screening tests and breath analyses Section 14 (3) (b)

*substitute*

- (b) if the person is in hospital and the doctor or authorised nurse practitioner attending the person certifies in writing that, in his or her opinion, complying with the requirement would be detrimental to the person's medical condition; or

### 41 New section 14 (4)

*insert*

- (4) If the person is in hospital, the police officer must, before making the requirement, tell the doctor or authorised nurse practitioner attending the person of the officer's intention to make the requirement.

### 42 Medical examinations Section 16 (4) and (5)

*omit*

doctor

*substitute*

doctor or authorised nurse practitioner



**43 Section 16 (6)**

*omit*

doctor or a police officer

*substitute*

doctor, authorised nurse practitioner or police officer

**44 Refusing blood test etc  
Section 23 (2) (b)**

*omit*

doctor

*substitute*

doctor or authorised nurse practitioner

**45 Section 23**

*renumber subsections when Act next republished under Legislation Act*

**46 Driver etc intoxicated  
Section 24A (2)**

*substitute*

- (2) A person arrested for an offence against this section is entitled to be examined by a doctor or authorised nurse practitioner if the person asks to be examined.

**47 Certificate of evidence  
Section 41 (1) (e)**

*substitute*

- (e) a certificate purporting to be signed by a doctor or authorised nurse practitioner stating all of the following is evidence of the matters stated in the certificate:
- (i) that he or she is a doctor or authorised nurse practitioner;
  - (ii) that at a stated hospital, on a stated date and at a stated time, he or she was attending the person named in the certificate;
  - (iii) that he or she was told by a police officer of the officer's intention to require a person to undergo a screening test under section 8 (Power to require screening test if vehicle not involved in accident), section 9 (Power to require screening test if motor vehicle involved in accident) or section 10 (Power to require screening test for culpable driving) or to provide a sample of the person's breath for breath analysis under section 12 (Breath analysis);
  - (iv) that he or she was of the opinion at the time he or she was told that—
    - (A) complying with the requirement would be detrimental to the person's medical condition; or
    - (B) complying with the requirement would not be detrimental to the person's medical condition; and

**48 Section 41 (1)**

*renumber subparagraphs when Act next republished under  
Legislation Act*

**49 Right of arrested person to medical examination  
Section 47 (1)**

*substitute*

- (1) A police officer who arrests a person for an offence against this Act must tell the arrested person, or someone else acting on behalf of the arrested person, that the arrested person is entitled to be examined by a doctor or authorised nurse practitioner nominated by the arrested person or other person.

**50 Dictionary, note 2**

*substitute*

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- doctor
- exercise
- fail
- function
- nurse
- nurse practitioner.

**51 Dictionary, new definitions**

*insert*

***authorised nurse practitioner*** means a nurse practitioner who is the occupant of a nurse practitioner position acting within the scope of practice for the position.

***medical examination*** means an examination by a doctor or authorised nurse practitioner.

***nurse practitioner position***—see the *Health Act 1993*, section 37B (2).

***scope of practice***—see the *Health Act 1993*, section 37B (2).

## Part 12                      Sexually Transmitted Diseases Act 1956

### 52    Legislation amended—pt 12

This part amends the *Sexually Transmitted Diseases Act 1956*.

### 53    Definitions for Act Section 4, new definitions

*insert*

**authorised nurse practitioner** means a nurse practitioner who is the occupant of a nurse practitioner position acting within the scope of practice for the position.

**nurse practitioner position**—see the *Health Act 1993*, section 37B (2).

**scope of practice**—see the *Health Act 1993*, section 37B (2).

### 54    New section 4A

*insert*

#### 4A    Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1    Criminal Code*

The Criminal Code, ch 2 applies to the following offence against this Act (see Code, pt 2.1):

- s 5 (Obligations on people with sexually transmitted diseases)
- s 5A (Notification about case of sexually transmitted disease)
- s 6 (Notification about person contravening s 5 (2))
- s 6A (Notification by pathologist etc)
- s 7A (Notice requiring medical examination of young person).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## **55 Sections 5 to 7**

*substitute*

### **5 Obligations on people with sexually transmitted diseases**

- (1) A person commits an offence if—
- (a) the person is reckless about whether the person has, or may have, a sexually transmitted disease; and
  - (b) the person fails to consult a doctor or authorised nurse practitioner about the disease as soon as possible.

Maximum penalty: 5 penalty units.

- (2) A person commits an offence if—
- (a) the person is a patient of a doctor or authorised nurse practitioner and is told by the doctor or nurse practitioner that the person has, or may have, a sexually transmitted disease; and
  - (b) the person fails to have the treatment recommended by the doctor or nurse practitioner until the person is cured of, or is free from, the disease.

Maximum penalty: 5 penalty units.

- (3) Strict liability applies to subsection (1) (b).
- (4) An offence against subsection (2) is a strict liability offence.

**5A Notification about case of sexually transmitted disease**

- (1) A doctor or authorised nurse practitioner commits an offence if—
- (a) the doctor or nurse practitioner has reasonable grounds to believe that a patient has, or may have, a sexually transmitted disease; and
  - (b) the doctor or nurse practitioner fails to notify the chief health officer about the case as soon as possible.

Maximum penalty: 5 penalty units.

- (2) A person commits an offence if the person includes in a notification mentioned in subsection (1) details that may identify the patient or the patient's address.

Maximum penalty: 5 penalty units.

- (3) Subsection (2) does not apply if another Territory law requires or permits the details to be given.
- (4) An offence against subsection (2) is a strict liability offence.

**6 Notification about person contravening s 5 (2)**

- (1) If a patient of a doctor or authorised nurse practitioner fails to have the treatment recommended by the doctor or nurse practitioner as mentioned in section 5 (2), the doctor or nurse practitioner must notify the chief health officer about the case as soon as possible, giving details that may identify the patient and the patient's address.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.

**6A Notification by pathologist etc**

- (1) A person (the *responsible person*) commits an offence if—
- (a) a pathologist tests a specimen to find out if a person has, or may have, a sexually transmitted disease; and

- (b) the test is positive; and
- (c) the responsible person—
  - (i) is the pathologist, and is self-employed; or
  - (ii) employs the pathologist; or
  - (iii) is in charge of a laboratory at a hospital that employs the pathologist; and
- (d) the responsible person fails to notify the chief health officer as soon as practicable—
  - (i) that the test is positive; and
  - (ii) the name and address of the doctor or authorised nurse practitioner who ordered the test or from whom the specimen was received.

Maximum penalty: 5 penalty units.

- (2) A person commits an offence if the person includes in a notification under subsection (1) the name of the person from whom the specimen was taken.

Maximum penalty: 5 penalty units.

- (3) Subsection (2) does not apply if another Territory law requires or permits the name to be given.
- (4) An offence against this section is a strict liability offence.
- (5) In this section:

*pathologist* includes a laboratory assistant or technical officer employed in a laboratory.

## **7 Notice requiring medical examination**

- (1) The chief health officer may, by written notice, require a person to have a medical examination at the time and place stated in the notice if the chief health officer—

- (a) receives a notification under section 6 (Notification about person contravening s 5 (2)) about the person; or
  - (b) has another reason for believing that the person has, or may have, a sexually transmitted disease.
- (2) The person must have the medical examination.
- (3) In this section:

*medical examination* means an examination by a doctor or authorised nurse practitioner.

#### **7A Notice requiring medical examination of young person**

- (1) If a notice under section 7 (Notice requiring medical examination) is given to a person under 16 years old (the *young person*), the chief health officer may give a copy of the notice to a parent or other person who has parental responsibility for the young person.
- (2) A person commits an offence if—
- (a) the person is given a copy of a notice under subsection (1); and
  - (b) the person fails to take all reasonable steps to ensure that the young person complies with the notice.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.
- (4) In this section:

*parental responsibility*—see the *Children and Young People Act 1999*, section 18.



**56 Apprehension of person failing to attend for examination  
Section 8 (1)**

*substitute*

- (1) This section applies to a person if—
- (a) the person is given a notice under section 7 (Notice requiring medical examination); and
  - (b) the person fails to comply with the notice.
- (1A) On application by the chief health officer, the Magistrates Court may issue a warrant for the person's apprehension.

**57 Section 8 (5) (a)**

*substitute*

- (a) fix a time and place for the person to be examined by a doctor, or authorised nurse practitioner, appointed by the chief health officer; and

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

**58 Section 8 (8)**

*substitute*

- (8) If a person apprehended under this section refuses to be examined by a doctor or authorised nurse practitioner as mentioned in subsection (5) (a), the doctor or nurse practitioner may forcibly examine the person, with any assistance the doctor or nurse practitioner considers necessary.

**59 Section 8**

*renumber subsections when Act next republished under Legislation Act*

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## Part 13 Tuberculosis Act 1950

### 60 Legislation amended—pt 13

This part amends the *Tuberculosis Act 1950*.

### 61 New section 3A

*insert*

#### 3A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to the following offence against this Act (see Code, pt 2.1):

- s 4 (Doctors and authorised nurse practitioners—failure to notify).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

### 62 Section 4

*substitute*

#### 4 Doctors and authorised nurse practitioners—failure to notify

- (1) A doctor or authorised nurse practitioner commits an offence if—
  - (a) the doctor or nurse practitioner has reasonable grounds to believe that a patient has, or may have, tuberculosis; and

- (b) the doctor or nurse practitioner fails to notify the chief health officer about the patient's condition as soon as possible, including—
  - (i) whether the tuberculosis is or was in an active form or is suspected of being or having been in that form; and
  - (ii) whether the patient is or was in an infectious condition or is suspected of being or having been in that condition.

Maximum penalty: 5 penalty units.

- (2) A doctor commits an offence if—
  - (a) the doctor has reasonable grounds to believe that a dead person had, or may have had, tuberculosis at the time of death; and
  - (b) the person was a patient of the doctor immediately before death, or was examined by the doctor after death; and
  - (c) the doctor fails to notify the chief health officer about the person's condition as soon as possible, including—
    - (i) whether the tuberculosis is or was in an active form or is suspected of being or having been in that form; and
    - (ii) whether the person is or was in an infectious condition or is suspected of being or having been in that condition.

Maximum penalty: 5 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the doctor or authorised nurse practitioner proves that he or she believed on reasonable grounds that the chief health officer had already been told about the condition of the patient or dead person.
- (5) In this section:

*authorised nurse practitioner* means a nurse practitioner who is the occupant of a nurse practitioner position acting within the scope of practice for the position.

*nurse practitioner position*—see the *Health Act 1993*, section 37B (2).

*scope of practice*—see the *Health Act 1993*, section 37B (2).

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## Endnotes

### 1 Presentation speech

Presentation speech made in the Legislative Assembly on 11 December 2003.

### 2 Notification

Notified under the Legislation Act on 19 March 2004.

### 3 Republications of amended laws

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Nurse Practitioners Legislation Amendment Bill 2004 which originated in the Assembly as the Nurse Practitioners Legislation Amendment Bill 2003 and was passed by the Legislative Assembly on 9 March 2004.

Clerk of the Legislative Assembly

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